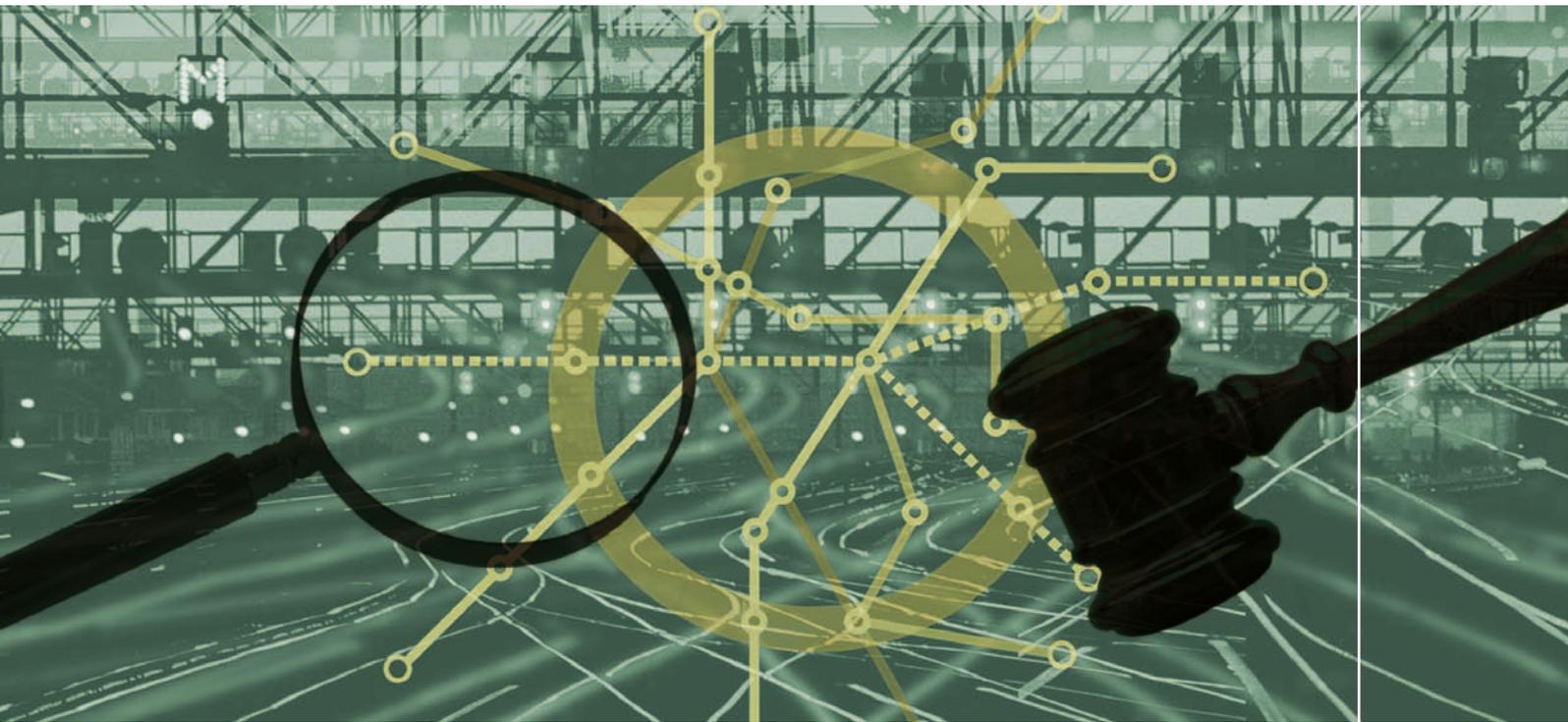




UNODC

United Nations Office on Drugs and Crime



Basic training manual on investigating and prosecuting the smuggling of migrants

Module 8
International cooperation



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UNITED NATIONS OFFICE ON DRUGS AND CRIME
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Module 8. International cooperation

A. Learning objectives

The present module examines some of the issues of international cooperation that will feature in most, if not all, investigations. Despite its importance, international cooperation is often very difficult to achieve. At the end of this module, you should understand:

- The types of international cooperation that can be provided, as defined by the Organized Crime Convention.
- Different types of formal and informal cooperation.
- How to request extradition and mutual legal assistance from international partners.
- The basis for establishing a joint investigation team.
- Some of the key issues associated with international cooperation, and the possible means of minimizing risks and overcoming challenges.

