



**UNODC**

United Nations Office on Drugs and Crime



# Toolkit to Combat Smuggling of Migrants

**Tool 6**  
**International criminal  
justice cooperation**



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UNITED NATIONS OFFICE ON DRUGS AND CRIME  
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# Toolkit to Combat Smuggling of Migrants

## Tool 6

# **International criminal justice cooperation**



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# Overview

The smuggling of migrants—a crime that, by its very nature, transcends State and regional boundaries—cannot be combated unless the criminal justice response to it also crosses borders. Tool 6 explores international criminal justice cooperation.

## **Overview of international cooperation**

The first section of the tool is divided into four subsections, as follows:

- 6.1 stresses the need for international criminal justice cooperation;
- 6.2 explains the different types of international cooperation that can be mounted against the transnational organized crime of smuggling of migrants;
- 6.3 outlines the basis for formal international cooperation;
- 6.4 flags up some of the challenges that may arise during cooperation.

## **Cooperation mechanisms under the Organized Crime Convention**

The second section of the tool is divided into five subsections, as follows:

- 6.5 sets out the extradition mechanisms;
- 6.6 contains a checklist to be used when making requests for extradition;
- 6.7 explains the mutual legal assistance mechanisms;
- 6.8 contains a checklist to be used when making requests for mutual legal assistance;
- 6.9 lays the foundations for joint investigation teams into smuggling of migrants.

## **Cooperation mechanisms under the Smuggling of Migrants Protocol**

The third section of the tool is divided into eight subsections, as follows:

- 6.10 provides an overview of the international cooperation requirements specifically provided for in the Smuggling of Migrants Protocol;
- 6.11 discusses the cooperation and assistance required in relation to smuggling of migrants by sea;
- 6.12 specifically discusses border cooperation;
- 6.13 addresses cooperation in relation to travel and identity documents;

6.14 addresses the requirement for cooperation in training and technical assistance and describes some promising practices;

6.15 details the cooperation required for the return of smuggled migrants;

6.16 focuses on information exchange;

6.17 notes that States seeking to implement measures that go beyond the minimum requirements of the Protocol may enter into other cooperative agreements and arrangements.



## Overview of International Cooperation

### 6.1 The need to cooperate in combating smuggling of migrants

As smuggling of migrants is a transnational crime, international cooperation is an essential prerequisite to preventing and combating it. As the smugglers of migrants form closely meshed networks that transcend national and regional borders, so too must criminal justice responses be coordinated among States in order to be effective. New routes and *modi operandi* used by smugglers of migrants demonstrate the continuing evolution and growing complexity of smuggling networks and their operations, and highlight the importance of strong international cooperation in the investigation, prevention and prosecution of the smuggling of migrants. Such cooperation must take place at every level, from policing at borders to the development of anti-migrant smuggling policy and the assistance and repatriation of smuggled migrants.

While law enforcement cooperation at the international level is necessary to combat smuggling of migrants, such cooperation cannot be limited to cooperation at State borders alone. While law enforcement officers should have the capacity to control borders, developmental and other considerations must also play a role alongside law enforcement responses to smuggling of migrants. Combating the root causes of irregular movement, such as poverty and discrimination, and the creation of job opportunities are also means for addressing the smuggling of migrants by acting to reduce the vulnerability of certain people to falling into the hands of smugglers and by giving people incentives to remain in their countries of origin. Opportunities for regular migration may also reduce the demand for smuggling.

A lack of effective cooperation may lead to an increase in the number of migrants seeking the services of smugglers (see Tool 1, section 2 on root causes of migration), or simply result in displaced migratory and smuggling routes if cooperation is limited to strengthening border controls. But where cooperation is successful, it can result in the dismantling of smuggling networks that prey on vulnerable people in search of a better life, and it can save lives.

Smugglers of migrants have achieved successful cooperation across geographical, cultural and ethnic boundaries. In order to stop them, international actors against migrant smuggling must do the same.

#### Recommended resources

United Nations. *Report of the Secretary-General on international migration and development*. 18 May 2006. A/60/871.

Paragraph 71 of the report of the Secretary-General on international migration and development states:

Member States now share a core set of migration-related goals that include: enhancing the development impact of international migration; ensuring that migration occurs mainly through legal channels; ensuring the protection of the

rights of migrants; preventing the exploitation of migrants, especially those in vulnerable situations; and combating the crimes of smuggling of migrants and trafficking in persons. Governments should recommit to these goals and develop a strategy based on co-development to reach them.

International Organization for Migration. *Interstate Cooperation and Migration: Berne Initiative Studies*. 2005.

Four of the five papers in this volume examine current forms of inter-State cooperation in the migration field at the regional level and the fifth paper discusses trends in inter-State cooperation at the global level. Taking as their point of departure the rapid growth in informal non-binding regional consultative processes on migration, the papers analyse their modes of operation, review their outcomes and provide an assessment of their effectiveness in facilitating inter-State cooperation at the regional and global level. The papers also suggest ways in which inter-State cooperation at the regional and global levels might be enhanced in the future.

[http://publications.iom.int/bookstore/index.php?main\\_page=product\\_info&products\\_id=161](http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=161)

## 6.2 Types of international cooperation

International cooperation in criminal matters is an essential prerequisite to combating smuggling of migrants. Smuggling of migrants is a transnational crime that may involve actors from several jurisdictions. A given set of facts may justify and give rise to criminal investigations and prosecutions in multiple jurisdictions. Informal and formal methods of international cooperation are important in order to prevent smugglers from having safe havens.

The forms of international cooperation include:

- Extradition
- Mutual legal assistance
- Transfer of criminal proceedings
- Transfer of sentenced persons
- Cooperation for purposes of confiscation to deprive traffickers of criminal assets
- Cooperation between law enforcement authorities including exchanging information and cooperation in conducting inquiries
- Joint investigations
- Cooperation in using special investigative techniques

Channels of communication of international cooperation include:

- Competent national authorities or central authorities
- Diplomatic staff
- Law enforcement officials

The type of cooperation needed, the legal requirements of the requested State and the provisions of the relevant agreement will determine who is contacted. Also, the forms of cooperation mentioned above could be combined with a view to ensuring the most comprehensive assistance with investigations, prosecutions and judicial proceedings related to smuggling of migrants.

Examples of more structured forms of cooperation in law enforcement include:

- Posting liaison officers to facilitate cooperation with the host Government's law enforcement officers in criminal investigations.
- Bilateral and multilateral agreements and arrangements on law enforcement cooperation and on the sharing of law enforcement information.

- Cooperation within such structures as the International Criminal Police Organization (INTERPOL), or various regional cooperation structures.<sup>1</sup>
- Judicial cooperation in criminal matters provides a more formal framework for cooperation compared with the cooperation in law enforcement. The tools available are based on bilateral and multilateral agreements and arrangements or, in some cases and in the absence of such agreements and arrangements, directly on national law.

Both informal and formal law enforcement cooperation, however, have been hampered by a number of problems, such as:

- Diversity of legal systems
- Diversity of law enforcement structures
- Absence of channels of communication for the exchange, for example, of basic information and criminal intelligence
- Diversity in approaches and priorities
- Cultural and linguistic challenges
- Lack of trust

The United Nations Convention against Transnational Organized Crime<sup>2</sup> contains detailed provisions on both formal and informal cooperation in criminal matters, which are also applicable, *mutatis mutandis*, to the Smuggling of Migrants Protocol, as follows:

- Extradition (art. 16)
- Transfer of sentenced persons (art. 17)
- Mutual legal assistance (art. 18)
- Joint investigations (art. 19)
- Cooperation in using special investigative techniques (art. 20)
- Transfer of criminal proceedings (art. 21)
- International cooperation for purposes of confiscation (art. 13)
- Law enforcement cooperation (art. 27)

In general terms, States parties can use the Organized Crime Convention as a legal basis for international cooperation. In the area of extradition, States parties that make extradition conditional on the existence of a treaty are required to inform the Secretary-General whether they will consider the Convention as the legal basis for this form of cooperation. States may also use national legislation and/or the principle of reciprocity to execute extradition requests.

In the area of mutual legal assistance, article 18 includes a set of provisions that can be used by countries not bound by relevant bilateral treaties or by States that have already concluded such treaties and may wish to complement them.

<sup>1</sup> Consider for example, the European Police Office, the European Union Judicial Cooperation Unit, the West African Police Chiefs Committee, the Central African Police Chiefs Committee, the Southern African Regional Police Chiefs Co-operation Organization, the East African Police Chiefs Cooperation Organization, the Association of Southeast Asian Nations Chiefs of Police, the Commission of Police Chiefs of Central America, the Caribbean and Mexico, the South Pacific Chiefs of Police Conference and the Association of Caribbean Commissioners of Police.

<sup>2</sup> United Nations, *Treaty Series*, vol. 2225, No. 39574.

### Recommended resources

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.

Module 8 of this *Training Manual* for law enforcers and prosecutors specifically addresses the investigator's role in international cooperation in responding to migrant smuggling.

This publication is currently being prepared. For more information, visit [www.unodc.org](http://www.unodc.org) or contact [ahtmsu@unodc.org](mailto:ahtmsu@unodc.org).

United Nations Office on Drugs and Crime. *Anti-Human Trafficking Manual for Criminal Justice Practitioners*. New York, 2009.

Module 6 of this *Manual* recalls the different forms and principles of international cooperation, discusses types of international cooperation beyond traditional forms of extradition and mutual legal assistance as defined by the Organized Crime Convention, and discusses the impact of different legal systems on international cooperation among States. The module further offers insight into the process of making formal requests for mutual legal assistance, the contents of the request letter and considerations when making requests.

[www.unodc.org/documents/human-trafficking/09-80667\\_module6\\_Ebook.pdf](http://www.unodc.org/documents/human-trafficking/09-80667_module6_Ebook.pdf).

## 6.3 The legal basis for formal cooperation

Formal cooperation in addressing the smuggling of migrants can be based on treaties (sometimes also called conventions or covenants). Treaties can be bilateral or multilateral or regional, such as those of the Council of Europe or the European Union.

- **Bilateral:** agreements between two countries on particular issues such as extradition and mutual legal assistance.
- **Multilateral:** agreements between several countries on particular issues. For instance, there are agreements on particular issues among the members of the European Union, African Union, Council of Europe, Council of the Baltic Sea States and the Association of Southeast Asian Nations.
- **International:** international agreements that provide a broad basis for extradition or mutual legal assistance, especially in the absence of bilateral or regional treaties.

### International crime conventions

As States do not have treaties with all other States, the Organized Crime Convention is a significant instrument. There are 151 States parties to the Convention.

- The Organized Crime Convention is an example of a Convention on which international cooperation can be based.
- The Organized Crime Convention contains a very comprehensive regime for international cooperation:
  - Extradition (art. 16).
  - Mutual legal assistance (art. 18).
  - Transfer of sentenced persons (art. 17).
  - Transfer of criminal proceedings (art. 21).
  - International cooperation for purposes of confiscation (art. 13).
  - Joint investigations (art. 19).
  - Cooperation in using special investigative techniques (art. 20).
- Article 27 of the Convention establishes the measures that States parties should adopt for law enforcement cooperation:
  - Strengthening channels of communication among law enforcement authorities (para. 1 (a)).
  - Cooperating with other States parties in conducting inquiries concerning persons and the movement of proceeds and instruments of crime (para. 1 (b)).

- Providing items or substances for analytical or investigative purposes (para. 1 (c)).
  - Promoting exchanges of personnel, including the posting of liaison officers (para. 1 (d)).
  - Exchanging information on specific means and methods used by organized criminal groups (para. 1 (e)).
  - Exchanging information and coordinating administrative and other measures for the purposes of facilitating early identification of offences (para. 1 (f)).
  - Considering entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies. Where no such agreement or arrangement is in place, the Convention may provide the basis for mutual law enforcement cooperation (para. 2).
- All of these provisions apply to the Protocols once ratified.

### Domestic law of the requested State

Some countries allow extradition on particular legal grounds:

- Cooperation may be entered into on the basis of reciprocity
- Cooperation may be provided for on a case-by-case basis according to domestic legislation

Where the Organized Crime Convention has not been signed or there is no other legal basis for international cooperation, the principles of reciprocity and courtesy may provide the basis for cooperation.

### Recommended resources

The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

[www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext](http://www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext)

#### *United Nations model legislation and manuals*

Model laws are developed to meet the needs of each of the world's major legal traditions: common law, civil law and Islamic law. The model laws and manuals that will assist in strengthening international cooperation are:

- Model Law on Mutual Assistance in Criminal Matters (2007) (for both civil and common law systems)
- Model Treaty on Extradition (General Assembly resolution 45/116, annex, as amended by General Assembly resolution 52/88, annex)
- Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex I, as amended by General Assembly resolution 53/112, annex I)

- Revised Manuals on the Model Treaties on Extradition and Mutual Assistance in Criminal Matters

These tools are available from:

[www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html](http://www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html)

United Nations Office on Drugs and Crime. *Competent National Authorities Online Directory*.

The database provides contact information for the competent authorities of more than 150 States or dependent territories that had been provided to the United Nations Office on Drugs and Crime (UNODC), including information on specific procedures to be followed in urgent cases. The Directory currently contains the contact information of over 600 competent national authorities, organized into thematic categories:

- Extradition: authorities designated to receive, respond to and process extradition requests under article 6 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988\* and article 16 of the Organized Crime Convention; as well as transfer of sentenced persons under article 17 of the Organized Crime Convention.
- Mutual legal assistance: authorities designated to receive, respond to and process mutual legal assistance requests under article 7 of the 1988 Convention and article 18 of the Organized Crime Convention.
- Illegal traffic of narcotics by sea: authorities designated to receive, respond to and process requests for cooperation to suppress illicit traffic by sea under article 17 of the 1988 Convention.
- Smuggling of migrants by sea: authorities designated to receive, respond to and process requests for cooperation to suppress smuggling of migrants by sea under article 8 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

[www.unodc.org/compauth/en/index.html](http://www.unodc.org/compauth/en/index.html)

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.

The modules contained in this *Training Manual* address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights.

This publication is currently being prepared. For more information, visit [www.unodc.org](http://www.unodc.org) or contact [ahtmsu@unodc.org](mailto:ahtmsu@unodc.org).



United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

The *Legislative Guides*—formulated to accommodate different legal traditions—set out the basic requirements of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, as well as the issues that each State party must address in implementing them.

[www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html](http://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html)

United Nations. *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.06.V.5).

The publication of the *Travaux Préparatoires* (official records) of the negotiations of the United Nations Convention against Transnational Organized Crime and the Protocols thereto is intended to provide a better, in-depth understanding of the Convention and its Protocols. The publication tracks the progress of negotiations in the open-ended intergovernmental Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, established by the General Assembly by its resolution 53/111 of 9 December 1998 with terms of reference supplemented by the Assembly in its resolution 53/114 of 9 December 1998, and requested to finalize the draft texts and submit them directly to the General Assembly for adoption (resolution 54/126).

[www.unodc.org/unodc/en/treaties/CTOC/travaux-preparatoires.html](http://www.unodc.org/unodc/en/treaties/CTOC/travaux-preparatoires.html)

Association of Southeast Asian Nations. *Trafficking in Persons: Handbook on International Cooperation*. Australian Government and United Nations Office on Drugs and Crime, 2009.

The purpose of this *Handbook* is to provide an introduction to the key tools of international cooperation, specifically mutual (legal) assistance and extradition and to provide guidance on how to use these tools. Though the *Handbook* is aimed primarily at criminal justice actors in the region of the Association of Southeast Asian Nations who are working to combat trafficking in persons, it also addresses issues that are relevant to all countries engaged in this work, and offers guidance which is applicable to smuggling of migrants.

[www.artipproject.org/ic-workshop/Extract\\_TIP%20Handbook%20on%20International%20Cooperation\\_Feb09Draft.pdf](http://www.artipproject.org/ic-workshop/Extract_TIP%20Handbook%20on%20International%20Cooperation_Feb09Draft.pdf)

\*United Nations, *Treaty Series*, vol. 1582, No. 27627.

