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THE JOHANNESBURG CONVENTION ON MUTUAL CUSTOMS ASSISTANCE – IS A NEW TOOL FAILING EARLY?

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Abstract

The Johannesburg Convention on Mutual Administrative Assistance in Customs Matters as of 2003 is a crucial breakthrough and important legal tool for the implementation of risk analysis systems by customs authorities governed by the the World Customs Organization (WCO) around the globe. However it has not entered into force yet. Is this new legal tool failing early? The old Nairobi Convention from 1977 is outdated and has never been widely accepted.

This paper addresses the need for mutual Customs assistance, a common legal basis and analyses the current situation. The author underlines the idea that the Johannesburg Convention recognises the increased global concern for the security and facilitation of the international trade supply chain, and that offences against customs law are prejudicial to the security of the Contracting Parties and their economic, commercial, fiscal, social, public health and cultural interests. It also recognises that the international exchange of information is an essential component of effective risk management and that such exchange of information should be based on clear legal provisions.

The author also points out that though mutual customs assistance is possible on the basis of the Nairobi Convention or on the basis of bilateral agreements and other binding or non-binding WCO and/or UN legal tools, the Johannesburg Convention would make things better, clearer and modern.

In conclusion the author argues that in case the JC is not going to be ratified by most countries the overall aim of a more secure supply chain is about to fail due to administrative hindering and hesitating governments.

The methods used during the study are analysis, synthesis, comparison, generalization, systematic and functional analysis.

Keywords: World Customs Organization, International Customs Law, cooperation, the Johannesburg Convention, the Nairobi Convention.

Introduction

The International Convention on Mutual Administrative Assistance in Customs Matters (so called “Johannesburg Convention”, JC) as of 27 June 2003¹ is a legal instrument

¹ The text of the Johannesburg Convention is available under the URL: http://www.wcoomd.org/home_about_us_conventionslist.htm (WCO, 2016a), the URL: www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/~media/WCO/Public/Global/PDF/About%20us/Legal%20Instruments/Conventions%20and%20Agreements/Johannesburg/Internconvmutualadmineng2003.ashx, (viewed 5 June 2016). a Russian version is available under the URL: http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/~media/WCO/Public/RU/PDF/About%20us/Legal%20Instruments/Conventions%20and%20Agreements/Johannes-burg/Johannesburg%20Convention_ru.ashx (viewed 4 June 2016).

agreed upon by the members of the World Customs Organization (WCO)². Its predecessor, the International Convention on mutual administrative assistance for the prevention, investigation and repression of Customs offences (so called “Nairobi Convention”, NC) as of 9 June 1977³ that has entered into force on 21 May 1980 has a much smaller scope since it is solely focussing on the cooperation in the combat of drug-smuggling and smuggling in general. This paper is looking into the number of ratifications for the JS, shows the relation to the NC and questions, whether the new JC is failing early because only three WCO Member States have signed and ratified the JC yet.

1. Status of the Conventions

1.1. Status of the Johannesburg Convention (JC)

The JC will enter into force according to its Article 51 “three months after five of the entities referred to in paragraphs 1 and 3 of Article 46 thereof have signed the Convention without reservation of ratification or have deposited their instrument of ratification or accession”. There is a requirement of ratification of five Member states.

However the Johannesburg Convention has only been signed by ten countries out of which seven have not ratified the signature (Table 1) and it has been ratified by only three countries yet (Table 2): Albania, India and South Africa.

Table 1. Signatory states of the Johannesburg Convention (JC) which have not ratified the JC yet and their WTO-Status

Johannesburg Convention	WTO-Member ⁴	Least Developed Country ⁵
Belarus	Observer	No
Burkina Faso	Yes	Yes
Cambodia	Yes	Yes
Ghana	Yes	No
Jordan	Yes	No
Lebanon	Observer	No
Madagascar	Yes	Yes

Ten countries have signed the Johannesburg Convention but seven have not ratified it yet.

