



UNODC

United Nations Office on Drugs and Crime

UNODC XCE/S50 Project: "Enhancing operational capacity to investigate and disrupt Human Trafficking activities in the Western Balkans"

Workshop to Develop Guidelines on International Legal Cooperation Instruments in the Area of Anti-Human Trafficking and Smuggling of Migrants

Budva, Montenegro
30 September-2 October 2009

Meeting Report

1. Purpose

A regional workshop involving judges, prosecutors and law enforcement officers dealing with cases of human trafficking and smuggling of migrants was held in Budva, Montenegro from 30 September-2 October 2009, within the German funded extension of the UNODC Project: "Enhancing Operational Capacity to Investigate and Disrupt Human Trafficking Activities in the Western Balkans".

During the previous UNODC project workshop held in Albania, in February 2009, a new set of recommendations was produced with the aim of strengthening regional law enforcement and judicial cooperation in the area of anti-human trafficking (AHT) and smuggling of migrants (SOM), in particular through the enhanced use of international legal cooperation instruments (mutual legal assistance, extradition, etc.). In order to achieve this objective, the UNODC technical assistance was welcomed by all the participants in the workshop.

Therefore, the aim of the Budva workshop was to initiate the consultative and inclusive process of developing guidelines on international legal cooperation instruments in the area of anti-human trafficking and smuggling of migrants.

2. Background

The opening remarks were made by:

- Mr. Alexander Avanesov, UN Resident Coordinator and UNDP Resident Representative to Montenegro
- Ms. Sonja Perišić, Senior Advisor, Office of National Anti-Human Trafficking Coordinator – Montenegro
- Ms. Ela Banaj, UNODC Project Coordinator

There follows a list of the presentations delivered:

Facing the Challenges of Organized and Serious Crimes in the Western Balkans” Promoting Justice And Security In South Eastern Europe UNODC Regional Programme (2009-2011): Ms. Ela Banaj, UNODC Project Coordinator, Albania

UNODC Project: “Enhancing Operational Capacity to Investigate and Disrupt Human Trafficking Activities in the Western Balkans” – overall project development, future activities and expected outcomes”: Ms Claudia Gioffre, Consultant, and Viktor Damjanović, National Project Officer, UNODC Belgrade

“Global Legal Framework against Human Trafficking-an International Cooperation Aspect”: Ms. Albina Yakubova, Anti-Human Trafficking and Migrant Smuggling Unit, UNODC Vienna

Presentation and overview of the development process of Guidelines on international legal cooperation instruments – legal and law enforcement aspects: Mr. Almir Maljević and Mr. Roger Britton, UNODC Consultants

Joint Investigations through the SECI Center: Mr. Corneliu Alexandru Dragne, Criminal Analyst, SECI Center

Presentation of the Joint (UNODC, IOM, UNHCR) programme to combat human trafficking in Serbia and regional anti-human trafficking initiative: Mr. Mitar Djurašković, National Anti-Human Trafficking Coordinator, Republic of Serbia

In order to facilitate the consultative process for the development of the guidelines, two working groups were conducted with the aim of discussing issues and problems in the area of international/regional criminal justice cooperation and sharing ideas and suggestions on how to enhance such cooperation in the region. The working group moderated by Mr. Roger Britton concentrated on the law enforcement aspects of regional cooperation, while the group moderated by Mr. Almir Maljević focused on the legal perspectives.

3. Outcomes of the working groups

I. Working Group on Legal Aspects

Participants:

- Albania – Mr. Besnik Muci, Prosecutor
- Bosnia and Herzegovina – Mirza Jusufović, Judge
- Croatia – Mr. Marino Hrain, Prosecutor
- FYR Macedonia – Ms. Slavica Andreevska, Judge
- FYR Macedonia - Mr. Vlatko Georgijevski, Prosecutor
- Kosovo UNSCR 1244 - Mr. Lulzim Sylejmani, Special Prosecutor
- Kosovo UNSCR 1244 – Mr. Fejzullah Hasani, Judge
- Montenegro - Ms. Mira Samardžić, Prosecutor
- Montenegro - Ms. Valentina Pavličić, Judge

- Serbia - Mr. Aleksandar Vujičić, Judge
- Serbia - Mr. Dragan Često, Deputy Prosecutor
- UNODC - Ms Claudia Gioffre
- UNODC - Ms Albina Yakubova
- UNODC - Mr Almir Maljević

Aim of the working group:

The aim of the WG on legal aspects is to initially discuss the issues that are to be taken into account in the process of development of the regional guidelines to enhance judicial cooperation among SEE countries/entities in the area of AHT and SOM, especially through the improvement in the use of international legal cooperation instruments.