## 6.4 Challenges of international cooperation

There are several challenges to international cooperation on combating the smuggling of migrants and in other criminal investigations. Both formal and informal law enforcement cooperation have been hampered by such issues as:

- Lack of trust
- Diversity of legal systems
- Diversity of law enforcement structures
- Absence of channels of communication
- Diversity in approaches and priorities
- Linguistic and cultural challenges

The most important component of international cooperation is the role played by individuals. All the laws and policies that allow for international cooperation count for little if individuals do not cooperate proactively and appropriately.

There is sometimes reluctance to share information, often in relation to security concerns. When seeking cooperation, an investigator must be mindful of these concerns. Having suitable methods in place to protect the security of information may encourage a better flow of information.

International cooperation in criminal matters can be challenging and requires knowledge, planning and awareness of the practical issues at stake in both the requested and the requesting States. Some of these issues include, but are not limited to, the cost of investigations, the location of the trial, the applicable legal framework, nationality, the location of witnesses, the location of offenders, gathering of evidence and admissibility of evidence rules. However, with a little experience, the benefits of using the tools of international cooperation will greatly outweigh these challenges.

### Challenges of formal cooperation

The main advantage of effective formal cooperation is its potential for generating evidence that is admissible in court.

However, varying laws and legal systems present a significant challenge for formal cooperation. Often bureaucratic requirements are demanding and results are sometimes not timely.

If a person's safety is at risk, it is unlikely that a formal letter of request will be appropriate because it may take a considerable amount of time to achieve a result.

### Challenges of informal cooperation

Informal cooperation (direct officer-to-officer contact) is often quicker than formal cooperation. This can have many benefits with respect to smuggling of migrants operations as it can result in prompt responses to situations that carry risks to people.

However, there are some risks and challenges involved in this form of cooperation, such as:

- Exposing colleagues in other countries to risks in connection with cooperation
- Diplomatic incidents because action is not properly considered
- Exposure of people to increased risks through unwitting or deliberate leakage of information from the agency involved
- Increased risk of compromising other operations and law enforcement staff

These types of risks can be minimized by:

- Not making individual officer-to-officer contact if this is specifically forbidden by one of the jurisdictions concerned.
- Finding out what the arrangements for cooperation between the countries concerned are. Where liaison officers or units exist, their advice should be sought.
- Not passing on information that may expose someone to danger without establishing the risks of contacting a particular unit or individual.
- Keeping liaison units informed of the activities in progress.

It may be difficult to assess the level and impact of the risk at a distance. Where possible, liaison departments and officers should be asked to provide information about who can be safely contacted.

### Best practice in international cooperation: communication

- International cooperation is greatly facilitated by communication between counterparts.
- Informal, direct and spontaneous contact should be established and maintained (for example, via e-mail, telephone, tele- or video-conferences). In general, there should be as much communication as possible among counterparts.
- Procedures should be simplified and expedited.

#### Recommended resources

##### *Police organizations*

International and regional police organizations can assist in the facilitation of cooperation. Consider for example the International Criminal Police Organization, the European Police Office, the West African Police Chiefs Committee, the Central African Police Chiefs Committee, the Southern African Regional Police Chiefs Cooperation

Organization, the East African Police Chiefs Cooperation Organization, the Association of Southeast Asian Nations Chiefs of Police, the Commission of Police Chiefs of Central America, Mexico and the Caribbean, the South Pacific Chiefs of Police Conference and the Association of Caribbean Commissioners of Police.

United Nations Office on Drugs and Crime. *Competent National Authorities Online Directory*.

The database provides contact information for the competent authorities of more than 150 States or dependent territories that had been provided to UNODC, including information on specific procedures to be followed in urgent cases. The Directory currently contains the contact information of over 600 competent national authorities, organized into thematic categories: extradition, mutual legal assistance, illicit traffic by sea and smuggling of migrants by sea.

[www.unodc.org/compauth/en/index.html](http://www.unodc.org/compauth/en/index.html)

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.

The modules contained in this *Training Manual* address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights.

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## Cooperation mechanisms under the Organized Crime Convention

### 6.5 Extradition

Extradition—a formal means of cooperation—is provided for in article 16 of the Organized Crime Convention.

Extradition is the surrender by one State of a person present on its territory to another State that seeks this person either for the purpose of prosecution, or for the purpose of enforcing a sentence.

For a long time, extradition was largely a matter of reciprocity or comity. Even now, in the absence of a binding treaty, there is no international obligation to extradite. However, there is a growing trend towards recognizing the duty to extradite or prosecute, in particular in relation to certain international crimes, including smuggling of migrants.

Some of the most important concerns in relation to extradition are discussed below.

#### Existence of a legal basis for extradition

In general, some States require a treaty to extradite and some do not. In States that do require a treaty, bilateral and multilateral treaties can provide the basis for extradition. Multilateral treaties like the Organized Crime Convention are very efficient with regard to extradition as they provide an obligatory basis for extradition, valid for all States parties.

#### Requirements for the application of article 16 on extradition

Article 16 of the Organized Crime Convention applies when an offence covered by the Convention involves an organized criminal group and the person sought for extradition is “located in the territory of the requested State Party”. There is no need to prove that the offence was transnational in nature for the purposes of extradition in cases involving the smuggling of migrants.

#### Dual criminality

The requesting State must prove that the criminal offence involving the person who is the subject of the request for extradition is punishable under the domestic law of both the requested and requesting States. This rule has come to be applied less strictly as a result of attempts to list acts that are offences under the Convention and therefore punishable in the jurisdictions of all States parties.

#### Specificity

This principle obligates States to specify the offences for which the extradition request is being sent and obligates the requesting State to prosecute only those offences.

With particular regard to the offence of smuggling of migrants, it is essential to achieve convergence in national laws in terms of defining the relevant criminal conduct in accordance with the definition contained in the Smuggling of Migrants Protocol (see Tool 1, section 8) and especially in terms of ensuring that such conduct is an extraditable offence.

### Double jeopardy

A State may deny a request for extradition when the person sought has already been tried for the offence contained in the request.

### Non-extradition of nationals

The reluctance of States to extradite their own nationals appears to be lessening in many cases. The Organized Crime Convention includes a provision that reflects this development: article 16 (11) refers to the possibility of temporary surrender of the person on condition that he or she will be returned to the requested State party for the purpose of serving the sentence imposed. In cases where the requested State refuses to extradite a person on the grounds that the person is its own national, the State is often seen, under binding international legal instruments, to have an obligation to bring the person to trial.

This is an illustration of the principle of *aut dedere aut judicare* (extradite or prosecute) and requires the establishment of appropriate jurisdictional basis (see below). Where extradition is requested for the purpose of enforcing a sentence, the requested State may also enforce the sentence that has been imposed in accordance with the requirements of its domestic law.

The differences between the prosecutorial practices under common law and continental law systems can make effective interregional and international cooperation difficult. In the field of extradition, such differences are even more acute in relation to the documents to be presented to the requested State and the evidentiary requirements for granting an extradition request, especially in complex cases involving the smuggling of migrants. Advance research on requirements as well as close coordination with foreign counterparts can make a significant contribution to simplifying extradition procedures.

### Recommended resources

UNODC provides several tools to facilitate the process of seeking and executing extradition requests.

*The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air.*

[www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext](http://www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext)

United Nations Office on Drugs and Crime. *Model Law on Extradition.*

UNODC elaborated a Model Law on Extradition to assist interested States in drafting or amending domestic legislation in this field.

The Model Law on Extradition is available from:

[www.unodc.org/pdf/model\\_law\\_extradition.pdf](http://www.unodc.org/pdf/model_law_extradition.pdf).

United Nations Office on Drugs and Crime. *Model Treaty on Extradition*.

The Model Treaty on Extradition (General Assembly resolution 45/116, annex, subsequently amended in resolution 52/88, annex) was developed as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving cooperation in matters of crime prevention and criminal justice.

The Model Treaty on Extradition and the Revised Manuals on the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters are available from:

[www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html](http://www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html)

United Nations Office on Drugs and Crime. *Competent National Authorities Online Directory*.

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[www.unodc.org/compauth/en/index.html](http://www.unodc.org/compauth/en/index.html)

United Nations Office on Drugs and Crime. *Anti-Human Trafficking Manual for Criminal Justice Practitioners*. New York, 2009.

The purpose of this *Manual* is to support criminal justice practitioners in the prevention of human trafficking. Many of the principles are applicable to combating the smuggling of migrants. Module 6 recalls the different forms and principles of international cooperation, discusses types of international cooperation beyond the traditional forms of extradition and mutual legal assistance as defined by the Organized Crime Convention, and discusses the impact of different legal systems on international cooperation amongst States.

[www.unodc.org/documents/human-trafficking/09-80667\\_module6\\_Ebook.pdf](http://www.unodc.org/documents/human-trafficking/09-80667_module6_Ebook.pdf)

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investigative techniques, intelligence, legislative issues, international cooperation and human rights.

This publication is currently being prepared. For more information, visit [www.unodc.org](http://www.unodc.org) or contact [ahtmsu@unodc.org](mailto:ahtmsu@unodc.org).

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

The Legislative Guides—formulated to accommodate different legal traditions—set out the basic requirements of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, as well as the issues that each State party must address in implementing them.

[www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html](http://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html)

### *Report of the Informal Expert Working Group on Effective Extradition Casework Practice*

The informal expert working group on effective extradition casework practice of the UNODC Legal Advisory Programme met in Vienna in 2004 to discuss the most common impediments in major legal traditions to efficient and effective extradition. The product was a report containing a comprehensive package of recommendations pertaining to:

- Extradition infrastructure: legislation, treaties, institutional structures and so forth
- Day-to-day casework practice: planning, preparation, conduct of proceedings, communication systems, language problems and so forth

Also of particular use is annex C to the report, which provides a checklist for the content of extradition requests, required supporting documents and information. A checklist for extradition requests is contained in Tool 6, section 6.

The report is available from:

[www.unodc.org/pdf/ewg\\_report\\_extraditions\\_2004.pdf](http://www.unodc.org/pdf/ewg_report_extraditions_2004.pdf).

United Nations. Congress on Crime Prevention and Criminal Justice. *Workshop 1: Enhancing International Law Enforcement Cooperation, including Extradition Measures—Background Paper*. A/CONF.203/9.

The present paper describes key trends, practices and recent developments in both law enforcement cooperation and international cooperation in criminal matters, including extradition and mutual legal assistance. It outlines the evolution of both informal and formal international cooperation, identifying challenges and problems to be addressed in each relevant field.



Association of Southeast Asian Nations. *Trafficking in Persons: Handbook on International Cooperation*. Australian Government and United Nations Office on Drugs and Crime, 2009.

The purpose of this *Handbook* is to provide an introduction to the key tools of international cooperation, specifically mutual (legal) assistance and extradition and to provide guidance on how to use these tools. Though the *Handbook* is aimed primarily at criminal justice actors in the region of the Association of Southeast Asian Nations who are working to combat trafficking in persons, it also addresses issues that are relevant to all countries engaged in this work, and offers guidance which is applicable to smuggling of migrants.

[www.artipproject.org/ic-workshop/Extract\\_TIP%20Handbook%20on%20International%20Cooperation\\_Feb09Draft.pdf](http://www.artipproject.org/ic-workshop/Extract_TIP%20Handbook%20on%20International%20Cooperation_Feb09Draft.pdf)

## Promising practices

### African instrument

#### *The Economic Community of West African States (ECOWAS) Convention on Extradition*

Signed in Abuja in August 1994, the ECOWAS Convention on Extradition understands extradition to mean the surrender of all persons within the territory of the requested State:

- Who are wanted for prosecution for an offence or
- Who are wanted by the legal authorities of the requesting State for the carrying out of a sentence

[www.iss.co.za/AF/RegOrg/unity\\_to\\_union/pdfs/ecowas/4ConExtradition.pdf](http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/ecowas/4ConExtradition.pdf)

### Arab instrument

#### *Extradition Agreement of the League of Arab States (1952)*

This instrument was approved by the Council of the League of Arab States in 1952, but was signed by only a limited number of States and ratified by fewer. The Convention is a stand-alone basis for extradition, but contemplates the existence of bilateral arrangements between States parties.

### Commonwealth instrument

Scheme relating to the rendition of fugitive offenders within the Commonwealth

This Commonwealth Scheme was conceived at a meeting of law ministers in London in 1966 to provide for reciprocal agreements among Commonwealth member States.

[www.thecommonwealth.org/Internal/38061/documents/](http://www.thecommonwealth.org/Internal/38061/documents/)

## European instruments

*European Convention on Extradition* (United Nations, Treaty Series, vol. 359, No. 5146).

<http://conventions.coe.int/Treaty/EN/Treaties/Html/024.htm>

*Additional Protocol to the European Convention on Extradition* (Council of Europe, European Treaty Series, No. 86).

<http://conventions.coe.int/Treaty/en/Treaties/Html/086.htm>

*Second Additional Protocol to the European Convention on Extradition* (Council of Europe, *European Treaty Series*, No. 98).

<http://conventions.coe.int/Treaty/en/Treaties/Html/098.htm>

*Convention on Simplified Extradition Procedure between the Member States of the European Union (1995)* (Official Journal of the European Communities, C 078, 30 March 1995).

This European Union Convention supplements the European Convention on Extradition of the Council of Europe and simplifies the extradition procedure between member States without affecting the application of the most favourable provisions of bilateral or multilateral agreements.

[http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/judicial\\_cooperation\\_in\\_criminal\\_matters/114015a\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/114015a_en.htm)

### *Council framework decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States*

This framework decision simplifies and speeds up the extradition procedure, by replacing the political and administrative phase of the process with a judicial mechanism. The framework decision replaced the Convention relating to Extradition between Member States of the European Union as of July 2004. The procedure for the surrender of fugitives within the European Union, established by the 2002 Council Framework Decision on the European arrest warrant, is intended to streamline and accelerate the relevant proceedings among the member States, by, inter alia, abolishing the double criminality requirement for a list of offences, including smuggling of migrants.

[http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/judicial\\_cooperation\\_in\\_criminal\\_matters/133167\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/133167_en.htm)

### *Benelux Convention on Extradition and Judicial Assistance in Penal Matters (1962)*

The Benelux Convention was adopted by Belgium, Luxembourg and the Netherlands in June 1962. This Convention reflects many aspects of the European Convention provisions, but many of its substantive articles are specific to the close relations between the signatories.

### *Nordic States Scheme (1962)*

Adopted by Denmark, Finland, Iceland, Norway and Sweden, this extradition treaty reflects the strong connections between those States.

### *European arrest warrant*

In the European Union, Member States have agreed to honour each other's arrest warrants, implementing the European arrest warrant which was designed to replace traditional extradition proceedings between States. Other recent trends in extradition law have focused on making it easier for States to fulfil the dual criminality requirement. This has been done by inserting general provisions into treaties that list acts and require only that they be punished as crimes or offences by the laws of both States. Some States have simplified the requirement even further by introducing a conduct-based test that allows extradition for any conduct criminalized and subject to a certain level of punishment in each State. Regional harmonization of national legislations with the criminalization provisions in the Organized Crime Convention and the Trafficking in Persons Protocol can greatly aid extradition procedures. For more information, visit:

[http://ec.europa.eu/justice\\_home/fsj/criminal/extradition/fsj\\_criminal\\_extradition\\_en.htm](http://ec.europa.eu/justice_home/fsj/criminal/extradition/fsj_criminal_extradition_en.htm)

### *Inter-American instruments*

*Inter-American Convention on Extradition.* (United Nations, *Treaty Series*, vol. 1752, No. 30579).

The Inter-American Convention on Extradition, which entered into force in 1992, was the result of a long history of inter-American extradition conventions dating back to 1879. The Convention is open to accession by any American State, and to permanent observers to the Organization of American States following approval by the General Assembly of the Organization of American States.

