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***International cooperation in the prevention,
combating and elimination of kidnapping and
in providing assistance to victims***



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Introduction

The increasing involvement of organized crime groups in kidnapping for ransom or for some other reasons has raised serious concern to the international community. No doubt, it poses a serious challenge to all states. Both poorest developing countries and such superpowers of the 21st century as the United States of America regard kidnapping as a serious problem that should be addressed as effectively as possible. The necessity to fight this criminal practice is a reason for the international community to join efforts to boost international cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims.

In this report, we shall define the term “kidnapping”, analyze the UN issued documents on the issue of kidnapping, have a look at the counter-kidnap activities carried out by several agencies (e. g. United Nations Office on Drugs and Crime), examine the UN member states’ practices of addressing the problem, and draw some conclusions.

Kidnapping as a crime

Definition and historical background

Kidnapping in accordance with law is the taking away of a person by force, threat, or deceit, with intent to cause him or her to be detained against his will. Kidnapping may be done for ransom or for political or other purposes. A parent whose legal rights to custody of a child have been revoked can be guilty of the crime for taking the child. Consent of a kidnapped person is a defense, unless given by one legally incompetent at the time (e.g., a minor or a mentally ill person). The crime differs from abduction, in that the intent of sexual intercourse is not required, and from false imprisonment, in which there is no attempt to abduct¹. The practice of kidnapping, in the wider and not strictly legal sense, has been known since the beginnings of history. In the past, and presently in some parts of the world (such as southern Sudan), kidnapping is a common means used to obtain

¹ In US criminal law abduction is not regarded as a different crime. However, most countries define abduction as a category of kidnapping.

slaves and money through ransom. In more recent times, kidnapping in the form of shanghaiing (or "press-ganging") men was used to supply merchant ships in the 19th century with sailors, whom the law considered unfree labour. Kidnapping has also been employed by brigands and revolutionaries to obtain money through ransom or to hold hostages whose safe release was dependent on the freeing of political prisoners.

Kidnapping for ransom is a common occurrence in various parts of the world today, and certain cities and countries are often described as the "Kidnapping Capital of the World." As of 2007, that title belongs to Baghdad. In 2004, it was Mexico, and in 2001 it was Colombia.

Types and named forms of kidnapping

According to the report of the United Nations Secretary-General (E/CN.15/2003/7) the following types of kidnapping can be identified:

1. Kidnapping for extortion, to demand ransom, influence business decisions or obtain commercial advantage. This category of kidnapping was also regarded as connected to protection rackets where kidnapping (or the threat thereof) was used to ensure payment.
2. Kidnapping between or within criminal groups for purposes of debt recovery or securing advantage in a particular criminal market.
3. Kidnapping for purposes of sexual exploitation, including the kidnapping of and then the subsequent trafficking in women and children both within countries and across state frontiers.
4. Kidnapping linked to domestic or family disputes. Such cases were seldom reported to be linked to organized crime, although in some cases a demand for ransom was made.
5. Kidnapping for political or ideological purposes, including the obtaining of publicity for a particular cause.
6. Kidnapping in the course of carrying out another criminal act.

As far as the named forms of kidnapping are concerned, we should mention a couple of terms such as:

1. Bride kidnapping - a term often applied loosely, to include any bride 'abducted' against the will of her parents, even if she is willing to marry the 'abductor'. It still is traditional amongst certain nomadic peoples of Central Asia. It has seen resurgence in Kyrgyzstan since the fall of the Soviet Union and the subsequent erosion of women's rights.
2. Tiger kidnapping - taking a hostage to make a loved one or associate of the victim do something, e.g. a child is taken hostage to force the shopkeeper to open the safe. The term originates from the usually long preceding observation, like a tiger does on the prowl.

Some figures and examples

To understand the seriousness of the problem let us take a look at the situation with kidnapping in different parts of the world.

USA: As the United States is estimated to have a population of about 304 million people, if 20,561 persons were reported kidnapped in 2008, it would amount to a kidnapping rate of 6.7 per 100,000 persons.

Colombia: The most recent statistics provided by Colombia indicated that 2,512 cases of kidnapping had been reported between January and November 2008

Russia: In the northern Caucasus region of the Russian Federation, the area where kidnappings are most prevalent 335 incidents were reported in 2007 and 382 in the first nine months of 2008.