Table 2. Member states of the Johannesburg Convention (JC) as of 2016 which have ratified the JC and their WTO-Status

Johannesburg Convention	WTO-Member	Least Developed Country
Albania#	Yes	No
India	Yes	No
South Africa	Yes	No

(EU-Members as of 2016 are shown with an*, EU-Candidates are shown with an #, EU-Applicants are shown with **)

² For a short history of the WCO and its legal milestones see Weerth, 4 GTCJ 7/8 (2009), pp. 267 - 269.

³ The text of the Nairobi Convention is available under the URL: http://www.wcoomd.org/home_about_us_conventionslist.htm (WCO, 2016a), the URL: <http://www.wcoomd.org/en/about-us/legal-instruments/~media/574B25F13D-9C4D4BA44AB4CD50A967C5.ashx> (viewed 4 June 2016); a Russian version is available under the URL: <http://www.wcoomd.org/en/about-us/legal-instruments/~media/9C3C80A97F2C434796-FE4C6E13C3E442.ashx> (viewed 5 June 2016).

⁴ See WTO, 2016a.

⁵ See WTO, 2016b.

1.2. Status of the Nairobi Convention (NC)

The International Convention on mutual administrative assistance for the prevention, investigation and repression of Customs offences (so called “Nairobi Convention”, NC) as of 9 June 1977 that has entered into force on 21 May 1980 is focussing on the cooperation in the combat of drug-smuggling and smuggling in general. Its preamble clearly stated that “Consi-dering that action against Customs offences can be rendered more effective by co-operation between Customs administrations, and that such co-operation is one of the aims of the Convention establishing a Customs Co-operation” was signed by 50 countries and ratified by 52 states (Table 3).

Table 3. Signatory states of the Nairobi Convention (NC) which have ratified the Convention and their WTO-Status

Nairobi Convention	WTO-Member	Least Developed Country	Nairobi Convention	WTO-Member	Least Developed Country
Albania #	Yes	No	Moldavia	Yes	No
Algeria	Observer	No	Morocco	Yes	No
Australia	Yes	No	New Zealand	Yes	No
Azerbaijan	Observer	No	Niger	Yes	Yes
Belarus	Observer	No	Nigeria	Yes	No
Canada	Yes	No	Norway	Yes	No
Côte D' Ivoire	Yes	No	Pakistan	Yes	No
Croatia*	Yes	No	Qatar	Yes	No
Cuba	Yes	No	Russian Federation	Observer	No
Cyprus*	Yes	No	Saudi Arabia	Yes	No
Czech Republic*	Yes	No	Senegal	Yes	Yes
Finland*	Yes	No	Seychelles	Yes	No
France*	Yes	No	Slovakia*	Yes	No
Georgia	Yes	No	South Africa	Yes	No
Iceland	Yes	No	Sri Lanka	Yes	No
India	Yes	No	Swaziland	Yes	No
Indonesia	Yes	No	Sweden*	Yes	No
Iran	Observer	No	Tajikistan	Yes	No
Ireland*	Yes	No	Togo	Yes	Yes
Italy*	Yes	No	Tunisia	Yes	No
Jordan	Yes	No	Turkey #	Yes	No
Kenya	Yes	No	Uganda	Yes	Yes
Latvia*	Yes	No	Ukraine	Yes	No
Lithuania*	Yes	No	United Kingdom*	Yes	No
Malawi	Yes	Yes	Zambia	Yes	Yes
Malaysia	Yes	No	Zimbabwe	Yes	No
Mauritius	Yes	No			

(EU-Members as of 2016 are shown with an*, EU-Candidates are shown with an #, EU-Applicants are shown with **)

Note: two further countries have signed the Nairobi Convention but did never ratify it – Austria* and Iceland.

Surprisingly some EU Member states (12 out of 28) have ratified the Nairobi Convention whereas the EU itself and most EU Member States of the EU-28 (16 EU-Member States) are not members of this Convention. This is a surprising finding since the external trade policy of the EU should be governed by the European Commission on a Union-wide level. Major trade nations are members such as Canada and New Zealand, whereas other major trade nations did not join the Nairobi Convention, such as the US, Germany, Japan and China.