[www.oas.org/juridico/English/treaties/b-47.html](http://www.oas.org/juridico/English/treaties/b-47.html)

## 6.6 Request for extradition: checklist

### Checklist

The following information should always be included in extradition requests:

- Identity of the person sought
  - A description of the person sought and other information that may be relevant to establishing his or her identity, nationality and location
- Facts and procedural history of the case
  - An overview of the facts and procedural history of the case, including the applicable law of the requesting State and the criminal charge against the person sought
- Legal provisions
  - A description of the offence and applicable penalty, with an excerpt or copy of relevant parts of the law of the requesting State
- Statute of limitations
  - Any relevant limitation period beyond which prosecution of a person cannot be lawfully brought or pursued
- Legal basis
  - A description of the basis upon which the request is made, such as national legislation, the relevant extradition treaty or arrangements or, in the absence thereof, by virtue of comity

If the person sought is accused, but not yet convicted, of an offence, the following should be submitted:

- Warrant for arrest
  - The original or certified copy of a warrant issued by a competent judicial authority for the arrest of that person, or other documents having the same effect.
- Statement of the offence or offences
  - A statement of the offence or offences for which extradition is requested and a description of the acts or omissions constituting the alleged offence or offences, including an indication of the time and place of commission. The maximum sentence for each offence, the degree of participation in the offence by the person sought and all relevant limitation periods should also be stated.
- Evidence
  - Evidence of identity is always required. The requesting State must establish whether sworn evidence is required. If so, it must also be established whether the witness must depose that he or she both knows the person sought and knows that the

person engaged in the relevant acts or omissions constituting the relevant offence or offences. Suspicion of guilt for every offence for which extradition is sought must be substantiated by evidence. The requesting State must establish in advance whether this must take the form of sworn or unsworn evidence of witnesses, or whether a sworn or unsworn statement of the case will suffice. If a statement of the case will suffice, it is necessary to establish whether it has to contain particulars of every offence. Where sworn evidence is required, it must be established whether this has to show prima facie evidence of every offence for which extradition is sought. If so, the requesting State must clarify what is required and admissible to establish that, or any lesser test. Everything must be submitted in the form required.

- If the person sought is convicted of an offence, the following must be submitted:
  - An original or a certified or authenticated copy of the original conviction or detention order, or other documents having the same effect, to establish that the sentence is immediately enforceable. The request should also include a statement establishing to what extent the sentence has already been carried out.
  - A statement indicating that the person was summoned in person or otherwise informed of the date and place of hearing leading to the decision or was legally represented throughout the proceedings against him or her, or specifying the legal means available to him or her to prepare his or her defence or to have the case retried in his or her presence.
  - A document setting out the conviction and a statement affirming that there is an intention to impose a sentence.

### Signature of documents, assembly of request and attachments

- Warrants for arrest and conviction or detention order:
  - It must be established in each case whether the warrant or order must be signed by a judge, magistrate or other judicial officer, or officer of State.
  - It must also be established whether the officer of State must also sign each separate document.
- Assembly of request
  - The requesting State must establish whether all the documents included in the request and attachment must be bundled together, and what, if any, seals are required to prevent later arguments that documents have been added or removed.
- Transmission of the request
  - The requesting State should ensure that the request and attachments are transmitted by the channel agreed with the requested State (not necessarily the diplomatic channel). The transmission and delivery should be monitored to ensure crucial time limits are met.

### Optional additional content and documents

- Identification of authority
  - Identification of the office or authority requesting the provisional arrest or extradition.

- Prior communication
  - Details of any prior contact between officers in the requesting and requested States.
- Presence of officials
  - An indication as to whether the requesting State wishes its officials or other specified persons to be present at or participate in the execution of the extradition request and the reason why this is requested.
- Indication of urgency and/or time limit
  - An indication of any particular urgency or applicable time limit within which compliance with the request is required and the reason for the urgency or time limit.
- Use of other channels
  - Where a copy of the request has been or is being sent through other channels, this should be made clear in the request.
- Language
  - The request and accompanying documents should be made in or accompanied by a certified translation (of all the documents in their entirety) in a language specified by the requested State (or if that State permits more than one, the preferred language indicated after consultation).
- Supplementary documents
  - Supplementary information or documents should be provided as required.

Note: This checklist, put together by the informal expert working group on effective extradition casework, is not intended to be universally exhaustive.

### Recommended resource

The full report of the informal expert working group on effective extradition casework practice can be downloaded at:

[www.unodc.org/pdf/ewg\\_report\\_extraditions\\_2004.pdf](http://www.unodc.org/pdf/ewg_report_extraditions_2004.pdf)

## 6.7 Mutual legal assistance

Mutual legal assistance—a type of formal cooperation—is the subject of article 18 of the Organized Crime Convention.

Mutual legal assistance is a mechanism States can use to receive and provide assistance for gathering evidence for investigations and criminal prosecutions. It covers a wide range of assistance. Mutual legal assistance is a vital tool of international criminal justice cooperation in addressing migrant smuggling; through a request for such assistance, one State authorizes another State to take particular measures.

### Basis for mutual legal assistance

Mutual legal assistance can be based on bilateral, multilateral or international treaties.

Article 18 of the Organized Crime Convention contains extensive provisions for international cooperation. It sets out types of mutual legal assistance and procedures in detail. If the parties are not bound by a treaty, then the procedures in article 18 of the Organized Crime Convention apply. If there is a treaty, the parties can still agree to apply the procedures in the Organized Crime Convention where it is simpler to do so.

This applies to all offences set out in the Convention and the Smuggling of Migrants Protocol, if ratified, where there are reasonable grounds to suspect that the offence is transnational in nature and involves an organized criminal group.

Under the Organized Crime Convention, States parties are required to afford one another the widest measure of mutual legal assistance.

### Types of mutual legal assistance provided for in article 18 of the Organized Crime Convention

- Effecting service of judicial documents
- Providing information and evidentiary items
- Taking evidence or statements from persons
- Executing searches, seizures and freezing
- Providing documents and records
- Facilitating the voluntary appearance of persons in the requesting State party
- Examining objects and sites
- Identifying and tracing proceeds of crime and property for evidentiary purposes

- Temporarily transferring persons in custody
- Providing any other assistance that is not contrary to the domestic law of the requested State party

### **Making a request for mutual legal assistance**

States should designate a central authority competent to receive and execute requests or transmit them to the competent authorities for execution. The role of central authorities is to ensure the speedy execution or transmission of requests, and best practices include:

- Dissemination of up-to-date contact information to other States
- Ensuring that the central authority is available round the clock
- Ensuring that the central authority has the responsibility and power to receive requests made under different treaties
- Quality control and follow-up on requests received or made
- Issuing guidelines for domestic and international use

### **Executing a request for mutual legal assistance**

In executing a request for mutual legal assistance, the requested State party should:

- Ensure the speedy execution of the request
- Respect any deadlines suggested by the requesting State party
- Consult on progress
- Clarify what limitations apply to the use of information or evidence (the best practice in this situation is for the requested State party to impose as few limitations as possible)
- Ensure the confidentiality of requests where the requesting State party requires that the matter is treated confidentially (or inform the requesting State party where confidentiality is not possible)
- Bear the ordinary costs of execution, but consult with the requesting State party where there are substantial extraordinary costs. In such situations, the best practice is for the requesting State party to provide assistance where of the requested State lacks resources

The request must be executed in accordance with the domestic law of the requested State but there is a need to respect the specific procedures described in the request unless those are prohibited or impossible, so as not to pose obstacles to the prosecution.

### **Refusing a request for mutual legal assistance**

Requests for mutual legal assistance can be refused if:

- Requirements are not met.
- The execution of the request would be prejudicial to the essential interests of the requested State.



- The authorities of the requested State party would be prohibited by its domestic law from carrying out the requested action had the offence been under investigation in its own jurisdiction. For instance, the use of certain special investigative techniques is permitted in some jurisdictions but prohibited in others.

Where a request for mutual legal assistance is refused, reasons must be given. There is an obligation to consult with the requesting State party to consider whether a request may be granted subject to terms and conditions.

Pursuant the Organized Crime Convention, States parties may not refuse a request for legal assistance on the sole ground that the offence is also considered to involve fiscal matters. Where dual criminality does not exist, a State may still choose to assist, but it has the right to refuse to render mutual legal assistance.

### Best practices in mutual legal assistance legislation

Legislation concerning mutual legal assistance should be modern and flexible, allowing for:

- The use of the Organized Crime Convention as a basis for mutual legal assistance in the absence of a treaty
- A broad range of assistance measures
- Provision of assistance in the absence of dual criminality
- Limited grounds for refusal

### The role of central authorities

Requests for assistance are to be made by designated central authorities, which are to have the responsibility and power to receive requests for assistance and to execute them or pass them on to competent national authorities. A country may also have a unit (generally staffed by law enforcement officers) that processes enquiries through informal arrangements such as memorandums of understanding or bilateral agreements. This is likely to be distinct from the central authority that deals only with formal requests as defined by the Organized Crime Convention.

Where it becomes apparent that the request or requests involve substantial costs, the requesting and requested States should consult to determine the terms and conditions under which the request is to be executed and the manner in which the costs are to be borne. The sharing of confiscated assets between States is an important way to encourage cooperation, as provided for in article 14, paragraph 3 (6).

Staff at the central authority should ideally speak various languages, have access to reliable translation services or be able to apply creative solutions to language barriers. For example, staff at the central authority could seek assistance from other government departments and missions abroad or even from the requesting or requested State.

## Recommended resources

UNODC offers several tools to facilitate making and executing requests for mutual legal assistance.

### *The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air*

[www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext](http://www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext)

United Nations Office on Drugs and Crime. *Competent National Authorities Online Directory*.

Contact information for competent authorities of more than 150 States or dependent territories has been provided to UNODC, including information on specific procedures to be followed in urgent cases. The online Directory currently contains the contact information of over 600 Competent National Authorities, organized into thematic categories: extradition, mutual legal assistance, illicit traffic of narcotics by sea and smuggling of migrants by sea.

[www.unodc.org/compauth/en/index.html](http://www.unodc.org/compauth/en/index.html)

### *United Nations model legislation and manuals on mutual legal assistance*

Model laws are developed to meet the needs of each of the world's major legal traditions: common law, civil law and Islamic law, and accompanied by interpretative commentary. The model laws and manuals that will assist in mutual legal assistance are:

- Model Law on Mutual Assistance in Criminal Matters (2007) (for both civil and common law systems)
- Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex, as amended by General Assembly resolution 53/112, annex I)
- Revised Manuals on the Model Treaties on Extradition and Mutual Assistance in Criminal Matters

These tools are available from: [www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html](http://www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html)

United Nations. *Model Foreign Evidence Bill, 2000*.

In some instances, national legislation must also be reviewed and amended to facilitate international cooperation and the use of foreign evidence in order for there to be full benefit from mutual legal assistance efforts.

The United Nations International Drug Control Programme Model Foreign Evidence Bill, 2000 is a useful tool in this regard. The model bill is available at the UNODC website:

[www.unodc.org/pdf/lap\\_foreign-evidence\\_2000.pdf](http://www.unodc.org/pdf/lap_foreign-evidence_2000.pdf)

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.

Module 8 of the UNODC *Basic Training Manual* addresses international cooperation in addressing migrant smuggling.

This publication is currently being prepared. For more information, visit [www.unodc.org](http://www.unodc.org) or contact [ahtmsu@unodc.org](mailto:ahtmsu@unodc.org).

United Nations Office on Drugs and Crime. *Casework Best Practice Guidelines*.

Through expert working groups, UNODC has gathered expert practitioners to identify, capture and make available to other practitioners best international practices, including lessons learned, practical guides and best practice tips.

The reports of these expert working groups on mutual legal assistance are:

- Report of the expert working group on mutual legal assistance and related international confiscation, Vienna, 15-19 February 1993.
- Report of the informal expert working group on mutual legal assistance case-work best practice, Vienna, 3-7 December 2001.

These reports are available at [www.unodc.org/unodc/en/legal-tools/Model.html](http://www.unodc.org/unodc/en/legal-tools/Model.html)

United Nations Congress on Crime Prevention and Criminal Justice, *Workshop 1: Enhancing International Law Enforcement Cooperation, including Extradition Measures—Background Paper*. A/CONF.203/9.

The present paper describes key trends, practices and recent developments in both law enforcement cooperation and international cooperation in criminal matters, including extradition and mutual legal assistance. It outlines the evolution of both informal and formal international cooperation, identifying challenges and problems to be addressed in each relevant field.

International Association of Prosecutors. *Basic Guide to Prosecutors in Obtaining Mutual Legal Assistance in Criminal Matters*.

The International Association of Prosecutors has created a basic guide for use by prosecutors in obtaining mutual legal assistance. The guide is intended to be a simple route map for achieving mutual legal assistance and sets out useful principles and three basic rules to be followed.

- Rule 1. The request should be completed with care. Confidentiality may not always be possible and if it is required, this must be made clear on the front of the document.

- Rule 2. The assistance requested must be permissible under the law of the requesting State and only made if it will result in additional evidence of value to the prosecution. In the context of any request, common rules relating to certainty, confidentiality, disclosure, dual criminality, defamation, human rights, proportionality and reciprocity must be respected.
- Rule 3. Check the contents of your request, ensuring that all necessary particulars are clearly included and that all necessary annexes are attached.

The Basic Guide is available at: [www.iap.nl.com](http://www.iap.nl.com)

Southern African Development Community. *Protocol on Mutual Legal Assistance in Criminal Matters*.

[www.sadc.int/index/browse/page/156#29](http://www.sadc.int/index/browse/page/156#29)

## Promising practices

### Organization of American States.

#### *Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition.*

At the Third Meeting of Ministers of Justice and Attorneys General of the Americas, held in 2000, it was decided to improve information exchanges between Member States of the Organization of American States in the area of mutual legal assistance in criminal matters. A working group was established and developed a pilot project focusing on the creation of a criminal justice information exchange network. One component of the resulting Information Exchange Network is a public website that enables citizens of Member States of the Organization to become familiar with their own justice systems and those of the States they are working with. The site includes a general description of legal systems of countries of the Americas and posts laws and bilateral and multilateral agreements in force concerning extradition and mutual legal assistance in criminal matters. This information is available in the four official languages of the Organization: English, French, Spanish and Portuguese.

For more information about the Information Exchange Network, visit:

[www.oas.org/juridico/mla/en/index.html](http://www.oas.org/juridico/mla/en/index.html)

### European liaison magistrates

In the European Union, a framework has been created for the exchange of liaison magistrates to improve judicial cooperation between Member States. The tasks of the liaison magistrates comprise any activity designed to encourage and accelerate all forms of judicial cooperation in criminal matters, in particular by establishing direct links between relevant departments and judicial authorities in order to facilitate mutual legal assistance. Under arrangements agreed between the home and the host Member States, the tasks of liaison magistrates may also include any activity connected with handling the exchange of information and statistics designed to promote mutual understanding of the legal systems of the States concerned and to further relations between the legal professions in each of those States.

## Mutual legal assistance instruments

### African instruments

*Cooperation agreement on police matters between Benin, Ghana, Nigeria and Togo (Lagos, 1984)*

*The Economic Community of West African States Convention on Mutual Assistance in Criminal Matters (1992)*

The Economic Community of West African States (ECOWAS) Convention on Mutual Assistance in Criminal Matters was signed in July 1992 and entered into force on 28 October 2003. The scope of the application of mutual legal assistance as defined by article 2 of the Convention includes:

- Taking evidence or statements
- Assisting in assuring the availability of detained persons or others to give evidence or assist in investigations
- Effecting service of judicial documents
- Executing searches and seizures
- Forfeitures and confiscations of the proceeds of crime
- Examining objects and sites
- Providing information and evidentiary items
- Providing originals or certified copies of relevant documents and records

*Southern African Development Community Protocol on Mutual Legal Assistance in Criminal Matters (2002)*

[www.sadc.int/index/browse/page/156#29](http://www.sadc.int/index/browse/page/156#29)

*Mutual Assistance Pact between Member States of the Economic Community of Central African States (2002)*

### Association of Southeast Asian Nations instrument

Association of Southeast Asian Nations Treaty on Mutual Legal Assistance in Criminal Matters (2004)

In Kuala Lumpur on 29 November 2004, the Governments of Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, the Philippines, Singapore and Viet Nam signed the Treaty on Mutual Legal Assistance in Criminal Matters.