B. Types of international cooperation

When international cooperation goes well, the results can be excellent, as shown by the case study below.



Case study

Successful international cooperation

Operation B in a Western European country began as an intelligence scoping exercise.

Over a period of 6 months, 10 targets were identified as the most significant human smugglers within a network. The 10 smugglers were of West Asian origin. Intelligence-gathering began, followed by tactical analysis of this scoping and of the methodology of this network. The operational team carried out surveillance and began gathering evidence. Countries of high significance to this criminal network were identified and the intelligence dissemination process began.

Meetings were held at Europol and the European Union's Judicial Cooperation Unit (Eurojust), facilitating the sharing of intelligence.

The heads of the criminal networks conducted their business in “secure cafes” in the capital of that Western European country. In these cafes, the subjects would make hundreds of telephone calls to their networks. They would call the irregular immigrants, sponsors, transport managers, drivers and overseas facilitators.

Foreign intercept evidence was used as part of the investigation.

Estimates are that 200,000 people were smuggled into that Western European country by this network.

Enforcement

On 11 October 2005, the intelligence phase of operation B was concluded. Fourteen residential and business premises were raided, with 21 subjects arrested. Five hundred police officers took part in the raids. Approximately £70,000 in cash was seized. Large amounts of financial and human smuggling evidence and 100 SIM cards and handsets were seized as evidence. A press release was issued which was circulated throughout Europe.

Impact assessment

The smugglers of migrants were surprised by the arrests, as the principal subjects considered themselves untouchables.

The flow of false and forged documents was severely disrupted.

There was a general rise in the price of smuggling from the West Asian country of origin, with prices up to £7,000 from £3,500-£4,000.

Operation B resulted in sentences amounting to about 65 years of imprisonment.

Formal and informal cooperation

As exemplified in the case study below, smuggling of migrants occurs transnationally, making international cooperation an essential prerequisite to preventing and combating the crime. Co-operation between law enforcement authorities can be formal or informal.

- Formal international cooperation could be based on existing bilateral or multilateral agreements, including agreements on mutual legal assistance in criminal matters, and on extradition, or on the Organized Crime Convention, depending on the jurisdiction of the countries involved, followed by a formal letter of request made when an official investigation is under way or during the judicial proceedings.
- Informal cooperation involves operational police-to-police contacts requiring assistance for investigation before any judicial proceedings are in place. In such instances, the necessary arrangements can usually be made between the relevant police officers or agencies without invoking mutual legal assistance agreements or conventions.



Case study

Cases of the smuggling of migrants can involve several countries. For instance, in one of the biggest smuggling cases to be tried in a Western European country of destination, thousands of nationals of a South Asian country were brought to that destination country illegally, using the fake passports of a country in Southern Africa.

The system used was extremely professional and sophisticated. Passport factories were uncovered in the destination country. Migrants would travel from the South Asian country to the Southern African transit country. There, they would pay US\$ 500 for a genuine passport of that transit country, fraudulently issued by corrupt officials. They would then enter the destination country. With the passports of the transit country, the migrants could stay in the destination country for six months without a visa. Some would enter into sham marriages to extend their stay; others would register with colleges but not undertake any course of study. The migrants involved would pay up to US\$ 30,000 for these services.

The destination country's arm of the migrant smuggling gang was led by two persons of South Asian background. One pleaded guilty and was given 10 years in prison. The other was also given a sentence of 10 years, issued with a deportation order and a US\$ 100,000 confiscation order.

The issue whether to cooperate formally or informally is often a difficult one to resolve. Laws may prohibit any type of cooperation or allow only one type. In reality, both forms of cooperation might be pursued in parallel.

The investigator's role

The investigator's role in international cooperation is best summarized by the following actions:

- Identify if or where cooperation is required.
- Identify what evidentiary materials are required.
- Identify what your legal constraints are.
- Identify what approach is likely to produce what you seek.
- Seek advice from senior officers, prosecutors or investigating judges, as appropriate, before embarking on a course of international cooperation.
- Consider the use of INTERPOL/Europol or other regional law enforcement agencies.¹
- Respond quickly to requests made to you by international partners.