Methodology:

The participants included representatives from the Judiciary and Prosecutor's office of the project beneficiary countries/territories. They were asked to focus on three main points:

1. the legal framework currently used for the purpose of the international cooperation in the area of AHT and SOM;
2. the problems they have so far encountered in the international cooperation in the area of AHT and SOM;
3. the examples of the solutions they found to the problems (best practices) and the examples of unsuccessful attempts to overcome the problems encountered.

The discussions clearly indicated that there are three particular legal aspects that are to be addressed if the international cooperation in the area of AHT and SOM in SEE is to be enhanced. These are:

- Legal framework used for the implementation of the International cooperation;
- (In)Admissibility of evidence in different jurisdictions;
- Joint investigation teams.

Legal framework used for the implementation of the International cooperation

The discussion and the problem: The discussions indicated that the legal framework for the international cooperation in criminal matters is primarily defined by criminal procedure codes, codes on rendering international legal assistance, bilateral agreements and international conventions. However, it was pointed out by the majority of discussants that despite the international instruments whose direct use

for international cooperation is allowed, the primary source used for the purpose of the international cooperation is still a criminal procedure code.

If the international cooperation is governed by the provisions of criminal procedure codes, the legal assistance has to be requested and provided through diplomatic channels (respective ministries of justice and ministries of foreign affairs). As the result, the criminal proceedings are too long and sometimes less effective.

Despite such situation some jurisdictions (Albania) stick to the prescribed procedures and accept/and render legal assistance only through diplomatic channels. Other countries however (Bosnia and Herzegovina, Croatia, Montenegro, Serbia), in trying to overcome the problem of lengthy procedures, are searching for alternatives. The most commonly used alternative is direct application of the international instruments and establishment of the direct communication channels between the investigative bodies. Nevertheless, discussants pointed out different views as to the acceptability of such direct procedures.

Recommendations: The countries/entities should:

- initiate, develop or improve training on direct use of intl. instruments that will facilitate extradition and MLA procedures;
- Initiate discussions on problems of mutual concern (organise national/regional/international conferences).

(In)admissibility of evidence in different jurisdictions

The discussion revealed the problem that evidence collected in accordance with the law of one jurisdiction might not be admissible in another. Here, the diversity of legislation was found to hamper the international cooperation.

The problem: inadmissibility of evidence legally collected in one jurisdiction, yet inadmissible in another causes criminal proceedings in the latter to be slowed down and in the end significantly impeded, if not completely jeopardised.

Recommendations:

- The countries/entities should organise training to improve the understanding of legislation/practice related to the collection of evidence in the region; and in relation to that
- Develop checklists to accommodate for the specificities in the respective jurisdictions.

Joint investigation Teams

The discussion and the problem: In the course of the discussion on the best practices it became apparent that joint, parallel, or coordinated investigations seem to be one of the most acceptable solutions to the problem of diversity of legislation in the region, as well as to the diversity of approaches to the interpretation of the

legislation regulating collection of evidence and other issues relevant for the international cooperation in the area of AHT and SOM. It was pointed out that, bearing in mind organisational issues and its operational capacity difference is to be made between joint investigations ≠ Joint investigation teams ≠ Joint investigative bodies.

However, legislation regulating joint investigation is not in place. Issues as to the initiation (who, when, for what offences) of joint investigations, management models (active or passive) emerged.

Recommendations:

- The possibility to draft a legal framework for joint investigations / JI teams / investigative bodies should be explored;
- The possibility to conclude bilateral / multilateral agreements on joint investigations in the region should be explored;
- Training on joint investigations should be developed and conducted.

II. Working Group on Law Enforcement Aspects:

Participants:

- Albania - Mr Milaim Demnushaj, National Coordinator Office on Anti Human Trafficking
- Albania - Mr. Arian Muca, Head of Anti-Human Trafficking Section of the Police
- Bosnia and Herzegovina – Mr Midhat Hasanspahić, Head of Counter Trafficking Unit, State Investigation and Protection Agency
- Croatia – Mr. Zlatko Koštić, Organized Crime Department
- Croatia – Ms. Daniela Gaube, Governmental Counsellor
- FYR Macedonia - Mr. Mome Jakimovski - Chief Inspector in the Sector for Human Trafficking and Smuggling of Migrants
- Kosovo UNSCR 1244 - Mr. Ramadan Ahmeti – Chief of Trafficking in Human Beings Section, Kosovo Police Force
- Montenegro - Ms. Irena Pejović – Senior Police Commissioner for Suppressing Illegal Migration
- Montenegro - Ms. Sonja Perišić, Office of National TIP Coordinator
- Serbia - Mr Dragan Timotijević, Head of Department Ministry of Interior / Service for Combating Organized Crime
- Serbia - Mr Mitar Djurašković, National TIP Coordinator
- RCC - Mr Predrag Vujičić, Expert on Justice and Home Affairs
- SEPCA - Mr Radovan Ljumović, Representative for Montenegro
- SECI - Mr. Corneliu Alexandru Dragne - Criminal Analyst
- OSCE Montenegro - Mr. Miroslav Gospodinov - Police Trainer
- IOM Montenegro – Ms. Dušica Zivković
- UNODC - Mr Viktor Damjanović
- UNODC- Mr Roger Britton

- UNODC - Ms Emilija Dodevska

Aim of the working group:

The aim of the WG was to discuss the issues that are to be taken into account in the process of development of the regional guidelines to enhance judicial cooperation among SEE countries/entities in the area of AHT and SOM, especially through the improvement in the use of international legal cooperation instruments, specifically from the LE perspective.

Methodology:

The participants were asked to focus on three main points:

1. The current situation with regard to Formal LE Cooperation in the region and any problems encountered:
2. The current situation with regard to Informal LE Cooperation in the region and any problems encountered:
3. Specific recommendations for the Guidelines, based on the current situation and any prevailing problems.

There follows a summary of the comments made during the workshop, by the 7 delegations, which included Law Enforcement representatives and National TIP Coordinators, plus the representatives of the SECI centre, SEPICA, OSCE and the RCC.

Formal Cooperation

The discussion and the problems identified: Structures for formal exchange of evidence exist, and there is solid legal basis for them. These mechanisms are generally working well, though they can be hampered by bureaucratic delays. When information is required urgently, the process can usually be speeded up, in cooperation with judges and/or prosecutors. SECI centre plays important role in facilitating formal MLA requests.

Informal Cooperation

The discussion and the problems identified: Among law enforcement agencies in the region a good network of informal exchange of information / intelligence has developed. It is based on operational focal points and other personal contacts. Mutual trust plays important role in functioning of such a network. Informal Cooperation is supported / legitimised by the Police Cooperation for South East Europe (PCC), SECI agreement and various bilateral agreements. In addition to facilitating formal cooperation, the SECI Centre has important role in facilitating informal exchange of information / criminal intelligence.

It was highlighted that co-ordinated investigations between two or more countries in the region have been very successful in the past. Furthermore, it was pointed out

that it is often more difficult to obtain information from EU countries than from within the region.

Lack of financial resources can hamper regional investigations (e.g. limited capability for joint meetings). Informal cooperation can be also adversely affected by the changes in personnel, as it takes time to build up new personal contacts. The lack of harmonisation of working practices can sometimes cause problems. While the similar languages amongst countries of former Yugoslavia present an advantage, the language problems with e.g. Albania can be overcome. Databases of TIP / SOM suspects or offenders are improving, but the room for further development exists. In this regards, accuracy and completeness of databases are very important.

Special attention should be devoted to avoid duplication of regional activities in TIP and to achieve better coordination.

Specific Recommendations for Guidelines

- Case study of a successful regional cooperation to identify best practices for inclusion in Guidelines;
- Liaison with and reference to other relevant regional bodies / initiatives such as SECI and ILECU (International Law Enforcement Cooperation Unit)
- Development of Standardised Form for *informal* exchange of information / criminal intelligence.

A short presentation was also made about the UNODC MLA Writer Tool (which had previously been demonstrated to many of the delegates at the meeting in Tirana in February 2009). The translation of the tool had already been made in Montenegrin (with the assistance of the OSCE and UNDP missions in Montenegro) and other delegations have spoken in favour of translating the tool in their own languages.

4. Follow-up Action

- The meeting report, presentations and list of participants to be circulated to all participants for further study and discussion. **Action:** UNODC
- Bilateral missions of the UNODC experts and staff to be organized in each of the countries/territories that participated in the workshop, in order to enable local authorities to more concretely present their specific needs in regards to the project. **Action:** UNODC, the participants
- The draft version of the guidelines to be presented on the second workshop in Belgrade (November 23-25). **Action:** UNODC

Report prepared by:

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