2. Aims of both Conventions⁶

The JC recognises the increased global concern for the security and facilitation of the international trade supply chain, and that offences against customs law are prejudicial to the security of the Contracting Parties and their economic, commercial, fiscal, social, public health and cultural interests. Along with the 1977 Nairobi Convention on Mutual Administrative Assistance, the JC also recognises that the international exchange of information is an essential component of effective risk management and that such exchange of information should be based on clear legal provisions.

2.1. Scope of the Johannesburg Convention⁷

2.1.1. Aims of the Johannesburg Convention

Customs administrations face an increasingly complex, fluid and expanding global trade landscape, driven in large part by elements such as continued initiatives to liberalize trade, more complex trade rules, the proliferation of regional trade agreements and threats to national security. At the same time, customs administrations face increasing pressure to facilitate trade. International trade supply chains remain vulnerable to possible terrorist attacks which would bring international trade to a standstill and could spell disaster for the international economy. Rogue traders and organized crime syndicates also exploit international trade supply chains through the evasion and avoidance of duties and taxes, the smuggling of goods, money laundering and trade in counterfeit goods. These activities threaten national economic security. Traditionally, customs administrations tended to focus on import control carried out in isolation from the controls undertaken by the export and transit administrations. This disjoint in controls remains a central vulnerability of the international supply chain and is compounded by the limited avenues available for customs administration to exchange the very information that would enable a closer integration of controls throughout the supply chain.

With a view to promoting the security and facilitation of goods moved through international trade supply chains, the WCO Council has finalized international standards that are aimed at facilitating the seamless cross-border movement of goods. One of the cornerstones of these standards is to establish real-time cooperation between customs administrations through advanced electronic transmission of customs data, enabling customs to identify high risk consignments prior to the arrival of goods.

The main objective of the JC is to provide a binding and enabling legal instrument for reciprocal cooperation between customs administrations, to assist them in obtaining information not available in their territories for the application of customs law. Contracting parties accept the obligation to provide each other with administrative assistance under the terms of the JC. The scope of such assistance includes: the proper application of customs law; the prevention, investigation and combating of customs offenses; and ensuring the security of the international trade supply chain.

Some practitioners and scholars are observing that the lack of coordination between customs

⁶ See Tweddle, 2 WCJ 1 (2008), pp. 101 – 105.

⁷ See Parliamentary Observation Group of South Africa, 2006.

administrations and between customs and business has become a more prominent issue in recent years with the requirements for faster information delivery, in advance of shipping, for security and other purposes, and the expanding requirements of data standardization in international supply chains.⁸ The ability to handle data efficiently and swiftly has become a key element in international competitiveness, especially in international supply chains.

2.1.2. Contents of the Johannesburg Convention

The JC consists of 54 articles over 13 chapters that have roman numbers. A number of these are mandatory articles that represent core provisions for a sound legal basis for providing mutual administrative assistance. These provisions are contained in articles 1 to 8, 11, 13, 18, 24 to 28 and 31 to 54. The 13 chapters deal with:

I. Definitions: This chapter consists of one article with definitions (Article 1);

II. Scope of the Convention: This chapter consists of one article (Article 2) dealing with the purpose and scope of the Convention;

III. General assistance procedures: This chapter consists of two articles (Articles 3, 4) dealing with the procedures for communicating requests for assistance, as well as for the spontaneous provision of assistance;

IV. Information: This chapter consists of six articles (Articles 5 to 10) dealing with the purpose and type of information which could be requested and provided. The chapter also provides for voluntary automatic exchange of information, as well as the advance exchange of information;

V. Special types of assistance: This chapter consists of eight articles (Articles 11 to 18) dealing with special types of assistance which could be provided, such as surveillance, controlled delivery, notification, the recovery of Customs claims, the appearance of experts and witnesses, the presence of officials in each other's territories and arrangements for visiting officials;