Kidnapping and the United Nations

Before 2000 the problem of kidnapping was addressed from such a point of view that kidnapping is just one type of organized crime (that is why we consider the United Nations Convention against Transnational Organized Crime as one of the most important legal instruments to combat kidnapping). The United Nations started to regard this serious offence as a separate issue only in 2002 with the adoption of the ECOSOC 2002/16 resolution on International cooperation in the cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims. The resolution vigorously condemned and rejected the worldwide practice of kidnapping, in any circumstance and for any purpose,

urged all the member states to establish as a serious crime in their domestic legislation kidnapping in all its modalities and invited the member states to provide to the Secretary-General information on the practice of kidnapping and on relevant domestic measures that have been taken. ECOSOC 2003/28 resolution also urged member states that have taken new measures to cooperate with the Secretary-General and competent entities of the United Nations system, in particular the Centre for International Crime Prevention of the United Nations Office on Drugs and Crime, by submitting comments on the progress report of the Secretary-General and by providing information on national legislation and on practical measures and experience at the domestic level in that connection.

The result of this work has been the United Nations Secretary-General's report (E/CN.15/2003/7), which Koffi Annan presented to the Commission on Crime Prevention and Criminal Justice. The situation with kidnapping throughout the world in that report was described as follows:

“It was evident from the number and content of responses received that many States regarded kidnapping, and its links to the activities of organized criminal groups and terrorist groups, as constituting one of the most important challenges they faced in the security sphere. Indeed, responses from several States provided a graphic illustration of the significant psychological, social and economic damage associated with kidnapping. While definitional and recording problems made it difficult to provide an exact international assessment of overall levels of kidnapping, it was clear that the crime was now well established in several regions of the world, most notably Latin America, parts of Asia and Africa. Some European countries also noted increases, although these appeared to relate to the use of kidnapping between competing organized criminal groups. Given the seriousness of the problem in some regions and its potential to spread further, it was encouraging that States that responded to the questionnaire considered the crime to be of a particularly serious nature, a conviction generally resulting in punishment of four or more years' imprisonment. If conducted by an organized criminal group, kidnapping thus fell under the provisions of the United Nations

Convention against Transnational Organized Crime with regard to mutual legal assistance and extradition”.

Among the recommendations enumerated in this report were:

- to harmonize the definition of kidnapping used in various jurisdictions as far as possible
- to make more concerted effort to monitor global levels of kidnapping, as well as any connections to organized crime
- to build more effective international cooperation arrangements to fight kidnapping.

The General Assembly 59/154 and the ECOSOC 2004/20 resolutions, issued December 20 and July 24, 2004 correspondingly, requested the United Nations Office on Drugs and Crime to prepare a handbook, for use by competent authorities, of proven and promising practices in the fight against kidnapping, including:

- (a) Measures to prevent the crime of kidnapping that are directed at potential victims;
- (b) Preventive measures aimed at disbanding organized criminal groups and terrorist groups;
- (c) Cooperation or strategic alliances with the private sector;
- (d) Response to and management of crises;
- (e) Identification of the minimum elements that would help States to make adjustments to their domestic legislation with a view to having a common understanding of the crime of kidnapping, which would also help to ascertain reliable trends from a global perspective;
- (f) Development of specialized measures for providing support and assistance to victims and their families;
- (g) Information on national authorities responsible for preventing and combating kidnapping;
- (h) Reporting procedures, rescue operations, information systems and prosecutions;

The GA resolution also required to provide technical assistance to States, upon request, to enable them to strengthen their capacity to combat kidnapping, including training of judges, prosecutors and other law enforcement officials in mechanisms for disbanding criminal organizations.

The above mentioned handbook, entitled Counter-Kidnap Manual was made available to Member States in early 2006 and included best practices for law enforcement authorities to combat kidnapping.

Report of the Secretary-General, E/CN.15/2003/7

March 5, 2003 at the Commission on Crime Prevention and Criminal Justice 12th session the United Nations Secretary-General presented his report on International cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims. The report was an analysis of the responses received from member states that replied to a UN questionnaire on the practice of kidnapping and its extent in their countries, as well as the legislative, law enforcement, victim support and international cooperative initiatives taken in response to the problem.

