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Overview of International Cooperation Protocols in Criminal Matters Part 1

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Overview of International Cooperation Protocols in Criminal Matters



From a conceptual point of view, international legal cooperation in criminal matters is a fundamental mechanism through which the international community addresses the problem of crime in general, and transnational organized crime in particular. Through this mechanism, authorities in charge of guiding criminal investigations in a state, such as judges and prosecutors, usually request collaboration from their counterparts in other states to solve different aspects of a criminal judicial process.

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Transnational threats, such as terrorism, illicit money laundering, human trafficking and drug trafficking, have made tools such as legal cooperation between states essential. In view of this challenging panorama, all actors involved in the fight against crime must be aware of the importance of International Cooperation and consider it an effective mechanism.

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When we talk about international legal cooperation in criminal matters, we refer to two collaboration tools between justice systems: **legal assistance and extradition**. The origins of international legal cooperation date back to pre-Roman times, but its true development occurred in the 19th century, when several bilateral treaties on extradition were signed. At that time, legal assistance in criminal matters was linked to extradition, although over time, it began to be regulated separately.

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It is important to highlight that, in addition to legal cooperation, there are other tools to obtain help from other states in criminal investigations, such as **collaboration through Interpol, financial intelligence units and cooperation agreements between tax and customs agencies.**

Inter-institutional cooperation between public ministries in the region has also been developed.

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There are different types of treaties that can serve as a basis for requesting International Cooperation in criminal matters..

- First of all, there are bilateral treaties on assistance in criminal matters and extradition, signed between two states.
- Then, we have regional treaties that regulate cooperation between more than one state, such as the Mercosur protocol of mutual legal assistance in criminal matters.
- In addition, there are multilateral conventions to fight certain crimes, such as the United Nations Convention against Illicit Traffic in Drugs and Psychotropic Substances.

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There are four important objectives for international legal cooperation, both at the regional level in Mercosur and in a more general context. We will talk about the **transfer of convicted people, the transfer of criminal execution, the transfer of criminal proceedings and joint investigation teams.**

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- Transfer of criminal execution: although still little used among countries in the region, the transfer of criminal execution depends on the mutual recognition of foreign criminal sentences. This recognition is based on the idea of trust and observance of the rule of law in each of the cooperating countries. Through the transfer of criminal execution, a conviction issued in one country, such as Argentina, can be recognized and executed in another country, such as Brazil. This transfer avoids the need for extradition and can be an alternative when extradition is not possible due to nationality issues.

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- Transfer of convicted persons: it is an objective of a humanitarian nature that is carried out in the interest of the convicted person; For it to be carried out, it is necessary to have the consent of the convicted person and the states of sentencing and execution. The countries of the region are part of bilateral treaties and multilateral agreements on the transfer of convicted persons, such as the Mercosur agreement on the transfer of convicted persons. This modality can also be based on the Inter-American Convention on Serving Criminal Sentences Abroad and on multilateral treaties of other organizations.

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- Transfer of criminal proceedings: this mechanism allows the coordination of jurisdictions when two or more sovereign states have jurisdiction over the same criminal act. The transfer of criminal proceedings avoids duplication of resources and allows the process to be carried out in the country where the administration of justice is most efficient. This can be based on multilateral treaties such as the United Nations Convention against Transnational Organized Crime or regional agreements such as the 2010 San Juan protocol.

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- Joint investigation teams: they are binational or multinational forces that coordinate the prosecution of transnational crimes. Police agencies and public ministries from several countries work together under an operational agreement signed under an international treaty. These teams accelerate the obtaining of evidence necessary for criminal prosecution and simplify the process. The 2010 San Juan agreement on joint investigation teams is an example of a regional treaty that facilitates this collaboration.

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Effectiveness in the fight against transnational crime and even common crime requires close and agile cooperation between States. In order to facilitate this, there are international treaties and conventions that focus on cooperation from a criminal justice perspective and provide solid foundations for authorities to carry out cross-border investigations efficiently through mutual legal assistance.

Furthermore, these instruments seek to avoid impunity for lawbreakers through extradition, which is one of the oldest and most effective instruments of International Cooperation in criminal matters.

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Extradition involves the delivery of a person by a State that has them in its territory to another State that is looking for them to subject them to a criminal investigation or execute a final sentence issued by their courts. This pursues the interest of guaranteeing compliance with the criminal law and avoiding impunity. Extradition procedures vary from country to country, depending on each country's legal tradition, and are sometimes considered costly and bureaucratic. For this reason, alternatives to extradition have been proposed for the surrender of fugitives, such as expulsion or deportation, although these do not always fit into clear legal categories and can sometimes violate people's fundamental rights.

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In the context of regional integration, the need to simplify extradition procedures through the principle of mutual recognition of judicial decisions has been recognized. In this sense, the Common Market Council approved the agreement on the Mercosur detention order and surrender procedures between the Mercosur member states and associated states. This agreement, similar to the European arrest warrant, is based on the principle of mutual trust and represents a tangible symbol of the direct cooperation that we long for in the region.



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