VI. Cross-border cooperation: This chapter consists of five articles (Articles 19 to 23) dealing with general provisions for cross-border cooperation, as well as the types of cooperation involved, such as hot pursuit, cross-border surveillance, covert investigations and joint control and investigation teams;

VII. Use, confidentiality and protection of information: This chapter consists of three articles (Articles 24 to 26) dealing with the conditions under which information may be used, the confidential nature of information and the manner in which it is to be protected, notably personal data;

VIII. Centralization of information: This chapter consists of six articles (Articles 27 to 32) dealing with the communication of information to a secure central automated information system, the establishment of such a central information system, the management thereof, the handling of non-personal information, information on natural and legal persons and other information;

IX. Security of the Central Automated Information System: This chapter consists of two articles (Articles 33, 34) dealing with the responsibility for security measures and the implementation thereof;

X. Protection of Information in the Central Automated Information System: This chapter consists of seven articles (Articles 35 to 41) dealing with the provision of information, the use thereof, the retention of personal data, access thereto, the modification of information and relevant responsibilities and liabilities;

XI. Exemptions and reservations: This chapter consists of two articles (Articles 42, 43) dealing with the conditions under which Contracting Parties may decline or postpone cooperation, as well as the reservations which may be entered against the non-core articles;

⁸ See Tweddle, 2 WCJ 1 (2008).

XII. Costs: This chapter consists of one article (Article 44) dealing with individual Customs administrations' responsibilities for costs relating to the provision of Customs cooperation; and

XIII. Final provisions: This chapter consists of ten articles (Articles 45 to 54) which deal with issues such as the management of the Convention, signature, ratification, accession, settlement of disputes and entry into force.

3. Need of mutual assistance

3.1. Background

In June 2002 the WCO passed a Resolution on security and facilitation of the international trade supply chain. As a result of the Resolution an international Task Force that was formed; it has met five times and, through various project groups, has produced a package of security and facilitation measures and Guidelines. The most important of these are:⁹

- A list of essential data elements to identify high-risk consignments;
- The revised WCO Data model, which takes account of security concerns;
- Advance Cargo Information (ACI) Guidelines, which describe the procedures required for providing/accessing information in advance of shipment;
- A new Convention on Mutual Administrative Assistance in Customs Matters (Johannesburg Convention), to assist in sharing information between national Customs authorities;
- Guidelines for the establishment of national legal and administrative frameworks;
- Guidelines for Customs-business cooperation;
- Advance Technology Databank, providing information to Members on the technology available.

3.2. Current situation

Whereas most of the above said actions have been implemented by the WCO and several Member States successfully, the JC has been drawn up but not entered into force yet.

There is a need to address these lack of legal basis for further customs assistance and data exchange while there is a tremendous requirement for a unique risk analysis and data exchange model in order to make the supply chain more secure. The JC provides the contracting states to exchange customs information about dangers and risk between each other – a crucial and important exchange of information for the overall aim of security.

The Nairobi Convention of 1977 is focussing on the customs assistance for the combat of organised crime and the trade with prohibited goods. It is an acknowledged tool of mutual customs assistance however it lacks international backing since only 50 states are applying some of its XI annexes.

The JC is focussing more on data exchange of modern customs administrations and the flow of data between businesses and customs administrations. However only three states have ratified the JC, yet. What is the problem of most other states?

3.3. The Johannesburg Convention as integral part of the SAFE Framework and CBM

The JC plays an important part in the Trade Facilitation Initiative of the WCO/WTO, the WCO-SAFE Framework and the ideas of an Integrated Border Management (IBM) and Coordinated Border Management (CBM).¹⁰

⁹ See WCO, 2004a and WCO, 2004b.

¹⁰ See Polner, 5 WCJ 2 (2011) pp. 49-64, UNDOC/WCO, 2006, UN, 2007 and UNCTAD, 2011.