[www.aseansec.org/17363.pdf](http://www.aseansec.org/17363.pdf)

### Australian instrument

Through the Mutual Assistance (Transnational Organised Crime) Regulations 2004 and the Mutual Assistance in Criminal Matters Act 1987, mutual legal assistance is potentially available to all States parties to the Organized Crime Convention.

For more information, visit:

[www.ministerjusticeandcustoms.gov.au/www/agd/agd.nsf/page/Extradition\\_and\\_mutual\\_assistance](http://www.ministerjusticeandcustoms.gov.au/www/agd/agd.nsf/page/Extradition_and_mutual_assistance)

### Commonwealth instrument

Scheme (the Harare Scheme) relating to Mutual Assistance in Criminal Matters within the Commonwealth (1986, as amended in 1990 and 1999)

The Commonwealth scheme (the Harare Scheme) was agreed in 1990 and amended in 2002 and 2005. It is not a treaty or convention, but it assists States in making requests for assistance. Paragraph 14 of the scheme sets out the contents required in such a request.

[www.thecommonwealth.org/Internal/38061/documents/](http://www.thecommonwealth.org/Internal/38061/documents/)

### European instruments

#### *European Convention on the Transfer of Proceedings in Criminal Matters*

Strasbourg, 1972; came into force in 1978, (United Nations, *Treaty Series*, vol. 1137, No.17825).

<http://conventions.coe.int/treaty/en/Treaties/Html/073.htm>

#### *Act on mutual assistance in criminal matters between European Union Member States (2000)*

Given that legal and judicial systems differ from one European Union Member State to another, this Act sought to establish a cooperative mechanism to facilitate mutual judicial assistance between authorities (police, customs and courts) to improve the speed and efficiency of cooperation.

[http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/judicial\\_cooperation\\_in\\_criminal\\_matters/133108\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/133108_en.htm)

#### *European Convention on Mutual Assistance in Criminal Matters (United Nations, Treaty Series, vol. 472, No. 6841 [Council of Europe, European Treaty Series, No. 30])*

<http://conventions.coe.int/Treaty/en/Treaties/Html/030.htm>

#### *Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters*

(United Nations, *Treaty Series*, vol. 1496, No. 6841 [Council of Europe, European Treaty Series, No. 99])

<http://conventions.coe.int/Treaty/en/Treaties/Html/099.htm>

#### *Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters*

(Council of Europe, European Treaty Series, No. 182)

<http://conventions.coe.int/Treaty/en/Treaties/Html/182.htm>

*Convention on Mutual Assistance and Cooperation between Customs Administrations (1998)*

This Convention, drawn up on the basis of article K3 of the Treaty on European Union, seeks to increase cooperation among customs officials. It is not intended to affect other provisions regarding mutual assistance in criminal matters between judicial authorities, or more favourable provisions in bilateral or multilateral agreements between European Union Member States governing customs cooperation.

[http://europa.eu/legislation\\_summaries/customs/133051\\_en.htm](http://europa.eu/legislation_summaries/customs/133051_en.htm)

*Nordic States Scheme (1962)*

Adopted by Denmark, Finland, Iceland, Norway and Sweden, this scheme reflects the strong connections between those States.

Agreement among the Governments of the Black Sea Economic Cooperation Participating States on Cooperation in Combating Crime, in Particular in its Organized Forms (1998) and its Additional Protocol (2002)

**Inter-American instruments**

*Inter-American Convention on Mutual Assistance in Criminal Matters*

[www.oas.org/juridico/english/Treaties/a-55.html](http://www.oas.org/juridico/english/Treaties/a-55.html)

*Optional Protocol related to the Inter-American Convention on Mutual Assistance in Criminal Matters*

[www.oas.org/juridico/english/treaties/a-59.html](http://www.oas.org/juridico/english/treaties/a-59.html)

*The Inter-American Convention on the Taking of Evidence Abroad*

[www.oas.org/juridico/english/treaties/b-37.html](http://www.oas.org/juridico/english/treaties/b-37.html)

*Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad*

[www.oas.org/juridico/english/treaties/b-51.html](http://www.oas.org/juridico/english/treaties/b-51.html)

## 6.8 Request for mutual legal assistance: checklist

The following basic guidelines should be observed when submitting a request for mutual legal assistance:

- There should be a written record of the request
- The request should be in a language acceptable to the requested State
- In urgent cases, the initial request can be made orally, with later confirmation in writing
- To facilitate the process of making a request, the State requested should be consulted

### Content of requests

Article 18, paragraph 15 of the Organized Crime Convention<sup>3</sup> provides a brief list regarding the content of requests.

#### **Organized Crime Convention, article 18:**

15. A request for mutual legal assistance shall contain:
- (a) The identity of the authority making the request;
  - (b) The subject matter and nature of the investigation, prosecution or judicial authority to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
  - (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
  - (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
  - (e) Where possible, the identity, location and nationality of any person concerned; and
  - (f) The purpose for which the evidence, information or action is sought.

Article 18, paragraph 16, of the Convention states that the requested State party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

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<sup>3</sup>The Convention also provides a checklist for confiscation requests in article 13, paragraph 3.



To make the process as efficient as possible and equip the requested State to execute any assistance without delay, the request submitted should be as detailed as possible. In view of this, as well as providing the information listed in article 18, paragraph 15 of the Organized Crime Convention, a request for mutual legal assistance should generally address the following points:

- Identity
  - Identity of the office or authority presenting or transmitting the request and the authority conducting the investigation, prosecution or proceedings in the requesting State, including contact particulars for the office or authority presenting or transmitting the request and, unless inappropriate, the contact particulars of the relevant investigating officer, prosecutor and/or judicial officer.
- Prior contact
  - Details of any prior contact between officers in the requesting and requested States pertaining to the subject matter of the request.
- Use of other channels
  - Where a copy of the request has been or is being sent through other channels, this should be made clear in the request.
- Acknowledgement of the request
  - A cover sheet to be completed, acknowledging the request, and returned to the requesting State.
- Indication of urgency and/or time limit
  - A prominent indication of any particular urgency or time limit for complying with the request and the reason for the urgency or time limit.
- Confidentiality
  - A prominent indication of any need for confidentiality, the reason for this and of the requirement to consult with the requesting State, prior to execution, if confidentiality cannot be maintained.
- Legal basis for the request
  - A description of the basis on which the request is made, (for example, a bilateral treaty, multilateral convention or scheme or, in the absence thereof, on the basis of reciprocity).
- Summary of the relevant facts
  - A summary of the relevant facts of the case including, to the extent possible, full identification details of the alleged offender or offenders.
- Description of the offence and applicable penalty
  - A description of the offence and applicable penalty, with an excerpt or copy of the relevant parts of the law of the requesting State.
- Description of the evidence or assistance requested
  - A description in specific terms of the evidence or other assistance requested.
- Clear link between proceedings and evidence or assistance sought
  - A clear and precise explanation of the connection between the investigation, prosecution or proceedings and the assistance sought (for instance, a description of how the evidence or other assistance sought is relevant to the case).

- Description of the procedures
  - A description of the procedures to be followed by the requested State’s authorities in executing the request, to ensure that the request achieves its purpose, including any special procedures to enable any evidence obtained to be admissible in the requesting State, and reasons why the procedures are required.
- Presence of officials from the requesting State at the execution of the request
  - An indication as to whether the requesting State wishes its officials or other specified persons to be present at or participate in the execution of the request and the reason why this is requested.
- Language
  - All requests for assistance should be made in or accompanied by a certified translation into a language specified by the requested State.
  - Where it becomes evident that a request or the aggregate of requests from a particular State involves substantial or extraordinary costs, the requesting and requested States should consult to determine the terms and conditions under which the request is to be executed and the manner in which the costs are to be borne.

## Recommended resources

### *Checklist*

The resource containing the above checklist can be downloaded from:

[www.unodc.org/pdf/lap\\_mlaeg\\_report\\_final.pdf](http://www.unodc.org/pdf/lap_mlaeg_report_final.pdf).

United Nations Office on Drugs and Crime. *Mutual Legal Assistance Request Writer Tool*.

The UNODC Mutual Legal Assistance Request Writer Tool is a user-friendly computer-based tool which is easily adjustable to a State’s laws and practices and requires almost no prior knowledge of or experience with mutual legal assistance. Users are guided through the request process using a series of templates and a correct and complete request is automatically generated. The Tool—which does not require Internet access—is available free of charge in Arabic (forthcoming), Bosnian, Croatian, English, French, Montenegrin, Portuguese, Russian, Serbian and Spanish. For more information, visit [www.unodc.org/mla/index.html](http://www.unodc.org/mla/index.html)

### *Checklist for requests from other countries to Australia*

Some Governments have created their own checklists to facilitate the process of requesting assistance. One such example is that created by the Australian Attorney-General’s Department for States wishing to request such assistance from Australia, available from:

[www.ag.gov.au/www/agd/agd.nsf/Page/Extraditionandmutualassistance\\_Mutualassistance\\_Mutualassistanceincriminalmatters-checklistforrequestsfromothercountriestoAustralia](http://www.ag.gov.au/www/agd/agd.nsf/Page/Extraditionandmutualassistance_Mutualassistance_Mutualassistanceincriminalmatters-checklistforrequestsfromothercountriestoAustralia)

## 6.9 Joint investigation teams

### Article 19 Organized Crime Convention

"States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected."

Article 19 of the Organized Crime Convention encourages, but does not require States parties to enter into agreements or arrangements to conduct joint investigations, prosecutions and proceedings, possibly on a case-by-case basis. The domestic laws of most States permit such joint activities and for those few States whose laws do not so permit, this provision will be a sufficient source of legal authority for case-by-case cooperation of this sort.

There are different models of joint investigation, including:

- *Parallel coordinated investigation.* In this type of investigation, also known as a non-co-located investigation, parties operate from their respective jurisdictions.
- *Co-located investigation.* This type of investigation can be active or passive. It consists of an integrated joint investigation with officers from at least two jurisdictions authorized to operate on the ground or in an advisory capacity, under host State control in the territory where the team is operating.

The decision as to what type of joint investigation team is deployed will depend on the laws of the countries involved, the primary needs for having a joint investigation team and the cost and resource implications.

The final decision about which model is most appropriate must be made by States. The following issues will need to be taken into consideration:

- The inevitable sovereignty issues
- The legal framework in place
- The nature of the bilateral or multilateral agreement under which the States are operating
- The convenience for the parties involved

Key points in planning joint investigations include the following:

- The Organized Crime Convention is a flexible legal instrument allowing various approaches for a very wide range of situations and circumstances.
- Large-scale multilateral agreements or investigative teams are not necessary to conduct joint investigations.
- A State with no previous experience of joint investigations might consider conducting such an investigation on a case-by-case basis. This is permitted under the Organized Crime Convention and may provide a basis for a more formal bilateral or multilateral agreement to be concluded in the future.
- The relevant authorities must always be involved in developing agreements or agreeing to joint investigations on a case-by-case basis.
- Planning must be supported at the strategic, tactical and political levels.
- Relevant authorities within the jurisdiction need to be contacted.
- Agreements must be negotiated and documented.
- Bureaucracy should be kept to a minimum.

### Practical guidance on establishing joint investigation teams

When the smuggling of migrants is investigated, there is often a need to act quickly. This is because operational information upon which a joint investigation can be based is only of value for a limited time. This practical guidance aims to facilitate the process.

When considering establishing a joint investigation team, a State party should:

- Identify contacts for the purposes of initiating discussions and making decisions on the establishment of joint investigations. A situation could arise where an investigation would need to involve another country but no action could be taken to develop cooperation owing to a lack of infrastructure and identifiable contacts in the other country.
- Preferably aim to establish trust before the start of the joint investigation.
- Establish common goals for the joint investigation at the outset.
- Ensure commitment at all levels to guarantee that assistance will continue to be available when the investigation develops into a prosecution.
- Consider the availability of resources and sharing of resources at the outset as these issues can determine the extent of the cooperation.
- Make a decision on the working language for the joint investigation.

In some joint investigations conducted by States parties, informal collaboration has usually been supplemented with a formal request under an existing agreement at a later stage. In some cases, bilateral agreements have been made after initial cooperation on a particular case. The Organized Crime Convention enables and encourages this type of case-by-case cooperation.

## General recommendations for establishing joint investigation teams

- Contacts should be identified for initiating discussions.
- Mutual trust and common goals should be established from the beginning. Commitment should be ensured at all levels.
- Prosecutors, judges and law enforcement officers should receive training on international cooperation issues in order to enhance the level of cooperation.
- Human and capital resources should be identified and shared between parties.
- The working language of the joint investigations should be decided at the beginning.
- Integrated or active joint investigations should be promoted at the national operational level through existing law enforcement and prosecutorial groups, associations and committees.
- Integrated or active joint investigations should be promoted at the regional level through existing regional organizations and networks and/or by developing a network of national contact points for joint investigations.
- Model agreements (bilateral and operational) should be developed and made available or disseminated to prosecutors and law enforcement officials.
- The public should be made aware of the reasons for integrated or active joint investigations and visibility should be ensured through the use of special markings on uniforms and vehicles where appropriate.

## Promising practices

### *Operation Baghdad*

A network responsible for recruiting irregular migrants, mainly from Iraq, and transporting them to various EU Member States was uncovered. The migrants had to pay between 2,000 and 20,000 Euros, depending on their means of transportation and the destination country. At the end of 2007, enough intelligence had been gathered to make operation planning possible. Parallel and mirror investigations aiming for a joint action day were planned to dismantle as much of the organized criminal network as possible. This operation was named “Operation Baghdad”. Ahead of the Operation Baghdad action day on 23 June 2008, an international coordination centre was set up and hosted by the Central Office for the Repression of Illegal Immigration and Employment of Foreigners without Residence Permits (OCRIEST) in Paris. The coordination centre was manned by staff from OCRIEST, as well as by Europol Liaison Officers from France, Germany, Italy, the Netherlands, Sweden and the United Kingdom, together with bilateral foreign liaison officers from Belgium, Greece, the Netherlands and Spain already stationed in France.

On the common action day itself, Belgium, France, Germany, Greece, Ireland, the Netherlands, Norway, Sweden and the United Kingdom arrested a total of 77 persons and carried out numerous house searches during a period of 24 hours. In total, more than 1,300 EU law enforcement officers were involved, including 6 officers from Europol. Many different items were seized during the house searches, such as mobile phones, notebooks, computers, and address books and directories. Operation Baghdad resulted in 27 arrests in France,

13 in Sweden, 12 in Germany, 11 in Belgium, 7 in the United Kingdom, 3 in the Netherlands, 2 in Greece, 1 in Norway and 1 in Ireland. This joint action on 23 June 2008 shows what transnational law enforcement cooperation can achieve.

### Recommended resource

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.

The modules contained in this *Training Manual* address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights.

This publication is currently being prepared. For more information, visit [www.unodc.org](http://www.unodc.org) or contact [ahtmsu@unodc.org](mailto:ahtmsu@unodc.org).

