

# The Strategic Relationship with Europol to Combat Illicit Arms Trafficking to Mexico\*

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## The geopolitical aspect of arms trafficking to Mexico

### *The regional environment*

As a nation, Mexico is averse to firearms.<sup>1</sup> Even though the constitutions of 1857 and 1917 acknowledge the population's right to possess weapons "for their safety and legitimate defense", our legislation severely restricts this right.<sup>2</sup>

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<sup>1</sup> Six out of ten Mexicans are opposed to individuals owning firearms in their homes. See Parametría, "Control de armas de fuego en México y en Estados Unidos", in Carta Parametría, June 2016, at [https://www.parametria.com.mx/carta\\_parametrica.php?cp=4893](https://www.parametria.com.mx/carta_parametrica.php?cp=4893) (date of access: March 17, 2020).

<sup>2</sup> Article 10 of the Mexican Constitution reads: "The inhabitants of the United Mexican States are entitled to possess arms in their domiciles for their safety and legitimate defense, excepting those prohibited by federal law and those reserved exclusively for use by the permanent armed forces and reserve bodies. The cases, conditions, requirements and places in which inhabitants may be authorized to carry arms shall be determined by federal law." The text of the Constitution presently in force can be consulted at [http://www.diputados.gob.mx/LeyesBiblio/pdf/1\\_201219.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/1_201219.pdf) (date of access: February 18, 2020).

On the contrary, our northern and southern neighbors are more permissive when it comes to possessing weapons. In Guatemala, current legislation, which is also founded on a long constitutional history, does not limit the number of weapons a citizen can own or even carry, while the Second Amendment to the United States Constitution<sup>3</sup> protects the right to keep and bear arms as an essential value of American society, although it has come to create a deep internal ideological divide.

The contrast between the gun laws of Mexico and its neighbors has resulted in a flow of illicit weapons into Mexico to meet the demand of criminal organizations, facilitated by the permeability of our northern and southern borders. In Mexico, the market for weapons originates almost exclusively with organized crime and so it follows that any strategy to combat transnational organized crime must necessarily include policies to address gunrunning.

The availability of weapons to the north and south of Mexico is a factor that further complicates the regional outlook: it is estimated that in the United States, a country with approximately 329 million inhabitants, there 390 million firearms in the possession of civilians, not all of which are registered.<sup>4</sup> Furthermore, three U.S. states bordering with Mexico are among the ten with the most legally registered guns in the country.<sup>5</sup> In Guatemala, which has a population of 18 million, the authorities have registered 628,932 firearms

<sup>3</sup> “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” See A.J. Willingham, “27 words: Deconstructing the Second Amendment”, in CNN, March 28, 2018, at <https://edition.cnn.com/2016/08/10/politics/what-does-the-second-amendment-actually-mean-trnd/index.html> (date of access: February 18, 2020).

<sup>4</sup> Aaron Karp, *Estimating Global Civilian-held Firearms Numbers*, Geneva, Small Arms Survey (Briefing Paper), June 2018, at <http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf> (date of access: February 18, 2020), quoted in Medlin Mekelbug, “How Many Guns Are on the Streets in the United States”, in Politifact, at <https://www.politifact.com/factchecks/2019/sep/09/beto-orourke/how-many-guns-are-streets-united-states/> (date of access: February 14, 2020).

<sup>5</sup> Texas (1), California (3) and Arizona (7), according to the “Number of Registered Weapons in the U.S. in 2019, by State”, in statista.com, at <https://www.statista.com/statistics/215655/number-of-registered-weapons-in-the-us-by-state/> (date of access: February 14, 2020).

and issued 174 891 gun licenses.<sup>6</sup> To these figures should be added the 3 million unregistered guns estimated to be in the possession of criminals.<sup>7</sup>

According to a study conducted by the University of San Diego, it is calculated that some 200 000 arms a year<sup>8</sup> entered Mexico illegally from the United States in the last decade. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) reported that seven out of every ten weapons seized by the Mexican authorities between 2013 and 2018 were manufactured in or imported legally into the United States.<sup>9</sup> Foreign Affairs Minister Marcelo Ebrard stated that, in the first half of 2019, there was an increase in the number of weapons used in criminal acts. The use of assault rifles in particular increased 122% and automatic rifles 63%,<sup>10</sup> which was reflected in the firing capacity of organized crime.