The UN Working Group on Cargo Security states:¹¹

“The Framework notably comprises the following elements:

- Use of advance electronic information.
- Application of risk assessment.
- Use of modern non-intrusive technology for inspection of high-risk cargo.
- Customs-to-customs cooperation and information exchange.
- Customs-to-business partnerships for the facilitation of legitimate trade to traders meeting certain security standards, and their recognition as Authorized Economic Operators.
- Possibility that Authorized Economic Operators may receive mutual recognition of their status from other customs administrations for securing the entire supply chain.

Participants were also informed that the Standards were based on the Revised Kyoto Convention on the simplification and harmonization of customs procedures and the integrated border management system, which is designed to ensure open and secure borders. It was noted that in order to implement an effective border management regime, Governments should adopt the following WCO international standards:

- Revised Kyoto Convention.
- SAFE Framework.
- International Convention on Mutual Administrative Assistance in Customs Matters (“Johannesburg Convention”) or appropriate bilateral agreements on similar assistance.
- Integrated supply-chain guidelines.”

The idea of Coordinated Border Management (CBM)¹² is important to the WCO and its member states. The WTO Trade Facilitation Agreement (TFA) is as well as the Kyoto Convention a major priority to the WCO. Therefore the signature of the JC should also be one of the priorities of the WCO. The SAFE program and the implementation of AEOs around the World have been invented in order to make the supply chains safer and more secure. Here the WCO has not even tried to forge a common mutual agreement (though that would be desirable for the Developing world and many smaller countries and has been criticised accordingly)¹³ and therefore bilateral agreements are very much the mode of action of the Global Trade Nations (US, EU, China, Japan, Korea, etc.).

The JC is a capable tool for customs co-operation in the 21st century. Moreover it is of tremendous importance in order to control cross-border trade under the new data-exchange models. The old Nairobi Convention is not sufficient any more – the times have changed considerably.

3.4. WCO Data Model

It must be stated rather clearly that the ratification of the JC is of very much importance to the customs administrations around the world at the beginning of the 21st century. Only by help of customs co-operation the pre-departure declarations are going to make sense because pre-departure and pre-arrival declarations must be exchanged between different customs authorities.

Example A: An export is going to leave India. It must be declared to Indian customs. But it must also be declared to EU or US customs in order to be allowed into the countries / customs unions. Two customs declarations are necessary.

¹¹ See UN, 2007.

¹² See Polner, 5 WCJ 2 (2011), pp. 49-64.

¹³ See Widdowson, 1 JCEBI 2 (2014), pp. 67-77 and Weerth, 10 GTCJ 6 (2015), pp. 228-230.

Example B: An export is going to leave India. Therefore it would be more convenient when the customs declaration is only filed to Indian customs. When most customs administrations of the world would co-operate (at least the major trade nations) the data could be shuffled from India to the EU or the US. Only one customs declaration (with one data set) would be necessary.

3.5. Customs Intelligence outside of the Nairobi Convention and Johannesburg Convention

The findings suggest that the Nairobi Convention has not been accepted and applied widely across the globe, e.g. only 52 out of 193 countries of the world have signed the convention and only 12 out of 28 EU member states are exchanging data with other signatory states on the basis of the NC. The US, China and Germany (major World Trade nations) have never signed the NC. This is rather a poor result and not very promising for the future prospects of the JC.

However it must be clear that customs intelligence and data transfer is done regularly outside of the Nairobi Convention, e.g. between the US and the Netherlands, the US and the UK and the US and Germany. But what are the legal bilateral conventions that these actions are based on?