## Cooperation mechanisms under the Smuggling of Migrants Protocol

### 6.10 An overview of international cooperation as provided for in the Smuggling of Migrants Protocol

#### Cooperation and assistance requirements

- A State party is required:
  - To cooperate to the fullest extent possible to prevent the smuggling of migrants by sea (art. 7)
  - To render assistance to a State party in suppressing the use of a vessel flying its State flag (art. 8, para. 1)
  - To inform the flag State if it has boarded its vessel (art. 8, para. 3)
  - To respond expeditiously to a request to determine whether a vessel is entitled to claim its registry (art. 8, para. 4)
  - To respond expeditiously to a request for authorization to board, search and take other measures with respect to a vessel flying its flag (art. 8, para. 4)
  - To designate an authority to assist or respond to requests for assistance concerning such vessels (art. 8, para. 6)
  - To exchange information with other relevant States regarding the smuggling of migrants, consistent with domestic legal systems (art. 10, para. 1)
  - To comply with any request by the State party that submitted such information that places restrictions on its use (art. 10, para. 2)
  - To provide or strengthen specialized training to combat smuggling of migrants (art. 14, para. 1)
  - To cooperate with other States parties and competent international organizations and non-governmental organizations to ensure adequate training to prevent and eradicate smuggling of migrants (art. 14, para. 2)

Article 1 of the United Nations Convention against Transnational Organized Crime states that the purpose of the Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (the Smuggling of Migrants Protocol) reiterates in article 2 that its purpose is to promote cooperation to prevent and combat the smuggling of migrants, while protecting the rights of smuggled migrants.

Article 7 of the Smuggling of Migrants Protocol specifically concerns cooperation. It states:

“States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.”

Article 17 of the Smuggling of Migrants Protocol concerns agreements and arrangements. It states:

“States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:

- (a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or
- (b) Enhancing the provisions of this Protocol among themselves.”

### Specific areas of cooperation addressed by the Smuggling of Migrants Protocol

The Protocol requires States parties to cooperate in the following areas:

#### (a) *Assistance in relation to maritime cases*

In cases where a State party suspects a maritime vessel flying its flag, or a stateless vessel, of involvement in the smuggling of migrants, it may request general assistance from other States parties in suppressing such use of the vessel. Such assistance must be provided, within the means of the requested State party (art. 8, para. 1). Where States parties suspect a vessel registered or flagged to another State party, they may request that other State party to authorize boarding, searching and other appropriate measures. Such requests must be considered and responded to expeditiously (art. 8, paras. 2 and 4). In turn, the State party that searches the vessel must promptly inform the flag State of the results of any measures taken (art. 8, para. 3). Each State party is required to designate an authority or authorities to receive and respond to requests for assistance in maritime cases (art. 8, para. 6).

The main cooperation requirements in relation to maritime cases can be summarized as follows. A State party is required:

- To cooperate to the fullest extent possible to prevent the smuggling of migrants by sea (art. 7)
- To render assistance to a State party that has the right to board a vessel flying its flag (art. 8, para. 1)
- To inform the flag State if it has boarded its vessel (art. 8, para. 3)
- To respond expeditiously to a request from another State party to determine whether a vessel is entitled to claim its registry (art. 8, para. 4)
- To respond expeditiously to a request for authorization to board, search and take other measures with respect to a vessel flying its flag (art. 8, para. 4)
- To designate an authority to assist or respond to requests for assistance concerning such vessels (art. 8, para. 6)



*(b) Border measures*

Generally, States parties are required to strengthen border controls to the extent possible (art. 11, para. 1) and to consider strengthening cooperation among border control agencies, inter alia, by the establishment of direct channels of communication (art. 11, para. 6).

*(c) Travel and identity documents*

States parties are required to ensure the integrity and security of their travel documents (art. 12). This may include informing other States parties of measures taken to make documents resistant to tampering and of measures that can be used to verify that the documents are authentic. They are also required, at the request of another State party, to verify within a reasonable time the legitimacy and validity of documents purported to have been issued by them (art. 13).

*(d) Training and technical assistance*

In addition to training their own officials, States parties are required to cooperate with one another in training to prevent and combat the smuggling of migrants and in appropriate methods for dealing with smuggled migrants. The obligation to cooperate also includes cooperation with intergovernmental and non-governmental organizations, a number of which are active in matters related to migration (art. 14, para. 2).

The Protocol also calls for relevant technical assistance to countries of origin or transit for smuggled migrants (art. 14, para. 3). This compliments the more general requirements contained in articles 29 and 30 of the Organized Crime Convention.

Regarding the main cooperation requirements with respect to training and technical assistance, States parties are required:

- To provide or strengthen specialized training in preventing the smuggling of migrants (art. 14, para. 1).
- To cooperate with each other and competent international organizations and non-governmental organizations to ensure adequate training to prevent, combat and eradicate the smuggling of migrants (art. 14, para. 2).

*(e) Prevention*

The Protocol requires each State party to promote or strengthen development programmes that combat the root socio-economic causes of the smuggling of migrants (art. 15, para. 3).

*(f) Return of smuggled migrants*

Generally, a State party is required on request to accept the repatriation of its nationals and to consider accepting those who have or have had the right of permanent residence in its territory. This includes verifying the status of the person as a national or resident without unreasonable delay, re-admitting the person and, where necessary, providing any documents or authorizations needed to allow that person to travel back to the requested State party (art. 18, paras. 1-4).

*(g) Information exchange*

States parties are required, consistent with existing legal and administrative systems, to exchange information ranging from general research and policy-related material about smuggling and related problems to more specific details of methods used by smugglers (art. 10).

The main cooperation requirements with respect to information exchange can be summarized as follows:

- States parties shall exchange information with other relevant States regarding the smuggling of migrants, consistent with their domestic legal systems (art. 10, para. 1)
- States parties shall comply with restrictions imposed by States parties sending such information (art. 10, para. 2)

*(h) Other agreements or arrangements*

As with the parent Convention, States parties are encouraged to consider entering into other agreements of a bilateral or regional nature to support forms of cooperation and assistance that may go beyond those required by the Protocol (art. 17).

### Recommended resources

*The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*

[www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext](http://www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext)

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

The *Legislative Guides*—formulated to accommodate different legal traditions—set out the basic requirements of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, as well as the issues that each State party must address in implementing them.

[www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html](http://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html)

United Nations. *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.06.V.5).

The publication of the *Travaux Préparatoires* (official records) of the negotiations of the United Nations Convention against Transnational Organized Crime and the Protocols thereto is intended to provide a better, in-depth understanding of the Convention and its Protocols. The publication tracks the progress of negotiations in the open-ended intergovernmental Ad Hoc Committee on the Elaboration of a Convention against

Transnational Organized Crime, established by the General Assembly by its resolution 53/111 of 9 December 1998 with terms of reference supplemented by the Assembly in its resolution 53/114 of 9 December 1998, and requested to finalize the draft texts and submit them directly to the General Assembly for adoption (resolution 54/126).

[www.unodc.org/unodc/en/treaties/CTOC/travaux-preparatoires.html](http://www.unodc.org/unodc/en/treaties/CTOC/travaux-preparatoires.html)

## 6.11 Cooperation and assistance in relation to smuggling of migrants by sea

The Smuggling of Migrants Protocol aims to increase the cooperation of States parties to combat the smuggling of migrants by sea and sets out measures to be taken in response.

Article 7 on cooperation reads: “States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.”

Article 8 is on measures against the smuggling of migrants by sea.<sup>4</sup> These articles require States parties to cooperate to suppress the smuggling of migrants by sea. The establishment of jurisdiction over smuggling at sea is a prerequisite for the effective implementation of articles 7, 8 and 9.

Article 15 of the Organized Crime Convention requires States parties, inter alia, to establish jurisdiction when offences have been committed on board a vessel flying their flag. In addition and although this is not a requirement under the Convention or the Protocol, States parties may also wish to establish their jurisdiction over vessels on the high seas flying the flag of another State party as well as over those without nationality, as this will ensure the proper functioning of the measures provided for under articles 7, 8 and 9 of the Protocol.

To learn more about the smuggling of migrants by sea, see sections 2.8, 7.21 and 8.4.

### Recommended resources

#### *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988\**

The provision relevant to cooperation in combating migrant smuggling by sea was modelled on article 17, Illicit Traffic by Sea, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

[www.unodc.org/unodc/en/treaties/illicit-trafficking.html](http://www.unodc.org/unodc/en/treaties/illicit-trafficking.html)

For more information about article 17 refer to the *Practical Guide for competent national authorities under article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances of 1988 and Maritime Drug Law Enforcement Training Guide: Reference Guide for implementing article 17, United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.*

<sup>4</sup> See also articles 26, 27 and 28 of the Organized Crime Convention

### *The International Maritime Organization*

The International Maritime Organization Secretariat cooperates with relevant United Nations agencies and bodies as appropriate in incidents involving persons rescued at sea and has participated in several seminars and conferences on the subject.

For more information visit [www.imo.org](http://www.imo.org).

United Nations Office on Drugs and Crime. *Competent National Authorities Online Directory*.

The database provides contact information for the competent authorities of more than 150 States or dependent territories that had been provided to UNODC, including information on specific procedures to be followed in urgent cases. The online Directory currently contains the contact information of over 600 competent national authorities, organized into thematic categories: extradition, mutual legal assistance, illicit traffic by sea and smuggling of migrants by sea.

[www.unodc.org/compauth/en/index.html](http://www.unodc.org/compauth/en/index.html)

International Maritime Organization. *Information Resources on Drug Smuggling*.

[www.imo.org/includes/blastDataOnly.asp/data\\_id%3D28170DrugSmuggling\\_28January2010\\_.pdf](http://www.imo.org/includes/blastDataOnly.asp/data_id%3D28170DrugSmuggling_28January2010_.pdf)

Weinzierl, Ruth and Lisson, Urszula, *Border Management and Human Rights: A study of EU Law and the Law of the Sea*, Berlin: German Institute for Human Rights, 2007.

This study examines special questions of human rights and maritime law that arise in connection with the protection of maritime borders.

This study is available from:

[http://files.institut-fuer-menschenrechte.de/488/d75\\_v1\\_file\\_47c81c6053b74\\_Study\\_Border\\_Management\\_and\\_Human\\_Rights.pdf](http://files.institut-fuer-menschenrechte.de/488/d75_v1_file_47c81c6053b74_Study_Border_Management_and_Human_Rights.pdf).

\*United Nations, *Treaty Series*, vol. 1582, No. 27627.

## 6.12 Border cooperation

Article 11 of the Smuggling of Migrants Protocol (see section 7.12) contains measures for States parties to strengthen their border controls against the smuggling of migrants.

The requirement to strengthen basic border controls does not necessarily involve cooperation with other States, and such cooperation or coordination of border controls as may be needed will not generally require legislation. The strengthening of cooperation between agencies and establishment of direct channels of communication may require some legislation to ensure that the agencies concerned have the authority to cooperate and to allow the sharing of information that may otherwise be protected by confidentiality laws. Many of the issues raised by cooperation between border control agencies will be similar to those raised by cooperation between law enforcement agencies and by article 27 of the Convention.

### Recommended resources

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.

Module 8 of the UNODC *Basic Training Manual* addresses international cooperation in addressing migrant smuggling.

This publication is currently being prepared. For more information, visit [www.unodc.org](http://www.unodc.org) or contact [ahtmsu@unodc.org](mailto:ahtmsu@unodc.org).

### Promising practices

#### *United Nations Office on Drugs and Crime Border Liaison Office Mechanism in East Asia*

UNODC worked to establish and then consolidate Border Liaison Offices at a number of border crossing points in East Asia. The countries involved are Cambodia, China, Lao People's Democratic Republic, Myanmar, Thailand and Viet Nam—all signatories to a Memorandum of Understanding aimed at strengthening cooperation.

The concept behind the creation of the Border Liaison Offices was to reverse traditional attitudes and encourage cooperation between law enforcement units, and strengthen their capacity to share information, so that border responses can be cooperative and the value of jointly-held information is maximized.

The success of the Border Liaison Office concept has resulted in offices being established in 22 locations (44 offices), a major increase from the original four locations at the beginning of the project.

For more information, visit:

[www.unodc.org/eastasiaandpacific/en/Projects/2007\\_01/Consolidation\\_and\\_Enhancement.html#3](http://www.unodc.org/eastasiaandpacific/en/Projects/2007_01/Consolidation_and_Enhancement.html#3)

### *European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)*

Frontex, a European Union (EU) agency based in Warsaw, was created as a specialized and independent body tasked to coordinate the operational cooperation between Member States in the area of border security. Frontex started to be fully operational on 3 October 2005. The tasks of Frontex are:

- Coordination of operational cooperation between Member States in the area of management of external borders
- Assistance to Member States in the training of national border guards, including the establishment of common training standards
- Carrying out risk analyses
- Following the development of research relevant for the control and surveillance of external borders
- Assistance to Member States in circumstances requiring increased technical and operational assistance at external borders
- Providing Member States with the necessary support in organizing joint return operations

Frontex provides for coordination of operational cooperation between Member States in the area of management of external borders. As well as coordinating the cooperation of EU Member States, Frontex also pays attention to cooperation with third countries' border security authorities, in line with general EU external policy. In relation to establishing third country cooperation, Frontex:

- Builds and maintains an operation-level partnership with third countries, to provide the framework for intensifying operational cooperation
- Coordinates operational cooperation, including, for instance, exchange of information and experience, training cooperation
- Cooperates with third countries that have common goals in terms of border security

For more information about Frontex, visit: [www.frontex.europa.eu/](http://www.frontex.europa.eu/).

### *International Organization for Migration*

The website of the International Organization for Migration contains information about border management systems and approaches to balancing facilitation and control:

The holistic approach used by Australia appears to serve it well. Australia has determined that it is in its best interests to closely monitor movements into and out of the country. Aside from the comparatively small numbers involved in irregular migration, Australia

has maintained a fair control over the annual influx of immigrants through its universal visa arrangements.

Other countries, such as most African States, Canada, European Union Member States, the United States, and others, have to contend with land borders, which clearly change the dynamics of immigration in ways that demand somewhat different administrative arrangements from Australia.

European Union countries in particular are addressing issues related to the need to patrol along the “green borders”. The European Union is progressing towards the establishment of a common border guard force, joint operations by Member States at external borders, the establishment of a core curriculum for border guard training and consolidation of all European provisions concerning border control.

In situations where this form of integration is not feasible, there are still opportunities for close cooperation and collaboration between States that share a common land border. The Canada/United States Smart Border Accord addresses a number of issues in this regard, and there are numerous examples of inter-State collaboration in exchange of information and operational coordination of border monitoring and detection activity.

*Source:* [www.iom.ch/jahia/Jahia/about-migration/managing-migration/border-management-systems/balancing-facilitation-control](http://www.iom.ch/jahia/Jahia/about-migration/managing-migration/border-management-systems/balancing-facilitation-control).

### *International Centre for Migration Policy Development, Border Management*

Since the beginning of the 1990s, the International Centre for Migration Policy Development has been involved in numerous national, bilateral and EU-level initiatives in the area of border management. The Centre has been focusing on the concept of International Border Management which enhances trade facilitation while at the same time increasing border security. The overall objective of Integrated Border Management—to have open, but well controlled and secure borders—is achieved through the full coordination and cooperation of all relevant stakeholders, especially border police, customs, veterinary and phytosanitary inspection.

[www.icmpd.org](http://www.icmpd.org)

### *United States Immigration and Customs Enforcement*

The United States Immigration and Customs Enforcement (ICE) is the largest investigative agency in the Department of Homeland Security. ICE is charged with enforcing a wide array of laws, including those related to securing the border and combating criminal smuggling.

ICE has partnered with federal, State, local and foreign law enforcement counterparts to create the Border Enforcement Security Task Force initiative, a series of multiagency task forces developed as a comprehensive approach to identifying, disrupting and dismantling criminal organizations posing significant threats to border security. The task forces are designed to increase information sharing and collaboration among the agencies combating this threat on both sides of the border.

The Task Force incorporates personnel from ICE; United States Customs and Border Protection; Drug Enforcement Administration; Bureau of Alcohol, Tobacco, Firearms and Explosives; Federal Bureau of Investigation; United States Coastguard; and the United States



Attorney's Office along with other key federal, State, local and foreign law enforcement agencies. Participating in the Task Force on the Southwest border is the Mexican law enforcement agency Secretaria de Seguridad Pública. Canadian Border Services Agency and the Royal Canadian Mounted Police participate in the Task Force along the Northern border.