### *The global scenario*

An ATF analysis of the origin of the guns seized by the Mexican authorities found that as many as 30% of the weapons that reach the hands of organized criminal groups in Mexico come from Europe. This figure confirms

<sup>6</sup> Mexico has a population of 130 million, but, according to official figures, only 431 464 weapons were registered between 2016 and the first half of 2019, mostly to police corporations and private security companies, not individuals. See the registered guns in Mexico reports compiled by the Ministry of Defense at <https://datos.gob.mx/busca/dataset/armas-registradas-por-diferentes-motivos> (date of access: February 14, 2020).

<sup>7</sup> Rodrigo Baires Quezada, "En Guatemala hay un arma por cada 25 habitantes", in *Plaza Pública*, October 28, 2014, at <https://www.plazapublica.com.gt/content/en-guatemala-hay-un-arma-por-cada-da-25-habitantes> (date of access: February 14, 2020).

<sup>8</sup> Topher L. McDougal, David A. Shirk, *et al.*, "The Way of the Gun: Estimating Firearms Trafficking across the US-Mexico Border", in *Journal of Economic Geography*, vol. 15, no. 2, March 2015, pp. 297-327.

<sup>9</sup> Office of Strategic Intelligence and Information-ATF, *Mexico. Data Source: Firearms Tracing System, January 1, 2013-December 31, 2018*, Washington, D.C., U.S. Department of Justice-ATF, March 2019, at <https://www.atf.gov/file/135106/download> (date of access: February 14, 2020).

<sup>10</sup> Parker Asmann, "Lack of US Control Provokes Bloodshed in Mexico", in *InSight Crime*, August 31, 2019, at <https://www.insightcrime.org/news/analysis/lack-us-gun-control-record-bloodshed-mexico/> (date of access: February 14, 2020).

global estimates and means combatting arms trafficking requires equally broad and effective international cooperation.

According to the Stockholm International Peace Research Institute (SIPRI), the 27 European companies on its list of the world's 100 main arms manufacturers earned 102 billion dollars in 2018, equivalent to 25% of the global arms market,<sup>11</sup> while a Small Arms Survey report reveals that some 80 countries have the capacity to produce small weapons and together flood the international market with between 700 000 and 900 000 new weapons of this type every year.

Of the 18 countries that exported small weapons valued at 100 million dollars or more in 2016, eight were members of the European Union. One in particular, Italy, exported weapons worth over 500 million dollars.<sup>12</sup>

The United States is the largest importer of small European-manufactured weapons,<sup>13</sup> supporting the hypothesis that a portion of these imports is diverted to criminal organizations in Mexico. According to ATF data, an analysis of the weapons seized in Mexico indicates that some 70% were either manufactured in the United States or legally imported into the country, in all likelihood from a European country. That said, ATF was only able to identify the manufacturer or importer of less than half of the weapons traced, meaning the other half entered Mexico after traffickers took steps to make sure it was impossible to determine their origin.<sup>14</sup> The flow of arms from Europe to the United States is clear evidence of the link between the legitimate global arms market and illicit trafficking in North America.

<sup>11</sup> Alice Tidey, "Quarter of World's Arms Sales from European Companies: SIPRI," in Euronews, December 9, 2019, at <https://www.euronews.com/2019/12/09/quarter-of-world-s-arms-sales-from-european-companies-sipri> (date of access: February 14, 2020).

<sup>12</sup> Michael Picard, Paul Holtom and Fiona Mangan, *Trade Update 2019: Transfers, Transparency, and South-East Asia Spotlight*, Geneva, Small Arms Survey, December 2019, p. 20, at <http://www.smallarmssurvey.org/fileadmin/docs/S-Trade-Update/SAS-Trade-Update-2019.pdf> (date of access: February 14, 2020).