There are different non-binding and binding legal instruments offered by International Organizations – by the WCO and other International Economic Organizations such as the UN:¹⁴

WCO-Recommendations

- 1953 Council Recommendation on Mutual Administrative Assistance
- 1967 Recommendation of the Customs Co-operation Council on the Pooling of Information concerning Customs Fraud
- 1975 Council Recommendation on the Pooling of Information concerning Customs Fraud
- WCO-Declarations
- 2000 Cyprus Declaration
- WCO: Binding Instruments
- Revised Model Bilateral Agreement - June 2004
- Guidelines for Regional Mutual Administrative Assistance in Customs matters (2002)
- Convention on mutual assistance and cooperation between customs administrations (Naples II)
- Council Regulation on Mutual Assistance for Application of the Law on Customs (1997)
- Convention on the Use of Information Technology for Customs Purposes (1995)
- United Nations Instruments
- Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1998 (Vienna Convention)
- Convention Against Transnational Organized Crime, 2000 (Palermo Convention)
- UNCITRAL Model Law on Electronic Commerce with Guide to Enactment, 1996

What one can state after this long list of legal instruments is that mutual customs assistance is done on the basis of the NC but not only and in many cases with other WCO and/or UN instruments.

¹⁴ See WCO, Mutual Administrative Assistance (2016b), URL: <http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/wco-and-international-instruments-on-mutual-administrative-assistance.aspx>, viewed 5 June 2016.

3.6. *Move to bilateral Agreements*

There has been an urge to negotiate bilateral legal frameworks for mutual customs assistance e.g. between the US and the EU, between the US and Japan, between the EU and China, and so forth. These bilateral frameworks are containing certain agreements on mutual co-operation which might differ from the JC. This has been done for the exchange of AEO-data. And since the US, China and the EU are not signatory states of neither the NC nor the JC this is their preferred mode of action: the US has negotiated 74 bilateral agreements of mutual customs assistance¹⁵ and the EU has negotiated nine bilateral agreements of mutual customs assistance.¹⁶ Korea, Canada, Hong Kong, US, India, China, Japan, Georgia, Moldova and Ukraine.¹⁷

Furthermore the EU has negotiated many bilateral Free Trade Agreements which also include regulations on mutual (bilateral) customs assistance.¹⁸

But while major stakeholders of Global Trade are not even applying the NC there is a need to sign the JC for the about 50 member states that are interested in a better and better regulated co-operation.

WCO Members are still joining the NC (Georgia in 2009, Seychelles in 2010) while the JC has not entered into force, yet.

3.7. *WCO is lobbying the Johannesburg Convention*

The WCO is actively advertising the benefits of the JC:¹⁹

“Benefits of the Johannesburg Convention

- Adopting the Convention enables the Customs administration, in particular, to:
- legally exchange information, including personal data, and assistance directly with the partner of choice, which is not possible under the current Nairobi Convention;
 - exchange information on consignments in advance of their arrival at destination in order to secure the international trade supply chain;
 - have available a WCO instrument on mutual administrative assistance in Customs matters under which it is possible to enter reservations in respect of all provisions which do not constitute basic principles of the Convention, an option that does not exist under the Nairobi Convention;
 - extend mutual administrative assistance to cover many aspects of Customs work in a complementary fashion to the principles of mutual legal assistance accepted by most Members in the United Nations’ Palermo Convention;
 - provide a legal status to the Customs Enforcement Network, which is the WCO’s central data base on Customs offences; and
 - have an instrument to supplement bilateral agreements dealing appropriately with topical issues relating to the protection of society and the collection of revenue.”

¹⁵ See US Customs and Border Protection, Customs Mutual Assistance Agreements (CMAA), URL: <https://www.cbp.gov/bor-der-security/international-initiatives/international-agreements/cmaa> (2016), viewed on 5 June 2016.

¹⁶ Kieck/Maur in McLinden/Fanta/Widdowson/Doyle (Eds.) Border Management Modernization (2011), Chapter 14: Regional integration and customs unions, pp. 231-249 (244) listed 62 US agreements and seven EU agreements.

¹⁷ See European Commission, Taxation and Customs Union, International Customs Co-operation and Mutual Administrative Assistance Agreements (2016), URL: http://ec.europa.eu/taxation_customs/customs/policy_issues/international_customs_agreements/index_en.htm, viewed on 5 June 2016.