Replies were received from the following States: Argentina, Barbados, Belarus, Belgium, Bolivia, Bulgaria, Chile, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Japan, Jordan, Kuwait, Latvia, Lebanon, Malawi, Malaysia, Malta, Mexico, Monaco, Morocco, Netherlands, Oman, Panama, Peru, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Slovakia, Slovenia, Spain, Sweden, Switzerland, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Zimbabwe. The African Institute for the Prevention of Crime and the Treatment of Offenders provided a response reflecting the views of five countries, Cameroon, Comoros, Djibouti, Guinea and Senegal. Replies were also received from the United Nations Development Program and the International Atomic Energy Agency. The Department of Peacekeeping Operations of the Secretariat

submitted a detailed reply compiled from reports of its missions to Angola, Bosnia and Herzegovina, Georgia, Kosovo, Sierra Leone and Western Sahara².

Summary of the survey findings and additional responses from Member States

All responding States indicated either that their domestic legal system made provisions for the specific criminal offence of kidnapping or for an equivalent, such as the deprivation of liberty, the restriction of personal freedom, false or wrongful imprisonment and/or abduction.

All States reported that the crime of kidnapping was regarded as a serious offence. In a number of cases, penal or criminal codes referred to particular circumstances and actions that might take place during the course of a kidnapping or equivalent offence that were regarded as aggravating, with the result that the stipulated punishment was increased.

In all States, the penalties imposed for kidnapping were severe. In cases of kidnapping where there were considered to be no aggravating circumstances, the penalty was generally a period of imprisonment of between 1 and 10 years, although in some jurisdictions there was also an option for the payment of a fine. If the kidnapping was accompanied by aggravated circumstances, the penalties generally increased to between 10 and 20 years. In cases where injury or death resulted, the penalties included life imprisonment and, in a limited number of cases, the death penalty. Provision was also made for the punishment of accessories to the act of kidnapping.

It is significant that all countries that provided information considered kidnapping to be a serious crime and treated it accordingly. The information provided highlights the diversity of the phenomenon of kidnapping, the various types of kidnapping identified suggesting that the role of organized criminal and terrorist groups differed from jurisdiction to jurisdiction and that easy generalizations were difficult. In that regard, it is important to identify the relatively dramatic increase in some States in cases of kidnappings carried out within and between criminal

² To access information concerning kidnapping in one of these countries see the report of the Secretary-General, E/CN.15/2003/7 full text version (use a hyperlink in the "Useful links" section of this report)

groups as well as the development of new varieties of kidnapping in some countries. It is worth emphasizing again the high costs that the crime of kidnapping has for its victims and the difficulty of adequately meeting the requirements of those who have been victimized. Despite the scale of the problem, important steps have been taken in a number of jurisdictions to counter kidnapping. Although it may be too early to judge their success, a series of critical lessons are emerging on how kidnapping can be effectively countered. There therefore seems to be scope for an increased exchange of information on best practices and technical cooperation.

ECOSOC Resolutions

The Economic and Social Council adopted a series of resolutions on the issue of international cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims, in which it suggested the measures to be taken to improve the situation with kidnapping in the world in general as well as in some particular cases. We shall focus on two latest resolutions, i.e. those of 2004 and 2006.

ECOSOC Resolution 2004/20

In the resolution adopted in 2004 the ECOSOC among other things expressed concern at the increase in the practice of kidnapping and recommended that the General Assembly adopted a resolution in which it would condemn the practice of kidnapping, encourage member States to continue to foster international cooperation, especially extradition, mutual legal assistance, collaboration between law enforcement authorities and exchange of information, with a view to preventing, combating and eradicating kidnapping and requests the United Nations Office on Drugs and Crime, subject to the availability of extra budgetary resources, to prepare a handbook, for use by competent authorities, of proven and promising practices in the fight against kidnapping, including:

(a) Measures to prevent the crime of kidnapping that are directed at potential victims;

(b) Preventive measures aimed at disbanding organized criminal groups and terrorist groups;

(c) Cooperation or strategic alliances with the private sector; (d) Response to and management of crises;

(e) Identification of the minimum elements that would help States to make adjustments to their domestic legislation with a view to having a common understanding of the crime of kidnapping, which would also help to ascertain reliable trends from a global perspective; (f) Development of specialized measures for providing support and assistance to victims and their families; (g) Information on national authorities responsible for preventing and combating kidnapping; (h) Reporting procedures, rescue operations, information systems and prosecutions.