<sup>13</sup> European Parliament, "EU Member State's Arms Exports (2013)," in *At a Glance. Infographic*, Brussels, December 2015, 1, at [https://www.europarl.europa.eu/RegData/etudes/ATAG/2015/S72805/EPRS\\_ATAG\(2015\)572805\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2015/S72805/EPRS_ATAG(2015)572805_EN.pdf) (date of access: February 14, 2020).

<sup>14</sup> Office of Strategic Intelligence and Information-ATF, *op. cit.*

The 2017 Annual Report of the Council of Europe on the Control of Exports of Military Technology and Equipment includes 26 licenses for the export of small weapons valued at approximately 78.4 million euros to Mexico. These came from ten European Union Member States: Austria, Belgium, Czechia, Finland, France, Italy, Slovenia, Spain, Sweden and the United Kingdom. The report also includes export applications that were denied,<sup>15</sup> but in Mexico's case, none were recorded, indicating that we are deemed a reliable partner of the European Union.

Judging from the results of export controls on firearms from the European Union, shipments of arms imported legally to Mexico from Europe are not a significant diversion channel to organized crime. Consequently, to determine the magnitude of the flows, channels and routes by which illicit weapons reach Mexico, the Mexican authorities require efficient and timely tracing mechanisms. And in the case of weapons of European origin seized in Mexico, the European Union Police Cooperation Agency (Europol) is a strategic ally when it comes to documenting their origin.

## The strategic value of Europol

### *Regulatory framework*

Europol was initially established by an agreement entered into by the member countries of the European Community within the framework of the Maasticht Treaty of 1993 that created the European Union (EU).<sup>16</sup> The June 24,

<sup>15</sup> Export applications may be denied if they meet any of the following eight criteria: 1. Failure to comply with international obligations, including embargos; 2. Violations of human rights or on humanitarian grounds; 3. The internal circumstances of the importing country; 4. Threats to regional peace and stability; 5. National security of EU Member States or its allies; 6. Attitude of the importer to international security or terrorism; 7. Risk of diversion to non-authorized users, and 8. Incompatibility with the development goals of the importing country. European Parliament, *op. cit.*, p. 2.

<sup>16</sup> Council of the European Union, "Convention Based on Article K.3 of the Treaty on European Union, on the Establishment of a European Police Office (Europol Convention)", *Official Journal of the European Communities*, C 316, November 27, 1995, pp. 2-32, available at [https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:31995F1127\(01\)&from=ES](https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:31995F1127(01)&from=ES) (date of access: February 18, 2020).

2008 decision of the Council of the European Union (in force since 2009) substituted the 1993 Convention that established Europol.

On January 1, 2010, Europol became an agency of the European Union, increasing its capacity to interact with Member States, and on May 1, 2017, it officially became the European Union Agency for Law Enforcement Cooperation, when its new regulations came into force.<sup>17</sup> This regulatory evolution speaks to how E.U. Member States and their various bodies have progressively attributed greater importance to the Agency by broadening of its scope of action.

### *Structure*

Europol is headed by an executive director and three assistant executive directors who are appointed by the Council of the European Union for four-year terms. The current director is Catherine De Bolle of Belgian nationality, who was appointed in May 2018 and who is also the Agency's legal representative.<sup>18</sup>

Europol's main administrative and governing body is its Management Board, which comprises representatives from all the EU Member States (although Denmark only attends as an observer) and the European Commission, and whose main tasks are to provide the Agency with strategic

<sup>17</sup> The new regulations were adopted on May 11, 2016, when the European Parliament voted in favor of updating the powers of Europol to enable it to step up its efforts in the fight against terrorism, cybercrime and other serious forms of organized crime. The new regulations strengthened Europol's role in cooperation efforts between the law enforcement and justice systems of the European Union. Council of the European Union, "Council Decision of 6 April 2009 Establishing the European Police Office (Europol) (2009/371/JHA)", *Official Journal of the European Union*, L121, May 15, 2009, pp. 37-66, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009D0371&from=EN> (consulted on: February 18, 2020); European Parliament and Council of the European Union, "Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and Replacing and Repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JH", *Official Journal of the European Union*, L135, May 24, 2016, 53-114, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0794&from=EN> (date of access: February 18, 2020).