¹⁸ See Kieck/Maur in McLinden/Fanta/Widdowson/Doyle (Eds.) Border Management Modernization (2011), Chapter 14: Regional integration and customs unions, pp. 231-249 (244).

¹⁹ See WCO, Benefits of the Johannesburg Convention (2012), URL: <http://www.wcoomd.org/layouts/Construction-Kit/SolrLinkHandler.ashx?id=99AE6B2CF41A4A0482EEB677F2C8CC0E&lang=en>, viewed 5 June 2006.

3.8. Lack of Co-operation and mutual assistance

The lack of co-operations and mutual assistance has been observed within countries and between countries in the control of cross-border trade control of dangerous substances (e.g. radiating material for dirty bombs, chemical weapons, bioweapons, etc.).²⁰ It has been pointed out the co-operation is often insufficient and that agencies are fighting over responsibilities, successes, budgets and personnel. Therefore it must be the aim of the WCO and its Member states to enhance controls and make risk management efficient and successful. A better co-operation within countries (between agencies) and over borders is of the highest importance in order to combat crime and terrorism.

Summary and concluding remarks

Whereas the membership in the Revised Kyoto Convention is rising strongly in recent years²¹ and the AEO is implemented throughout the World with tremendous efforts in capacity building by the WCO and its COLUMBUS program it must be noted that there is no progress at all with the Johannesburg Convention.

Only three countries have ratified the JC yet. Therefore it has not entered into force. Two more countries are required for the entering into force of the JC. But why is it not happening? Ten countries already have signed the JC but only three out of these (Tables 1 and 2) have actually ratified the JC. The WCO is still advertising the benefits of the JC and it is required for the overall implementation of trade facilitation.

Trade Facilitation is done by help the WTO-TFA agreement, the Revised Kyoto convention and capacity building programs. But the implementation of the JC of mutual customs assistance is one major piece of the overall jigsaw in combating terrorism, illicit trade in prohibited goods, money laundering,²² smuggling and the risk analysis strategy...

Only when five countries have ratified the JC it will enter into force. In particular the NC signatory countries are asked to sign the JC which is going to be its modern successor. The JC enables to exchange risk analysis data that has been obtained by one customs authority to another one in order to help combat terrorism, fraud and organised crime. In case the JC is not going to be ratified by most countries the overall aim of a more secure supply chain is about to fail due to administrative hindering and hesitating governments.

Mutual customs assistance is possible on the basis of the Nairobi Convention or on the basis of bilateral agreements and other binding or non-binding WCO and/or UN legal tools. However the Johannesburg Convention would make things better, clearer and modern.

An observed tendency is the rising number of bilateral (different and sometimes secret) agreements? That cannot be and should not be the interest of the International Organization WCO and its Member states. It should also not be the aim of state leaders when combating international crime and terrorism and trying to enable better and risk management and risk orientated customs controls by help of CBM.

Of course some states might be hesitating because of their hope that bilateral conventions might be more promising. That might be the result for big stake holders like the US or the EU. But even many governments apart from the major trade nations (such as the BRICS and the small or medium sized countries in the Middle and South Americas, in Africa or Asia) are able to sign the JC without hesitation and they could thereby help to implement new security measures in global trade. Therefore the hesitating countries are very much encouraged to ratify this important legal tool for customs co-operation. However not only small and middle sized countries are asked to sign up the JC, in particular the large and

²⁰ See Tweddle, 2 WCJ 1 (2008) and Weerth, 3 WCJ 2 (2009).

²¹ See Weerth in Bungenburg/Herrmann/Krajewski/Terhechte (Eds.), EYIEL (2016), Chapter 34: Recent Developments in the World Customs Organization (WCO), in print.

²² See WCO, 2005.

important trade nations are asked to exchange data in order to make trade more easy and safe.

The criminal minds and terrorists are not waiting for the national states and its customs administrations to make better co-operations. They are simply happy that most nations are hesitating and doing their dark business...

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