Canada, Mexico and the United States work jointly under the Security and Prosperity Partnership for North America. The Border Enforcement Security Task Force is one of several working groups that was established or expanded to implement the partnership. The participating agencies aid with the collection and analysis of intelligence and coordinate and collaborate on investigative efforts to identify and dismantle smuggling organizations. The Task Force has been highly successful in combating violence in the Laredo area, which served as an impetus for the expansion of the programme.

For more information, visit:

[www.ice.gov/pi/news/factsheets/080226best\\_fact\\_sheet.htm](http://www.ice.gov/pi/news/factsheets/080226best_fact_sheet.htm).

### *Organization for Security and Co-operation in Europe*

In 1999, the Organization for Security and Co-operation in Europe launched a Border Monitoring Operation in the South Caucasus to assist countries in the reform and development of their border management capabilities. After the Border Monitoring Operation ended in 2004, the Organization continued to support efforts to build and strengthen border agency capacity. For instance, the Transition Institutional Support Programme was launched in May 2008, in line with the core principle of cooperation. This initiative illustrated how by bringing border officials from Georgia and its neighbouring countries together, the ability of border security and management agencies is strengthened to facilitate free and secure movement of people and goods across borders, while reducing transborder threats in the region. Training sessions for members of the Border Police of the Ministry of the Interior and the Revenue Service of the Ministry of Finance were organized to focus on effective coordination and cooperation among the Georgian agencies responsible for border security and management. The broader element included cross-border workshops for the border security and management for the agencies of Armenia, Azerbaijan, Georgia and Turkey.

Source and more information at [www.osce.org](http://www.osce.org).

### *Cross-Border Cooperation Process (Söderköping Process)*

The member States of the Cross-Border Cooperation Process or Söderköping Process are Belarus, Estonia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Slovakia and Ukraine. Partners include the European Commission, the International Organization for Migration, the United Nations High Commissioner for Refugees and the Swedish Migration Board. The objective of this process is to support newly acceded EU Member States in strengthening their migration and border management, as well as their refugee protection capacity.

<http://soderkopling.org.ua/>

### *Integrated Border Management Programme of the International Centre for Migration Policy Development*

The overall objective of the Integrated Border Management Programme is to support the development of a more efficient and coherent Integrated Border Management System at

selected main border crossing points in order to facilitate the legal movements of goods and persons, while at the same time better combating transnational crime, illegal migration and trafficking in human beings.

For more information on Integrated Border Management visit:

[www.icmpd.org/ibm.html](http://www.icmpd.org/ibm.html).

### *2004 US-Mexico Action Plan for Cooperation and Border Safety*

On 20 February 2004, representatives of the Secretariat of Governance of the United Mexican States and Secretariat of Foreign Affairs of the United Mexican States and the Secretary of Homeland Security of the United States of America signed an Action Plan for Cooperation and Border Safety.

The Action Plan outlined the following objectives:

- (a) Enhance existing media information and prevention programmes;
- (b) Combat human smuggling and trafficking;
- (c) Combat border violence;
- (d) Intensify public outreach to prevent migrant crossings in high-risk areas;
- (e) Coordinate responses to border emergencies;
- (f) Ensure secure and orderly repatriations of Mexican nationals;
- (g) Explore mechanisms, on a bilateral basis, to repatriate Mexican nationals to their places of origin;
- (h) Strengthen consultation mechanisms between Mexican Consuls and Department of Homeland Security authorities;
- (i) Strengthen the border liaison mechanism.

The Action Plan outlined specific actions concerning:

- (a) Media prevention programmes;
- (b) Combating human smuggling and trafficking;
- (c) Border violence;
- (d) Prevention of crossings in high-risk areas;
- (e) Response to emergencies in the border zone;
- (f) Secure and orderly repatriations;
- (g) Repatriation to places of origin;
- (h) Strengthening of the consultation mechanisms in the United States;
- (i) Strengthening of the border liaison mechanisms.

To read the full Action Plan, visit:

[www.migracioninternacional.com/docum/indice.html?mundo=usmexplanseg2004.html](http://www.migracioninternacional.com/docum/indice.html?mundo=usmexplanseg2004.html).

## 6.13 Cooperation in relation to travel and identity documents

### Smuggling of Migrants Protocol

In article 3 of the Smuggling of Migrants Protocol on the use of terms, subparagraph (c) reads:

“Fraudulent travel or identity document” shall mean any travel or identity document:

- (i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or
- (ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- (iii) That is being used by a person other than the rightful holder.

Article 13 on the legitimacy and validity of documents reads:

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for purposes of conduct set forth in article 6 of this Protocol.

### Recommended resources

*The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*

[www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext](http://www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext)

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

The main purpose of the Legislative Guides is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The Guides lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The Guides have

been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

[www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html](http://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html)

United Nations Office on Drugs and Crime. *Model Forensic Document Laboratory Guide* (forthcoming).

The UNODC *Model Forensic Document Laboratory Guide* is to be used to design and build forensic document examination and intelligence dissemination capacities. It is geared towards several levels of country and agency development from the most basic to most advanced capability. It aims at providing practical assistance for the establishment or upgrading of forensic document laboratories in the areas of staff skill and educational requirements to perform forensic document examinations and provide court testimony, intelligence alerts and training; acquire forensic science equipment, facilities, reference materials and databases; and provide general guidance for designing, establishing and maintaining a forensic document laboratory.

For more information about the forthcoming UNODC *Model Forensic Document Laboratory Guide* visit [www.unodc.org](http://www.unodc.org).

### *International Criminal Police Organization Stolen and Lost Travel Documents Database*

The database on stolen and lost travel documents is a strong tool for detecting the smuggling of migrants. Borders and ports around the world can be directly linked to the database through a secure International Criminal Police Organization (INTERPOL) channel. Countries can also contribute data to the database when they become aware of lost or stolen passports or travel documents.

The holder of information in the database is the country that owns the information. The system can be a powerful tool for the widest international cooperation, because when a country decides to upload data, all the information is accessible to all member countries in real time through the national bureau of liaison offices. Some restrictions can be applied for a specific reason so that the information is not accessible to some countries or regions, maybe for operational reasons. These restrictions can be changed at any time, but 99 per cent of the information loaded into the system is open to law enforcement. The spirit of the system is to share information globally.

### *How does the SLTD database work?*

#### FIND and MIND

- Fixed Interpol Network Database (FIND)
  - National Offices have a fixed connection through a secure network to the Interpol General Secretariat and to the Stolen and Lost Travel Documents database. When a passport is shown at a border or airport checkpoint, an automatic query is sent to the INTERPOL central database. If the passport has been reported as stolen, all the National Bureaus are involved within seconds, as well as the border checkpoint where the document has been presented.

- Mobile INTERPOL Network Database (MIND)
  - The Mobile INTERPOL Network Database (MIND) is an external hard disk that provides offline access to the INTERPOL databases.
  - The MIND is managed and updated daily by the INTERPOL General Secretariat.
  - An external hard disk is connected to a dedicated workstation with a universal serial bus (USB).
  - The mobile configuration is for field use, for example in rural areas or by patrols.
  - Checkpoints can be organized wherever needed and can be moved easily.

#### *International Support for the Stolen and Lost Travel Documents Database*

Partners in the Stolen and Lost Travel Documents database project include:

- United Nations Security Council
- Organization for Security and Co-Operation in Europe
- Council of the European Union
- The Group of Eight
- International Civil Aviation Organization
- Asia-Pacific Economic Cooperation

For more information about the INTERPOL Lost and Stolen Travel Document database, visit: [www.interpol.int](http://www.interpol.int).

## Promising practices

### *Canada Border Services Agency Immigration Intelligence on Irregular Migration*

- Document Integrity. Expertise on fraud detection, document security and identity issues is centralized in the Immigration Intelligence Branch. The Branch produces a full range of training packages, document alerts and tools relating to travel document fraud or document security issues which are disseminated to migration identity officers overseas, other government departments, airlines and foreign control partners in order to combat irregular migration including smuggling and trafficking. This capacity is complemented by document experts in regional intelligence units.

[www.cbsa-asfc.gc.ca/media/facts-faits/030-eng.html](http://www.cbsa-asfc.gc.ca/media/facts-faits/030-eng.html)

### *The Pacific Regional Immigration Identity Project*

A regional approach to assisting in the detection, measurement, investigation, prosecution and prevention of identity fraud at the border:

- Development of an understanding of identity crime
- Regular and ongoing discussions between agencies

- Multiagency teams and training packages
- Collection of regional identity documents
- Legislative provisions
- Sharing of national examples within the region through the Pacific Regional Identity Project, Oceania Customs Organisation and the Pacific Islands Chief of Police
- The Oceania Customs Organisation and Pacific Islands Chief of Police Secretariats input into and support the Pacific Regional Immigration Identity Project in ensuring a multiagency approach

[www.pidcsec.org](http://www.pidcsec.org)

## 6.14 Cooperation in relation to training and technical assistance

Article 14 of the Smuggling of Migrants Protocol sets out the requirement for States to cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society to ensure that there is adequate training to combat the smuggling of migrants.

For promising practices and recommended resources on cooperation in relation to training and technical assistance, see Tool 10, section 5.

## 6.15 Cooperation for the return of smuggled migrants

### Smuggling of Migrants Protocol

#### Article 18

##### Return of smuggled migrants

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.
2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.
3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.
4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.
6. States Parties may cooperate with relevant international organizations in the implementation of this article.
7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.
8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.



States parties are required to cooperate in the identification or determination of the status of their nationals and residents.

They are required to cooperate in (“facilitate and accept”) the return of nationals and to consider cooperation in the return of those with some rights of residency, including by issuing the documents needed to allow such persons to return from countries to which they have been smuggled. The requirements to accept the return of nationals and to consider accepting the return of those with some right of residency are based on the status of those individuals at the time of return.

In most States, conformity with the requirements of article 18 would primarily involve the issuance of administrative instructions to the appropriate officials and ensuring that the necessary resources are available to permit them to provide the necessary assistance, though legislative amendments might be required in some States.

### Legislation to facilitate return

Legislative amendments might be required in some States to ensure that officials are required to act (or in appropriate cases, to consider acting) in response to requests, and that they have the necessary legal authority to issue visas or other travel documents when a national or resident is to be returned.

In drafting such legislation, officials should bear in mind that any obligations in international law governing the rights or treatment of smuggled migrants, including those applicable to asylum seekers, are not affected by the Protocol or the fact that the State concerned has or will become a party to it (art. 18, para. 8).

Legislatures may wish also to consult the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,<sup>5</sup> which provides for measures that go beyond those set out in the Protocol. In particular, article 67 of this Convention calls for cooperation “with a view to promoting adequate economic conditions for ... resettlement and to facilitating ... durable social and cultural reintegration in the State of origin”.

For more on protection and assistance, see Tool 8.

#### Recommended resources

*The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air*

[www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext](http://www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext)

*European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)*

One of the tasks of Frontex is to provide Member States with the necessary support in organizing joint return operations. The role of the agency in joint returns is rather

<sup>5</sup> United Nations, *Treaty Series*, vol. 2220, No. 39481.

limited and concentrated on assistance to Member States organizing joint return operations.

[www.frontex.europa.eu](http://www.frontex.europa.eu)

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

The *Legislative Guides*—formulated to accommodate different legal traditions—set out the basic requirements of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, as well as the issues that each State party must address in implementing them.

[www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html](http://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html)

*“Return of unlawful migrants and international cooperation”*, Background Paper, Bali-Budapest Returns Workshop, Perth, Australia, 13-14 May 2004

This background paper, prepared by the Australian Department of Immigration and Multicultural and Indigenous Affairs (Canberra, April 2004) for the Bali-Budapest Returns Workshop in Perth, Australia, outlines some key concepts and considerations with respect to the return of unlawful migrants and international cooperation in this respect. An excerpt from the paper is given here. The full version can be accessed via the web address below.

#### *Return and International Obligations*

Some central principles of return are:

1. The right of a state to determine who is allowed to remain on its territory, with the consequent right to remove unlawful migrants;
2. The responsibilities of states to accept the return of their citizens, and to reduce statelessness; and
3. The responsibility to deal with humanitarian issues, such as to meet protection and non-refoulement obligations and to ensure the safety of people being returned.

The right to leave and to return to one’s country of citizenship (nationality) is enshrined in the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)) and has been reiterated, with different emphases, in other instruments. Therefore, in principle, Governments that acknowledge their obligations under these instruments should have no need to develop agreements for returning people to their country of citizenship. Practical, workable arrangements can, and often are, made between countries to effect returns. However, should the need for an agreement arise, the basic elements lie within the broad framework of relevant international instruments. The rights of States and the rights of the individual are key elements set out in those instruments and should be maintained in agreements. When States undertake to maintain the rights

of individuals there is a greater likelihood that return will be voluntary and sustainable. The need for return to be sustainable also underscores the positive role of development projects as preventive measures that reduce the risk of recurrent unlawful migration.

While States have an obligation under international law to accept the return of their citizens, returning States continue to experience some key obstacles to return, including situations where:

1. Countries of national origin will not accept back their citizens;
2. Countries of national origin do not accept that the returnee is a citizen, and/or have restrictive policies on citizenship;
3. Countries of national origin will not accept return when their citizen refuses to cooperate (for example by signing appropriate forms or by communicating with consular representatives); and
4. The provision of identity and travel documents to returnees is delayed for long periods.

Difficulties in returning unlawful migrants have widespread ramifications:

1. Host states may bear accommodation and other related costs of those to be returned;
2. There may be increased public dissatisfaction with migration and return processes as a result;
3. Failure to return puts pressure on managing orderly migration flows, including such diverse groups as guest workers and asylum seekers;
4. The breakdown and failure of return mechanisms acts as a major pull factor to unlawful migrants and those seeking to circumvent orderly migration channels—others are encouraged to abuse systems and try their luck, compounding problems in host countries; and
5. Delayed return also encourages smugglers to continue “selling” transport routes and destinations, putting persons at physical risk, and profiting from those families and communities least able to afford it.

#### *Return and protection issues*

If States administer refugee or other humanitarian determination systems, the principles underpinning these processes are undermined if persons not in need of protection cannot be returned to their country of citizenship or usual residence, or if the process of return is unduly protracted through a lack of cooperation by the individual and/or States.

For example, if States are unable to return unsuccessful asylum seekers, public confidence in asylum systems is weakened, and support for those refugees in greatest need is placed at risk.

This lack of confidence can motivate verbal and physical attacks on ethnic minorities.

The principles of asylum are also undermined if people are repatriated to countries where their safety is not ensured. This can occur when States do not distinguish between groups within unlawful migrant flows, and subsequently return those with genuine protection claims, and when decisions and actions are taken in isolation from protection and humanitarian issues.

### *Cooperation in practice*

Cooperation between States on return issues can take place formally or informally. Informal mechanisms may be arranged through personal contacts and identified contact points between counterpart agencies. These mechanisms suffice when returning unlawful migrants in all but the most complex cases. Formal mechanisms can be in the form of Memorandums of Understanding, exchanges of Diplomatic Notes or Safe Third Country Agreements (where national legislation requires it).

Where informal arrangements are inefficient, bilateral return agreements that facilitate the speedy and safe return of individuals to their country of nationality can be pivotal in addressing identified problems of return. Arrangements with countries of national origin for the return of their citizens rely on cooperation between States in operational matters such as establishing identity and confirming travel documentation.

While many States have found bilateral agreements helpful, others consider that they are redundant in view of existing principles in international law obliging states to readmit their citizens. Some States have found that despite having a readmission or return agreement in place, return can still be subject to delays.