ECOSOC Resolution 2006/19 (full text)

International cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims

The Economic and Social Council, Recommends to the General Assembly the adoption of the following draft resolution:

“The General Assembly,

“Concerned at the increase in the offence of kidnapping in various countries of the world and at the harmful effects of that crime on victims and their families, and determined to support measures to assist and protect them and to promote their recovery,

“Reiterating that the kidnapping of persons under any circumstances and for any purpose constitutes a serious crime and a violation of individual freedom that undermines human rights,

“Concerned at the growing tendency of organized criminal groups and also of terrorist groups in certain circumstances to resort to kidnapping, especially for the purpose of extortion, as a method of accumulating capital with a view to consolidating their criminal operations and undertaking other illegal activities,

regardless of their purposes, such as trafficking in firearms and drugs and money-laundering,

“Convinced that any linkage of various illegal activities involving kidnapping poses an additional threat to quality of life and hinders economic and social development,

“Convinced also that the United Nations Convention against Transnational Organized Crime provides a legal framework when necessary for international cooperation with a view to preventing, combating and eradicating kidnapping,

“Recalling its resolution 59/154 of 20 December 2004, entitled “International cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims”, in which it requested the United Nations Office on Drugs and Crime, subject to the availability of extra budgetary resources, to prepare a manual, for use by competent authorities, of proven and promising practices in the fight against kidnapping,

“Acknowledging the financial and technical contributions made by Member States to the preparation of the manual,

“1. Vigorously condemns and rejects once again the offence of kidnapping, under any circumstances and for any purpose;

“2. Notes with satisfaction the publication of the operational manual against kidnapping prepared pursuant to its resolution 59/154, and expresses its appreciation to the intergovernmental group of experts entrusted with the preparation of the manual;

“3. Encourages Member States to continue to foster international cooperation, especially extradition, mutual legal assistance, collaboration between law enforcement authorities and exchange of information, with a view to preventing, combating and eradicating kidnapping;

“4. Calls upon Member States that have not yet done so, in furtherance of the fight against kidnapping, to strengthen their measures against money-laundering and to engage in international cooperation and mutual legal assistance in, inter alia, the tracing, detection, freezing and confiscation of proceeds of kidnapping;

“5. Also calls upon Member States to take measures intended to provide adequate assistance and protection to victims of kidnapping and their families;

“6. Invites Member States, once they have considered the operational manual, to consider the possibility of using it in their national efforts to combat kidnapping, and requests the United Nations Office on Drugs and Crime, within available extra budgetary resources, not excluding the use of existing resources from the regular budget of the Office, to provide to Member States, upon request, technical assistance and advice in implementing the provisions of the manual;

“7. Requests the Executive Director of the United Nations Office on Drugs and Crime to report to the Commission on Crime Prevention and Criminal Justice at its sixteenth session on the implementation of the present resolution, and thereafter, to share its report with the Conference of the Parties to the United Nations Convention against Transnational Organized Crime.”

41st plenary meeting

27 July 2006.

United Nations Convention against Transnational Organized Crime

The United Nations Convention against Transnational Organized Crime, adopted by General Assembly Resolution 55/25 of 15 November 2000, is the main international instrument in the fight against transnational organized crime. It opened for signature by Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking

in Firearms, their Parts and Components and Ammunition. Countries must become parties to the Convention itself before they can become parties to any of the Protocols.

The Convention represents a major step forward in the fight against transnational organized crime and signifies the recognition by Member States of the seriousness of the problems posed by it, as well as the need to foster and enhance close international cooperation in order to tackle those problems. States that ratify this instrument commit themselves to taking a series of measures against transnational organized crime, including the introduction of a system of penalties for participation in an organized criminal group, money laundering, corruption and obstruction of justice etc.; the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities.

Related Protocols

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was adopted by General Assembly resolution 55/25. It entered into force on 25 December 2003. It is the first global legally binding instrument with an agreed definition on trafficking in persons. The intention behind this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases. An additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.

The Protocol against the Smuggling of Migrants by Land, Sea and Air, adopted by General Assembly resolution 55/25, entered into force on 28 January 2004. It deals with the growing problem of organized criminal groups who smuggle migrants, often at high risk to the migrants and at great profit for the offenders. A major achievement of the Protocol was that, for the first time in a global international instrument, a definition of smuggling of migrants was developed and agreed upon.

The Protocol aims at preventing and combating the smuggling of migrants, as well as promoting cooperation among States parties, while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation which often characterize the smuggling process.