<sup>18</sup> Europol, "About Europol", at <https://www.europol.europa.eu/about-europol> (date of access: February 18, 2020).

guidance, oversee its activities, adopt its work programs and annual budget, and exercise the governance duties provided for in its regulations. Its activities are conducted via three departments: operations, governance and capacities.

Headquartered in The Hague, Netherlands, Europol is staffed by over 1000 law enforcement officers from E.U. Member States, including police, migration, customs and other security services, while the 220-plus liaison officers posted at its seat represent counterpart national agencies in both EU and non-EU countries.

In terms of administration and accountability, Europol reports to the Justice and Home Affairs Council of the European Union, which approves its budget (which forms part of the E.U.'s general budget) along with the European Parliament and can adopt norms on the Agency's operational aspects, again, with the approval of the European Parliament. Every year, the Justice and Home Affairs Council sends the European Parliament a special report on Europol's activities.

### *Capacities*

In its capacity as a supranational agency, Europol links and coordinates national law enforcement and investigation corps. However, although is an autonomous body, it is important to remember that its mandate is limited to assisting the law enforcement authorities of E.U. Member States in the various facets of the fight against crime and terrorism.

The tasks assigned Europol by E.U. Member States are focused, albeit not exclusively, on combatting illegal drugs, human trafficking, illegal immigration, cybercrime, crimes against intellectual property, tobacco smuggling, currency forging, tax fraud, money laundering and terrorism, among others.<sup>19</sup>

### Information sharing

The supranational nature of Europol is its defining characteristic, enabling it to integrate the intelligence and operating capacities of E.U. Member

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<sup>19</sup> *Idem.*

States and, in so doing, multiply their scope, while a series of partnerships give the Agency a global reach. Its main activities are gathering, compiling, analyzing and sharing information, not just with E.U. law enforcement corps, but with the non-European organizations with which it has bilateral agreements.

## Operational coordination

The Agency shares information and coordinates operational aspects with third countries and their law enforcement and security forces, within the European Union, regionally and globally.

Since the European Union is its main field of action, Europol interacts primarily with the law enforcement corps of E.U. Member States. For this purpose, each Member State appoints a National Europol Unit, which serves as a link between the Agency and the authorities of the State in question. Likewise, Europol works closely with other E.U. institutions and agencies like the European Commission, Eurojust, the European Anti-Fraud Office and the European Central Bank via cooperation agreements.

Outside the European Union, Europol regulations provide for three types of instruments for cooperation with the security and law enforcement authorities of third countries: strategic and operational agreements and working arrangements. The first two are geared toward improving cooperation between Europol and the country concerned, the difference being that strategic agreements are limited to the sharing of strategic and technical information and intelligence in general, while operating agreements allow Europol to share information that contains personal data, which is highly restricted under E.U. legislation. Working arrangements are aimed at achieving more agile, more effective cooperation on the ground, and provide for the exchange of information between Europol and the national law enforcement and security corporations of third countries that directly perform these tasks, although this information is subject to certain restrictions when it is deemed to contain personal data.<sup>20</sup>

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<sup>20</sup> *Idem.*

## *Cooperation policies with non-EU partners*

Europol's system of liaison officers is open to representatives of non-E.U. partners, so if Mexico decided to cooperate with the Agency, it could send a liaison officer to Europol's headquarters to represent its law enforcement interests alongside those of the various law enforcement and public security agencies of E.U. Member States, with all the benefits this entails. Liaison officers from E.U. Member States have a broad scope of action, since they are not under the command of Europol or its executive director, but report directly to their respective law enforcement agencies and act in accordance with the laws of the Member State concerned.

Specifically, a working arrangement would allow Mexico to send at least one liaison officer to The Hague, providing endless opportunity for interaction and access to his or her peers. In practice, Europol does not make distinctions between EU and non-E.U. liaison officers—all are treated the same and are assigned their own office, but are required, without exception, to pass a vetting process and comply with strict security and confidentiality rules.