Investigators must make full use of any liaison officers who are available in the countries where information is sought and should consider using diplomatic channels or embassies, where appropriate.

¹ For instance, consider consulting 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 Chiefs of Police of Central American and the Caribbean, the South Pacific Chiefs of Police Conference and the Association of Caribbean Commissioners of Police.

Considerations when commencing an investigation

When commencing an investigation into the smuggling of migrants, it is useful to identify which countries may be able to assist and how as illustrated in the table below:

Country	Intelligence	Information sought
Source	Subjects arrested lived in a named town.	Information on financial aspects (accommodation), associates etc. Intelligence from the community.
Transit	Transited by way of this country. May have remained there for several days.	Routes. Potential accommodation sites. Forgers. Tickets etc.
Destination	Smuggled migrants and smugglers of migrants may exist in an ethnic community. Migrants may be exploited.	Financial intelligence. Associates. Possible connections to illegal work or exploitative situations.

?	Questions and exercises
<ul style="list-style-type: none"> • Does the law of your country allow for formal cooperation? • Does the law of your country allow for informal cooperation? • Explain what is meant by formal cooperation. • Explain what is meant by informal cooperation. • Explain the difference between formal and informal cooperation. • Is there a unit in your country responsible for facilitating international cooperation? 	

C. Framework for international cooperation

United Nations Convention against Transnational Organized Crime as a basis for international cooperation

Article 1 of the Organized Crime Convention states that the purpose of the Convention is to promote cooperation to prevent and combat transnational organized crime more effectively. Further to this, article 2 of the Smuggling of Migrants Protocol reiterates its purpose of promoting cooperation to prevent and combat the smuggling of migrants, while protecting the rights of smuggled migrants.

The Organized Crime Convention contains different provisions on both formal and informal cooperation in criminal matters which are also applicable to the Smuggling of Migrants Protocol, namely:

- Extradition (article 16)
- Mutual legal assistance (article 18)

- Transfer of criminal proceedings (article 21)
- Transfer of sentenced persons (article 17)
- Cooperation for purposes of confiscation to deprive perpetrators of criminal assets (articles 13 and 14)
- Cooperation between law enforcement authorities, including exchanging information and cooperation in conducting inquiries (article 27)
- Joint investigations (article 19)
- Cooperation in using special investigative techniques (article 20)

Article 27 of the Organized Crime Convention on law enforcement cooperation establishes the scope of the obligation to cooperate. Subject to their respective domestic legal and administrative systems, States parties are to cooperate closely in terms of law enforcement in the areas prescribed in paragraphs 1 and 2, by:

- Strengthening channels of communication among law enforcement authorities (para. 1 *(a)*)
- Undertaking specific forms of cooperation in order to obtain information about persons and movements of the proceeds and instruments of crime (para. 1 *(b)*)
- Sharing items or substances for investigative purposes (para. 1 *(c)*)
- Promoting exchanges of personnel, including the posting of liaison officers (para. 1 *(d)*)
- Exchanging information on criminal means and methods used (para. 1 *(e)*)
- Other cooperation for the purpose of facilitating early identification of offences (para. 1 *(f)*)

This article also calls upon States parties to consider 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).

In addition to the provisions in the Organized Crime Convention, the Smuggling of Migrants Protocol also contains several requirements on cooperation and assistance. Each State party to the Protocol is required to:

- Cooperate to the fullest extent possible to prevent the smuggling of migrants by sea (article 7)
- Render assistance to a State party that has the right to board a vessel flying its State flag (article 8, para. 1)
- Inform the flag State if it has boarded its vessel (article 8, para. 3)
- Respond expeditiously to a request for determination if a vessel is entitled to claim that State as the State of its registry (article 8, para. 4)
- Respond expeditiously to a request for authorization to board, search and take other measures with respect to a vessel flying its flag (article 8, para. 4)
- Designate an authority to assist or respond to requests for assistance concerning such vessels (article 8, para. 6)

- Exchange information with other relevant States regarding the smuggling of migrants, consistent with domestic legal systems (article 10, para. 1)
- Comply with conditions imposed upon it by States sending such information (article 10, para. 2)
- Cooperate with each other and competent international organizations and non-governmental organizations to ensure adequate training to prevent and eradicate smuggling of migrants (article 14, para. 2)



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 should always be borne in mind.