A matter where bilateral cooperation has proven to be valuable is in the prevention of unlawful or unauthorized movements. In this context, continued cooperation and communication between states on a range of issues, including those related to return, is important. Cooperation between States can take many forms and include sharing information, such as information on prior protection, trafficking and document fraud, and assisting to prevent unlawful migration through interception, while ensuring that any protection needs are met. Every country is potentially a transit point for unlawful movements of people or a target for traffickers and smugglers bringing in, or sourcing, illegal workers.

The success of interception activities relies on the cooperation of States in sharing information and in joint operations. Protection issues can be a concern during interception. If the State does not have established protection determination mechanisms, there may be a role for the United Nations High Commissioner for Refugees and for States to agree on a process for assessing any protection claims and in ensuring international protection is available, if required.

*Role of international organizations*

Generally, international organizations recognize the importance of return and strive to support and facilitate cooperative action of States, whether individually, bilaterally, regionally or internationally. Where it is considered helpful, international organizations can facilitate and provide a platform for States to discuss and develop mechanisms for bilateral and regional dialogue on return issues, and can coordinate regional efforts.

International organizations can assist through facilitating discussion on:

1. Information sharing;
2. Development of technical skills;
3. Managing orderly migration;
4. Negotiating agreements; and
5. Unilateral action that can have negative consequences for other States.

[http://docs.google.com/gview?a=v&q=cache:70ZyrTVTVIEJ:www.baliprocess.net/files/ReturnsProject/Return%2520and%2520International%2520Cooperation%2520\\_Bali-Budapest\\_2004\\_.pdf+migrants+return+cooperation&hl=en&gl=uk](http://docs.google.com/gview?a=v&q=cache:70ZyrTVTVIEJ:www.baliprocess.net/files/ReturnsProject/Return%2520and%2520International%2520Cooperation%2520_Bali-Budapest_2004_.pdf+migrants+return+cooperation&hl=en&gl=uk)

## 6.16 Information exchange

### **Smuggling of Migrants Protocol:**

#### **Article 10 Information**

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

- (a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol;
- (b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;
- (c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;
- (d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;
- (e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and
- (f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.

2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

States are required to share information either on a voluntary basis or in accordance with existing agreements or arrangements. Without effective channels of communication, operational and general information cannot be obtained.

To summarize the requirements of Article 10 of the Smuggling of Migrants Protocol, States are required to exchange information about:

- Embarkation and destination points as well as routes, carriers, means of transportation known to be or suspected of being used by smugglers of migrants
- The identity and methods of smugglers of migrants

- The authenticity and proper form of travel documents issued by a State party and the theft or related misuse of blank travel or identity documents
- Means and methods of concealment and transportation of persons
- Legislative experiences and practices and measures to prevent and combat migrant smuggling of migrants
- Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the smuggling of migrants

Further to this, article 27 of the Organized Crime Convention encourages States to cooperate closely with one another. To enhance international cooperation in this respect, more effective systems of information sharing should be developed at the regional and international level.

More information on information exchange under the Smuggling of Migrants Protocol is contained in sections 6.16 and 7.15.

### Legislative framework for information exchange

The exchange of information per se is not likely to require any specific legislative provisions. However, given the nature of some of the information that may be exchanged, amendments to domestic confidentiality requirements may be required to ensure that the information can be disclosed, and precautions may be needed to ensure that it does not become public as a result. Such changes may involve amendments to laws covering the media or public access to information, official secrecy laws and similar legislation to ensure an appropriate balance between secrecy and disclosure.

Prior consultation is advised before the information is exchanged, particularly where information is sensitive.

### Recommended resources

The International Criminal Police Organization (INTERPOL) has a Colour Code Notice system that informs all 187 member countries about a specific fact. This can be a powerful law enforcement weapon as it has widespread circulation. It can be used to inform countries of individuals or methods involved in migrant smuggling:

<i>Colour of notice</i>	<i>Meaning of notice</i>
Red	A request to seek the arrest or provisional arrest of a wanted person with a view to extradite such a person based on an arrest warrant
Blue	A request for additional information about a person's identity or illegal activities in relation to a criminal matter
Green	Warnings or criminal intelligence about persons who have committed criminal offences and are likely to repeat these crimes in other countries
Yellow	Request for help to locate missing persons, especially minors, or to help identify persons who are not able to identify themselves
Black	Signifies request for information about unidentified bodies
Orange	Signifies warning to police, public entities and other international organizations of dangerous materials, criminal acts or events that pose a potential threat to public safety

### *The INTERPOL Orange Notice*

The INTERPOL Orange Notice provides for the quick dissemination of information about smuggling of migrants. When INTERPOL learns of a new modus operandi for smuggling migrants, the General Secretariat issues an Orange Notice to all countries informing them of this. In this way, police from all countries can always contribute to increasing international capacity to fight the smuggling of migrants. When information is diffused on an international basis, countries are empowered to combat smuggling networks.

States sharing or receiving information:

- Should find out what procedures are in place in the State and follow them
- Should not share information in a way that would breach the domestic legislation of the State sharing the information
- Should only use information in a way that complies with the sending State's wishes
- Should always look for opportunities to share information that might help to stop or disrupt smuggling of migrants in other jurisdictions

States that receive information are obliged to comply with any conditions placed on the use of information by the country that sent it.

### *Migration Information Source*

The Migration Information Source of the Migration Policy Institute provides fresh thought, authoritative data from numerous global organizations and Governments, and global analysis of international migration and refugee trends. A unique, online resource, the Source offers useful tools, vital data and essential facts on the movement of people worldwide.

The Migration Policy Institute Data Hub showcases in-depth and most recent data on immigrant trends and patterns in the United States and around the world. Research tools include United States State Data on the foreign born, maps of the foreign born, the World Migration Map, comparative charts and tables, the Global Remittances Guide and asylum data.

[www.migrationinformation.org](http://www.migrationinformation.org)

## Promising practices

### *Interregional information sharing*

*Programme on the East Africa migration route: building cooperation and information sharing and developing joint practical initiatives amongst countries of origin, transit and destination*

The overall objective of this programme is to implement a series of initiatives to address the specific needs and requests for assistance by African target countries. The project is designed to form a key part of the European Union-Africa Dialogue and therefore addressed to authorities from East African countries with a particular focus on Intergovernmental Authority on



Development Member States responsible for border control and the fight against illegal immigration and trafficking in human beings, with a view to strengthening their respective organizational and managerial capacities to manage migration and developing their capacities in the fields of collecting and analysing intelligence in order to identify facilitators and disrupt their smuggling and related activities.

Amongst its specific objectives, the project aims: to establish a Migration Resource Centre and a network of contacts among officials and an ongoing forum and to establish a Regional Consultative Process for the exchange of information and best practice on migration management; to enhance the capacity of the targeted African countries, the Intergovernmental Authority on Development Secretariat and European Union Member States to collect and analyse intelligence relating to illegal migration in order to identify facilitators and disrupt their activities; to organize two technical workshops on key thematic migration issues; to address key gaps in the region's border and migration management structures; to provide training to officials from East African countries on technical and policy migration management topics; to inform potential irregular migrants via targeted publicity campaigns of the dangers of irregular migration; and to assess the feasibility of undertaking a joint operation in an African country to disrupt illegal migration.

More information about this initiative is available at [www.africa-union.org/root/ua/conferences/2008/mai/sa/12-14mai/igad.htm](http://www.africa-union.org/root/ua/conferences/2008/mai/sa/12-14mai/igad.htm).

## Regional information sharing

### *European Police Office Analytical Work Files*

The European Police Office (Europol) operates a system of Analytical Work Files. An Analytical Work File is the primary means by which Europol offers operational analytical support to investigations within the Member States. The purpose is to assist Member States in preventing and combating the forms of criminality associated with the facilitation of the entry and residence of illegal immigrants in the European Union by organized criminal groups. Analytical Work Files use a target group oriented approach. Information on how to request the opening of a target group is available in all European Union languages via the Europol National Units. Operational and personal data can be exchanged between the members of an Analytical Work File, with analytical support provided by Europol. Any third State or international organization can contribute data to be used in an Analytical Work File and may, under special conditions, be invited to be an associated member of an Analytical Work File. Contributions to the Analytical Work Files have to be forwarded via the Europol National Units. Operational data accepted by an Analytical Work File can only be shared between the members of the Work File or the members of a specific target group.

## National practices

### *Canada Border Services Agency Immigration Intelligence on Irregular Migration*

The Immigration Intelligence network is an important element in the Canada Border Services Agency strategy for dealing with irregular migration to Canada. This strategy relies on intelligence-based decision-making to identify high-risk travellers while facilitating the movement of legitimate visitors, refugees and immigrants.

- Migration Integrity Officers. The Immigration Intelligence network has 45 Migration Integrity Officer positions in key locations overseas to work with other government departments, international partners, local immigration and law enforcement agencies

and airlines to combat irregular migration, including people smuggling and trafficking. The work of these officers has resulted in an interdiction rate of 72 per cent in 2003. This means that of all those attempting to travel to Canada by air using improperly issued documents, 72 per cent (more than 6,400 individuals) were stopped before they got to Canada. In addition, these officers have maintained a steady flow of key intelligence information which allows continual enhancement of the integrity of Canada's immigration programme.

[www.cbsa-asfc.gc.ca/media/facts-faits/030-eng.html](http://www.cbsa-asfc.gc.ca/media/facts-faits/030-eng.html)

### *Centre for Migration Information and Management (CIGEM), Mali*

The Migration Information and Management Centre (CIGEM) is the result of cooperation between the Government of Mali and the European Commission for the purpose of providing a response to the migration phenomenon. It aims to help Mali come up with a migration policy that addresses the concerns of potential migrants, returning migrants and Malians residing abroad.

[www.cigem.org](http://www.cigem.org)

## 6.17 Other agreements or arrangements for cooperation

### Smuggling of Migrants Protocol

#### Article 17

##### *Agreements and arrangements*

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:

- (a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or
- (b) Enhancing the provisions of this Protocol among themselves.

The measures provided for in the Smuggling of Migrants Protocol are intended to represent a global minimum standard.

The drafters specifically envisaged that some States would wish to implement more elaborate measures, in particular in response to problems that have only arisen or are seen as particularly serious in certain bilateral or regional contexts.

For example, two States parties with a specific cross-border smuggling problem might find it appropriate to develop a bilateral treaty or arrangement to expedite cooperation between them. States with similar legal systems, such as those in Europe, might be able to adopt streamlined procedures to take advantage of this. The legal or legislative requirements to implement this provision—which is not mandatory—will vary from country to country. In some cases, legislative or executive authority is required to enter into discussions or negotiations, while in others, legislation may be needed only to ratify or adopt the resulting treaty or to implement it in domestic law.

The words “agreements or operational arrangements” are intended to provide for options ranging from formal legal treaties to less formal agreements or arrangements.

#### Recommended resource

##### *Model [bilateral] police cooperation agreement of the International Criminal Police Organization*

The International Criminal Police Organization (INTERPOL) has drafted a model police cooperation agreement for INTERPOL member States looking to increase their

level of cooperation. Although drafted as a bilateral agreement, with some amendments the model could be used as a regional agreement.

The model agreement provides for a number of different cooperation methods. The widest possible cooperation is encouraged, but the model is drafted in such a way that the general framework can be adapted by States wishing to limit the ways in which cooperation can be carried out (for instance, by omitting provisions such as those dealing specifically with special investigative techniques), to limit the grounds for cooperation (for instance, by drafting an exhaustive list of offences covered by the agreement) or to limit both the ways in which cooperation is carried out and the grounds on which that cooperation takes place.

The model agreement contains explanatory notes for each article, to facilitate the understanding and amendment of the suggested provisions.

The model agreement is available at:

[www.interpol.int/public/ICPO/LegalMaterials/cooperation/Model.asp](http://www.interpol.int/public/ICPO/LegalMaterials/cooperation/Model.asp).

## Promising practices

### Promising interregional cooperation practices

#### *Asian-African Legal Consultative Organization*

The Asian-African Legal Consultative Organization was an outcome of the Bandung Conference held in Indonesia in April 1955. Among the purposes of the Organization is to serve as a forum for Asian-African cooperation and information exchange on legal matters.

In its 20 August 2009 resolution on the special meeting on Transnational Migration: Trafficking in Persons and Smuggling of Migrants (AALCO/RES/48/SP1), the 48th Session of the Asian-African Legal Consultative Organization encouraged Member States:

- To ratify and accede to the Organized Crime Convention and its supplementary Protocols
- To consider holding regional and intraregional meetings in order to coordinate efforts to combat both human trafficking and smuggling of migrants
- To address these issues from a human rights perspective with an emphasis on protecting and assisting victims of human trafficking and smuggled migrants

Additionally, the Asian-African Legal Consultative Organization directed the Secretariat to monitor and report on developments in the above regards, mandated the Secretary-General to constitute an open-ended Committee of Experts to conduct a study on ways and means to enhance mutual legal assistance in criminal matters among Member States and placed the item on the provisional agenda of its 49th Session.

More information about the Asian-African Legal Consultative Organization is available at: [www.aalco.int](http://www.aalco.int).

### *Joint Africa-European Declaration on Migration and Development*

Tripoli, 22-23 November 2006

Signatory States from both continents agree to further cooperation with respect to issues of:

1. Migration and development
2. Migration management challenges
3. Peace and security
4. Human resources and brain drain
5. Concern for human rights and the well-being of the individual
6. Sharing best practices
7. Regular migration opportunities
8. Illegal or irregular migration
9. Protection of refugees

Included among its objectives with respect to illegal or irregular migration, the Signatories to the Declaration commit:

- To extending support for building institutional capacity in countries of origin and transit
- To enhancing efforts to criminalize trafficking and smuggling and punish perpetrators
- To cooperating in all spheres, including return and readmission of illegal migrants to their country of origin
- To cooperating to develop border control measures
- To cooperating with respect to information campaigns to educate vulnerable people about the dangers of illegal migration and exploitation

### *Joint Declaration of Association of Southeast Asian Nations and China on Cooperation in the Field of Non-Traditional Security Issues*

On 4 November 2002, Heads of State and Government of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam as well as the People's Republic of China met at the 6th Association of Southeast Asian Nations-China Summit. Participants were determined to further strengthen and deepen cooperation in the field of non-traditional security issues.

Specific priorities for strengthened cooperation were listed as follows:

1. The priorities at the current stage of cooperation are combating trafficking in illegal drugs, people-smuggling including trafficking in women and children, sea piracy, terrorism, arms-smuggling, money-laundering, international economic crime and cybercrime;

2. On the basis of deepening the existing multilateral and bilateral cooperation;
  - (a) To strengthen information exchange;
  - (b) To strengthen personnel exchange and training and enhance capacity-building;
  - (c) To strengthen practical cooperation on non-traditional security issues;
  - (d) To strengthen joint research on non-traditional security issues; and
  - (e) To explore other areas and modalities of cooperation.

More information is available at: [www.aseansec.org/13185.htm](http://www.aseansec.org/13185.htm).

### *Dialogue on Mediterranean Transit Migration*

Since its inception, the International Centre for Migration Policy Development has been deeply involved in the creation and development of informal and flexible consultative structures between migration officials in sending, transit and receiving States with a view to preventing irregular migration and creating the conditions for legal migration. In the period 2002-2003, the International Centre explored the possibility of such an informal dialogue dealing with issues related to transit migration through the Mediterranean region in the framework of the project “Establishing of intergovernmental dialogue on migration issues in the Mediterranean region”, partly funded by the European Commission. The results of this exploratory phase exceeded expectations and participating States called for a continuation of this dialogue through the creation of the Dialogue on Mediterranean Transit Migration. The International Centre for Migration Policy Development was requested to serve as its Secretariat.