Europol currently hosts some 250 liaison officers from 41 countries at its headquarters. These officers are in constantly communication with one another, their respective national authorities<sup>21</sup>, representatives of Europol itself and Eurojust (the European Union Agency for Criminal Justice Cooperation) on security issues, forming a global law enforcement ecosystem that facilitates the fluid exchange of information and open lines of communication. To this end and at no cost to their governments, Europol provides its liaison officers with access to SIENA,<sup>22</sup> a secure network for the exchange of information that features state-of-the-art encryption technology. The system's interface links Europol headquarters with strategic points of E.U. Member States and third parties with which the Agency

<sup>21</sup> Non-EU partners that currently have liaison officers at Europol include Albania, Australia, Canada, Colombia, Iceland, Moldavia, Montenegro, Northern Macedonia, Norway, Serbia, Switzerland and Turkey, as well as several US agencies. *Idem*.

<sup>22</sup> Europol, "Secure Information Exchange Network Application (SIENA)", in European Union, at <https://www.europol.europa.eu/activities-services/services-support/information-exchange/secure-information-exchange-network-application-siena> (date of access: February 19, 2020).

has cooperation agreements in place, ensuring the swift, secure and user-friendly exchange of crime-related information and intelligence. Europol figures on information exchanges that take place over SIENA attest to its importance as a public security tool.<sup>23</sup>

Additionally, since 2010 the European Union has been implementing four-year policy cycles with a view to lending greater continuity to the fight against organized crime and serious international crime, and ensuring effective cooperation between the agencies responsible for these issues, EU institutions and relevant third-party actors.

In this regard, the Council of Europe decided at a meeting on May 2017 to continue with the so-called *cycle of action of the European Union* against organized crime and serious forms of crime in the 2018-2021 period,<sup>24</sup> and to wage a coherent, methodical battle against crime by improving and strengthening cooperation between the agencies of EU Member States, the institutions and agencies of the European Union, third countries and international organizations. As can be seen, the priority areas outlined by the Council of Europe in the fight against crime largely coincide with those of the Mexican authorities in their efforts to combat organized crime and keep its citizens safe:<sup>25</sup> 1) cybercrime; 2) drug-trafficking; 3) facilitation of illegal immigration; 4) crimes against intellectual property; 5) human trafficking; 6) intra-community fraud; 7) illicit trafficking in arms, ammunition and explosives; 8) environmental crimes; 9) money laundering; and 10) document fraud.<sup>26</sup>

<sup>23</sup> According to Europol, 66 113 new cases were opened over SIENA in 2017 (a 42% increase compared to 2016); one million operational messages were exchanged (16% more than in 2016); 1200 national authorities from 47 countries and ten international partners participated; and 5531 system users were registered (a 17% increase compared to 2014). *Idem*.

<sup>24</sup> Council of the European Union, "Outcome of the Council Meeting, 3539th Council Meeting, Justice and Home Affairs", 9453/17, May 18, 2017, at <https://www.consilium.europa.eu/media/22193/st09453en17.pdf> (date of access: March 17, 2020).

<sup>25</sup> Council of the European Union, "Draft Council Conclusions on Setting the EU's Priorities for the Fight Against Organised and Serious International Crime Between 2018 and 2021", 8654/17, May 12, 2017, at <http://data.consilium.europa.eu/doc/document/ST-8654-2017-INIT/en/pdf> (date of access: March 17, 2020).

<sup>26</sup> European Council-Council of the European Union, "The EU Fight against Organised Crime", in European Union, at <https://www.consilium.europa.eu/en/policies/eu-fight-against-organised-crime-2018-2021/> (date of access: February 19, 2020).