The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition was adopted by General Assembly resolution 55/255 of 31 May 2001. It entered into force on 3 July 2005. The objective of the Protocol, which is the first legally binding instrument on small arms that has been adopted at the global level, is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

Other legal instruments

Along with the Convention against Transnational Organized Crime, several other legal instruments aimed at fighting some specific forms of kidnapping can be enumerated. Among them are: the Convention on the Civil Aspects of International Child Abduction, the International Convention against the Taking of Hostages and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents etc.

United Nations Counter-Kidnap Manual

The increasing involvement of organized crime groups in kidnapping for ransom has raised serious concern to the international community. In the most severely affected countries, several hundred kidnappings are conducted each year by organized crime groups. The Anti-Organized Crime and Law Enforcement Unit have developed a United Nations Counter - Kidnap Manual to include best practices for law enforcement authorities to combat kidnapping.

The manual presents a constructive tool for policy makers, law enforcement officers and criminal justice practitioners and is aimed at providing national authorities with guidelines on how to deal with a kidnapping case in a practical and effective manner. Although legislative and national policies to target kidnapping

are covered, the manual is substantively devoted to the key responses needed for success in prevention and investigation.

The Manual identified different types of kidnapping, including for extortion or political purposes, and advised Governments on how to formulate effective legislation and preventive measures. It also provided guidance for senior police investigators on sensitive subjects such as negotiation, surveillance and intervention options.

The manual was made available to Member States in all the official languages of the United Nations in early 2006.

United Nations Office on Drugs and Crime

The United Nations Office on Drugs and Crime (UNODC) is a United Nations agency that was established in 1997 as the Office for Drug Control and Crime Prevention by combining the United Nations International Drug Control Programme (UNDCP) and the Crime Prevention and Criminal Justice Division in the United Nations Office at Vienna, then renamed in 2002.

UNODC was established to assist the UN in better addressing a coordinated, comprehensive response to the interrelated issues of illicit trafficking in and abuse of drugs, crime prevention and criminal justice, international terrorism, and corruption. These goals are pursued through three primary functions: research, guidance and support to governments in the adoption and implementation of various crime-, drug-, terrorism-, and corruption-related conventions, treaties and protocols, as well as technical/financial assistance to said governments to face their respective situations and challenges in these fields.

As the only United Nations entity focusing on the criminal justice element of human trafficking and migrant smuggling, the work that UNODC does to combat human trafficking and the smuggling of migrants is underpinned by the United Nations Convention on Transnational Organized Crime and its protocols on trafficking in persons and migrant smuggling. Among the documents recently issued by UNODC one can find “Training manual to fight trafficking in children

for labour, sexual and other forms of exploitation” (18 September 2009), “Model Law against Trafficking in Persons” (30 June 2009) etc.

Commission on Crime Prevention and Criminal Justice

The Commission, which was established at a ministerial meeting held in Versailles in 1991, is a subsidiary body of the Economic and Social Council. It was preceded by a more technically focused Committee on Crime Prevention and Control, formed in 1971 to replace an earlier expert advisory committee and tackle a broadened scope of UN interest in criminal justice policy. The Economic and Social Council, on the recommendation of the General Assembly, established the Commission by its resolution 1992/1, entitled "Establishment of the Commission on Crime Prevention and Criminal Justice," and provided for the Commission's mandates and priorities in its resolution 1992/22, entitled "Implementation of General Assembly resolution 46/152 concerning operational activities and coordination in the field of crime prevention and criminal justice." Its mandated priority areas are:

- international action to combat national and transnational crime, including organized crime, economic crime and money laundering;
- promoting the role of criminal law in protecting the environment;
- crime prevention in urban areas, including juvenile crime and violence; and
- improving the efficiency and fairness of criminal justice administration systems.

Useful links

<http://www.un.org/> - UN official web-site

<http://daccessdds.un.org/doc/UNDOC/GEN/V04/516/63/PDF/V0451663.pdf?OpenElement> –report of the Secretary General

<http://www.un.org/docs/ecosoc/documents/2004/resolutions/eres2004-20.pdf> - ECOSOC resolution 2004-20

<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> - United Nations Convention against Transnational Organized Crime

<http://www.unodc.org/unodc/en/human-trafficking/index.html> - UNODC on human trafficking and migrant smuggling