#### *Participants*

The countries involved in the Mediterranean Transit Migration Dialogue comprise the Arab Partner States on the Southern and Eastern side of the Mediterranean, namely Algeria, Egypt, Lebanon, Libya, Morocco, Syria and Tunisia, and, on the Northern shores, European Union Member States, as well as Norway, Switzerland and Turkey as European Partner States. The Dialogue also involves Australia as an observer, the Geneva Centre for the Democratic Control of Armed Forces, Europol, the European Commission, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), the General Secretariat of the European Union Council, the Intergovernmental Consultations on Migration, Asylum and Refugees, INTERPOL, the International Organization for Migration, the League of Arab States, the Migration, Asylum, Refugees Regional Initiative, the Economic and Social Commission for Western Asia, the United Nations High Commissioner for Refugees and UNODC as well as the Odysseus Network. Officials of the Ministries of the Interior, Intelligence and Security Services, Ministries of Foreign Affairs and Development Agencies are regular participants.

#### *Guiding principles*

The guiding principles of the Dialogue are that it should be intergovernmental, informal and State-driven. Intergovernmental means a concentration on State actors’ concerns at various levels, from the technical to the political level. The Dialogue itself is entirely informal and non-binding thus enabling an open exchange of opinion whereby various perspectives are explored and acknowledged. Experience shows that such an informal forum can significantly

contribute to the opinion-forming of State officials, and be supportive of more formal dialogues and processes. Finally, the process is oriented towards the real and current concerns faced by Partner States, that is to say that it focuses on questions and topics of actual concern to the Partner States.

#### *Policy context*

The Dialogue aims at supporting current efforts undertaken at international, regional and sub-regional levels in Africa, the Middle East and Europe. To this end, it follows the guidance of the main European Union policy guidelines, such as the European Neighbourhood Policy, the Hague Programme, the MEDA programmes and the conclusions of the Council of the EU, in particular the Global Approach to Migration, as well as the guidance from the Rabat Process and the Tripoli Recommendations. In addition, regular participation at meetings in the context of other forums, such as the Euro-Med Process, the 5+5 Dialogue on migration in the Western Mediterranean and the Africa-Europe cooperation meetings, enables the Dialogue, through its Secretariat, to share its opinions and findings and ensure effective coordination and cooperation in its discussions and initiatives with other partners. Finally, the Dialogue fully respects and undertakes to promote the application of all relevant international legal instruments in the field of human rights and refugee protection, as well as combating of trafficking and smuggling.

#### *Support instrument*

In order to support Member States of the Mediterranean Transit Migration Dialogue and facilitate exchanges, the International Center for Migration and Policy Development, Europol and Frontex jointly created in 2007 the Interactive Map on Irregular Migration Routes and Flows in Africa, the Middle East and the Mediterranean Region, called MTM i-Map. For more on the MTM i-Map see Tool 4, section 2.

The Mediterranean Transit Migration Dialogue is financially supported by several participating states. The working languages of the Dialogue are Arabic, English and French.

*Source:* [www.imap-migration.org/pages/en/whatismtm.php](http://www.imap-migration.org/pages/en/whatismtm.php).

For more information about the Mediterranean Transit Migration Dialogue, visit the International Center for Migration and Policy Development: [www.icmpd.org](http://www.icmpd.org).

The working document Arab and European Partner States Working Document on the Joint Management of Mixed Migration Flows is available at:

[www.icmpd.org/fileadmin/ICMPD-Website/MTM/FINAL\\_Working-Doc\\_Full\\_EN.pdf](http://www.icmpd.org/fileadmin/ICMPD-Website/MTM/FINAL_Working-Doc_Full_EN.pdf).

### **Promising regional cooperation practices**

#### *Treaty on European Union: Provisions on police and judicial cooperation in criminal matters*

The provisions of the Treaty on European Union concerning cooperation in criminal matters call for closer cooperation between police forces, customs authorities, judicial authorities and other competent authorities in the member States, both directly and through Europol, for the purpose of preventing and combating crime.

The text of the Provisions on police and judicial cooperation in criminal matters is available at: <http://europa.eu/eur-lex/en/treaties/selected/livre107.html>.

*Organization for Security and Co-operation in Europe Chiefs of Police Meeting: Brussels Statement (24 November 2006)*

On cooperation among national police services to combat organized crime, participants in the Organization for Security and Co-operation in Europe (OSCE) Chiefs of Police Meeting:

- Reaffirmed their resolve to intensify efforts to combat organized crime and to introduce measures to continue and enhance cooperation in this field
- Underscored the need for a clear legal basis as a prerequisite for police cooperation at an intergovernmental level
- Underscored the crucial importance of information sharing between law enforcement agencies and in that context pointed to the role of data protection and data processing, effective and clear privacy legislation and complementarity of legal procedures
- Recognized the need for effective cooperation among law enforcement officers and prosecutors at an international level
- Reaffirmed that the United Nations Convention against Transnational Organized Crime was the major international instrument in the fight against organized crime and called for further and enhanced cooperation with the States parties and UNODC to ensure its full and proper implementation
- Acknowledged the major role of INTERPOL and underscored the need for national police to use operational databases and tools of INTERPOL to their full potential
- Acknowledged the major role of UNODC and other international and regional organizations

The Brussels Statement is available in English, French, German, Italian, Russian and Spanish at: [www.osce.org/spmu/documents.html](http://www.osce.org/spmu/documents.html).

*Police Cooperation Convention for South-East Europe*

Albania, Bosnia and Herzegovina, Moldova, Romania, Serbia and Montenegro and the former Yugoslav Republic of Macedonia entered into an agreement to enhance police cooperation and mutual assistance with respect to common security interests. In addition to general cooperation measures, the Convention addresses specific matters, including the exchange of information, liaison officers, training, cross-border surveillance, undercover investigations, joint investigation teams and cross-border cooperation. The Convention was signed on 5 May 2006.

The text of the Police Cooperation Convention for South-East Europe is available at: [www.eu2006.at/de/News/information/SEE\\_Police\\_Convention\\_270406\\_Final\\_text.pdf](http://www.eu2006.at/de/News/information/SEE_Police_Convention_270406_Final_text.pdf).

*Senior experts group on transnational organized crime ("The G8 Lyon Group")*

The group of eight (G8) has been cooperating to address international crime since its 1995 Summit. The Lyon Group is a group of senior experts mandated to enhance law enforcement and judicial cooperation. It was tasked to review and assist international agreements and mechanisms pitted against transnational organized crime and make recommendations to strengthen them. The Lyon Group presented 40 operative recommendations, which were



revised in 2002 to become the “G8 recommendations on transnational crime”. They comprise principles, best practices and actions which represent the G8 commitment to improving its response to transnational organized crime.

Section C of the “G8 recommendations on transnational crime” dealing with migration-related crimes reads as follows:

1. We note the involvement of transnational organized crime in human smuggling and trafficking and call upon all States to enact measures to combat these crimes and to cooperate fully at all levels. We support the signing, ratification, and implementation of the United Nations Convention against Transnational Organized Crime and its two protocols against the smuggling and trafficking of human beings as one of the means to accomplish this objective.
2. We encourage States to criminalize migrant smuggling and trafficking in persons. We call upon States to improve their border controls and travel and identity documents. Member States are encouraged to assist other States to improve their documents to comply with the standards and recommendations of the International Civil Aviation Organization and to develop means to identify, seize and return to the issuing State, where appropriate, documents that are fraudulent or have been fraudulently used.
3. Law enforcement agencies, immigration services, passport issuing authorities and related agencies should cooperate against smugglers and traffickers, especially in the exchange of information on the transnational movement of organized criminals and other measures States may lawfully employ to apprehend smugglers and traffickers, to deny entry to criminals and the use of their territories for criminal activities, the establishment of mechanisms and agreements to affect this information exchange, and in criminal investigations. States should also ensure that these capabilities are effective in deterring and detecting movements of terrorists.

[http://ec.europa.eu/justice\\_home/fsj/crime/structures/fsj\\_crime\\_structures\\_en.htm](http://ec.europa.eu/justice_home/fsj/crime/structures/fsj_crime_structures_en.htm)

### *Jakarta Centre for Law Enforcement Cooperation*

The Jakarta Centre for Law Enforcement Cooperation, located at the Indonesian National Police Academy, was established as a bilateral initiative with the Government of Australia. It has a capacity-building and operational support mandate to foster cooperation and encourage increased communication with and between regional law enforcement personnel throughout the Asian and Pacific region in combating transnational crime. The ultimate goal of the Jakarta Centre is to contribute to enhancing regional law enforcement capacity to manage multijurisdictional investigations of transnational crime in the region. Among its strategies are:

- Strengthening law enforcement response capacity
- Strengthening investigation capability
- Contributing to the development of wider criminal intelligence skills and capacity to share and exchange criminal intelligence
- Strengthening domestic and international law enforcement partnerships and networks

More information about the Jakarta Centre is available at:  
[www.jclec.com/](http://www.jclec.com/).

### *Task Force on Organised Crime in the Baltic Sea Region*

The main objective of Task Force cooperation is to decrease organized crime in the Baltic Sea region. Additionally, the Task Force aims to minimize duplication of efforts and routing the information flow into one common channel when it comes to intelligence. The Task Force is a forum for discussing regional perspectives on certain matters at the EU and international level.

[www.bstf.org/](http://www.bstf.org/)

### *Organization of the Black Sea Economic Cooperation working group on cooperation in combating crime, in particular in its organized forms*

On 25 June 1992, the Heads of State and Government of eleven countries: Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania, Russia, Turkey and Ukraine signed in Istanbul the Summit Declaration and the Bosphorus Statement giving rise to the Organization of the Black Sea Economic Cooperation.

[www.bsec-organization.org](http://www.bsec-organization.org)

### *Southern African Regional Police Chiefs Cooperation Organization*

The Southern African Regional Police Chiefs Cooperation Organization is an international independent police organization in Southern Africa which liaises closely with INTERPOL. Its member States are Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, the United Republic of Tanzania, Zambia and Zimbabwe. The Constitutional objectives of the Organization are:

1. To promote, strengthen and perpetuate cooperation and foster joint strategies for the management of all forms of cross-border and related crimes with regional implications;
2. To prepare and disseminate relevant information on criminal activities as may be necessary to benefit members to contain crime in the region;
3. To carry out regular reviews of joint crime management strategies in view of changing national and regional needs and priorities;
4. To ensure efficient operation and management of criminal records and efficient joint monitoring of cross-border crime, taking full advantage of the relevant facilities available through INTERPOL;
5. To make relevant recommendations to Governments of member States in relation to matters affecting effective policing in the Southern African region;
6. To formulate systematic regional training policies and strategies, taking into account the needs and performance requirements of the regional police services/forces;
7. To carry out any such relevant and appropriate acts and strategies for the purposes of promoting regional police cooperation and collaboration, as regional circumstances dictate.

In practice, its tasks are:

1. To make relevant recommendations to Governments in relation to:
  - a. Harmonization of legislation and accession and ratification of international conventions in matters relating to deportation, extradition, confiscation of proceeds of crime, repatriation of recovered exhibits;
  - b. Promotion of mutual assistance on criminal investigations, detection and apprehension of cross-border offenders;
  - c. Facilitation of the movement and attendance of witnesses to places of trial and any other matters which may become relevant from time to time;
2. To carry out any such relevant and appropriate acts and strategies for the purpose of promoting regional police cooperation and collaboration, as regional circumstances dictate.

More information about the Organization is available at:

[www.interpol.int/Public/Region/Africa/Committees/SARPCCO.asp](http://www.interpol.int/Public/Region/Africa/Committees/SARPCCO.asp).

#### *Eastern Africa Police Chiefs Cooperation Organization*

The Eastern Africa Police Chiefs Cooperation Organization was founded in Kampala during the first meeting of Eastern African police chiefs, held in February 1998. The meeting resolved to set up an institutionalized body after emphasizing the need for a collective effort to curb cross-border crime within the region. The constitution of the Organization was signed in Khartoum on 20 June 2000 and came into force on 21 August 2002. The constitution recognizes the INTERPOL Subregional Bureau in Nairobi as its secretariat.

More information about the Organization can be found at:

[www.interpol.int/Public/Region/Africa/SRBeasternAfrica.asp](http://www.interpol.int/Public/Region/Africa/SRBeasternAfrica.asp).

#### *Political Governance and Security Programme of the Pacific Island Forum Secretariat*

The Pacific Island Forum comprises 16 independent and self-governing States of the Pacific region. In October 2005, the Forum adopted a Pacific Plan to strengthen regional cooperation throughout these fragile island States. In support of that broader goal, the Political and Security Programme is primarily focused on law enforcement cooperation and building the capacity of law enforcement agencies to respond to transnational crimes.

More information about this initiative is available at:

<http://forumsec.org/pages.cfm/political-governance-security/>.

#### *Pacific Islands Chiefs of Police*

The Pacific Islands Chiefs of Police is an organization consisting of 21 members (States and territories) representing some 75,000 police officers. The organization aims to provide a voice on law enforcement issues and raise awareness of them. It also aims to identify trends in transnational organized crime and develop strategies to combat them, contribute to training initiatives to develop the law enforcement capacity of the region, promote information sharing

and intelligence and share best practices across the region. It is a mechanism for interaction and cooperation throughout the region.

More information about the Pacific Islands Chiefs of Police is available at:

[www.picp.org/](http://www.picp.org/).

### *The Judicial Cooperation Unit of the European Union (Eurojust)*

The European Union has established a liaison network of prosecutors (Eurojust) in order to deal more efficiently with cross-border crime, particularly that committed by organized transnational criminal groups. Each Member State nominates one prosecutor to join Eurojust, based in The Hague. Eurojust aims to enhance cooperation and coordination between national investigating and prosecuting authorities, allowing all law enforcement agencies to act more effectively, both individually and collectively. It does this by:

- Stimulating and improving coordination of investigations and prosecutions between competent authorities in EU member States.
- Taking into account any request emanating from a competent authority of a member State and any information provided by competent bodies by virtue of provisions adopted within the framework of the treaties.
- Improving cooperation between competent authorities of member States, in particular by facilitating the execution of international mutual legal assistance and the implementation of extradition requests.
- Supporting competent authorities of member States to render their investigations and prosecutions more effective when dealing with cross-border crime.

More information is available at:

<http://eurojust.europa.eu/index.htm>.

### *European Judicial Network*

In addition to Eurojust, the European Judicial Network has been established within the European Union to promote and accelerate cooperation in criminal matters, paying particular attention to the fight against transnational organized crime. The contact points in this network function as active intermediaries with the task of facilitating judicial cooperation between European Union Member States. They also provide necessary legal and practical information to the local judicial authorities in their own countries, as well as to the contact points and local judicial authorities in other countries, in order to enable them to prepare an effective request for judicial cooperation and improve or coordinate judicial cooperation in general. The European Judicial Network was the first practical structured mechanism of judicial cooperation in the European Union to become truly operational. Its key principle is to identify and promote people in each member State who play a fundamental role in judicial cooperation with respect to criminal matters, with the purpose of ensuring the proper execution of mutual legal assistance requests.

For more information, visit:

[www.ejn-crimjust.europa.eu/](http://www.ejn-crimjust.europa.eu/) and more specifically [www.ejn\\_crimjust.europa.eu/ejn\\_tools.aspx](http://www.ejn_crimjust.europa.eu/ejn_tools.aspx).

### *South-East European Cooperative Initiative Regional Center for Combating Trans-border Crime*

The Southeast European Cooperative Initiative brings together 13 member States in South-eastern Europe in an effort to combat organized crime. At the Regional Center in Bucharest, police and customs liaison officers facilitate information exchange between law enforcement agencies in the participating States. Requests for regional assistance are sent to the Center from the national office of each individual State through its liaison officer, who then disseminates them to the appropriate State liaison officers. The Agreement on Cooperation to Prevent and Combat Trans-border Crime was signed by member States of the Initiative in 1999 and entered into force in 2000. The approach of the Center to irregular migration in the region is that of an expert service provider. Thinking regionally and developing strategic knowledge about the common issue is followed by action according to member countries' needs, by offering a friendly cooperation environment in order to share information and organize common investigations, operations and trainings.

For more information, visit: [www.secicenter.org/](http://www.secicenter.org/)





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