The 2017 decision of the Council turned out to be significant in terms of the participation of non-E.U. partners in that one of the four stages in the implementation of this policy provided for the creation of EMPACT,<sup>27</sup> a platform defined as:

An ad hoc management environment to develop activities in order to achieve pre-set goals. It is a structured multidisciplinary co-operation platform of the relevant Member States, EU institutions and agencies, as well as third countries, international organisations and other (public and private) partners to address the prioritised threats of organised and serious international crime.<sup>28</sup>

Europol plays a major role in EMPACT in its capacity as the E.U. agency whose task is to assess and prioritize serious threats from organized crime and issue recommendations based on in-depth analysis of the greatest criminal threats to the Union.<sup>29</sup> These recommendations serve as a starting point for the development of strategic multi-annual plans based on the prioritization of threats and the setting of strategic goals to combat them.

Accordingly, the projects developed under EMPACT set out operating action plans (OAPs) to combat crime in priority areas. An OAP is designed for each objective and E.U. Member States and organizations work together to implement them in a coordinated fashion. OAP information is transmitted to Europol, where it is assessed and analyzed using the SIENA system that, as mentioned previously, is accessible to liaison officers and the law enforcement agencies of third countries that have entered into cooperation agreements with Europol.<sup>30</sup>

<sup>27</sup> European Multidisciplinary Platform Against Criminal Threats. The terms of reference of the 2018-2021 EU policy for combating crime, in which the structure and workings of EMPACT are described in detail, can be consulted at: Presidency of the Council of the European Union, "EU Policy Cycle Terms of Reference", in European Union, at <http://data.consilium.europa.eu/doc/document/ST-10544-2017-REV-2/en/pdf> (date of access: February 19, 2020).

<sup>28</sup> *Ibid.*, p. 6.

<sup>29</sup> SOCTA, Serious and Organised Crime Threat Assessment. *Ibid.*, p. 4.

<sup>30</sup> The terms of reference state that the involvement of partners external to the European Union implies compliance with regulations applicable to the exchange of information, as provided for in Europol's Regulations. *Ibid.*, p. 26.

Another advantage for Mexico of entering into a working arrangement with Europol would include access to EMPACT, as this would substantially improve strategic coordination with Europe. Mexico would also be able to participate in information sessions with experts and gain access to European funding for the training and professionalization of law enforcement corps in relevant areas.

## Conclusions

The global and regional environment has added to the serious security challenges Mexico faces on its home front. Controlling our borders and ports is the first step to combating the illicit trafficking in weapons that serves to arm the transnational criminal organizations operating in the country.

To this end, Mexico needs a comprehensive, diversified strategy and while cooperation with authorities in the United States—the country of origin of 70% of the arms that enter Mexico illegally—is our top international priority, such a strategy needs to be complemented with strategic cooperation with the rest of the international community. A working arrangement with Europol would have an enormous impact in this regard, complementing bilateral cooperation with each of the E.U. Member States that manufacture the weapons seized in Mexico and, at the same time, facilitating the task of the Mexican authorities in combating the remaining 30% of illicit arms flows into the country.

Such an arrangement with Europol would have both strategic and operational advantages for Mexico that would translate into more efficient measures to combat illicit arms trafficking:

- Direct, timely and agile coordination with over 200 agencies from 41 countries via Europol's liaison officers and access to secure, state-of-the-art systems for the exchange of information would make it easier to trace the origin of weapons confiscated in Mexico, while this exponential increase in the availability of information would better equip the Mexican government to combat gunrunning.
- In due course, the Mexican authorities would develop more efficient information-gathering methods, helping Europol reduce the time it takes

to trace seized weapons, which tends to be a lengthy process in the case of the United States.

- The fact that several U.S. law enforcement and security agencies have liaison officers at Europol should facilitate coordination and the exchange of relevant, real-time information with the United States and other relevant counterparts.
- Timely information on the specific weapons used by organized crime would make it easier for the Mexican authorities to prosecute the crimes such weapons are used in and the crime of gunrunning itself.

Combatting illicit trafficking in weapons is perhaps Mexico's most pressing priority at this moment in time, but depending on the outcome of such a working arrangement with Europol, this could lead to cooperation on other fronts in the fight against transnational organized crime.

Europol, too, stands to benefit from cooperation with Mexico, which has valuable information to share on the activities of the transnational criminal organizations operating in the country—assets we are only too willing to put to the service of the international community in our fight against a common enemy that knows no boundaries.