Bilateral and regional agreements

Memorandums of understanding and regional agreements may cover a wide range of investigative actions including:

- Intelligence development
- Activities such as controlled deliveries, surveillance or communication interceptions (see module 5)
- Establishing what evidence is available before a formal request is made to obtain that evidence

Cooperation also exists through regional or international enforcement organizations such as Europol and INTERPOL or other regional law enforcement agencies, that have offices in every country.



Questions and exercises

- Is your country party to any bilateral or multilateral international cooperation agreements?
- Has your country ever used the Organized Crime Convention as the basis for cooperation?
- Cooperation with which countries would you most benefit from when conducting investigations into the smuggling of migrants? Why?
- Where no bilateral agreement is in place with a country that you need to cooperate with, how would you go about cooperating with it?
- Does your country have any memorandums of understanding with other countries that could facilitate cooperation to combat the smuggling of migrants?

D. Informal cooperation

Informal cooperation (also known as police-to-police or agency-to-agency assistance) is the exchange of information between law enforcement and/or regulatory agencies and their foreign counterparts without the use of a formal mutual legal assistance request agreement.

Informal cooperation can be engaged in before an investigation becomes official and before the commencement of court proceedings (for example, in conducting surveillance or taking voluntary witness statements). Where there are prosecutorial objectives, informal communications between police will need to be formalized so as to ensure the admissibility of communications in court.

Informal cooperation can be more efficient and less expensive than formal cooperation. Police-to-police contact is arguably the fastest, cheapest and most flexible means of seeking information or intelligence and should be used wherever appropriate. This form of contact can be carried out through:

- INTERPOL, Europol and other regional law enforcement agencies
- Local crime liaison officers
- Any applicable memorandums of understanding
- Any regional arrangements (formal and informal)

Where the authorities of two States have built a relationship of trust, informal cooperation can lead to increased bilateral cooperation between the central authorities (such as exchange of officials at departments or ministries), or between local authorities on both sides of a border (such as police and customs authorities). Such cooperation may eventually be guided by bilateral executive agreements between the agencies involved.



The INTERPOL website offers links to police agencies around the world. See <http://www.interpol.int/Public/Links/PolJust.asp>.

Informal cooperation should comply with local procedures. These vary from State to State but typically involve passing a request through a central liaison unit or officer. In urgent cases, it may be possible to make direct officer-to-officer contact, with the general requirement that the liaison unit or officer be informed of the contact.

Informal requests, depending on the jurisdiction, should not be used if you intend to present admissible evidence from another jurisdiction in a court within your jurisdiction. However, if you are going to use evidence in court, it is safe to make a formal request.

Always find out how informal requests are made in your country. Do not assume that arrangements are the same in every circumstance or for every country for they can vary greatly.

Where they exist, always take advice from your liaison units or officers and always inform central authorities of prior informal contacts.



Example: cross-border cooperation — transborder observations

European Union (EU) police teams are allowed to follow tracks or survey in another EU country when the perpetrators cross borders. The policemen are allowed to carry their weapons and use their police vehicles. The authorization for the observation is given by the liaison judge in Europol for 24 hours (emergency demand) or 30 days (ordinary demand). For instance, French police have followed criminals from Paris to Venice through Switzerland.



Questions and exercises

- In your country, what is the procedure for cooperating informally with another country?
- Is your country party to any regional agreements that could facilitate cooperation to combat the smuggling of migrants?
- Are there any arrangements, similar to those described above, in place in your region to allow law enforcers in your country to follow perpetrators into other countries?
- What is the procedure for using these arrangements?

E. Extradition

Extradition principles and requirements

Extradition is a means of cooperating formally.

Extradition is the surrender of a person sought by the requesting State for criminal prosecution or for the enforcement of a criminal sentence in relation to an extraditable offence.

Extradition is addressed by article 16 of the Organized Crime Convention, which sets a basic minimum standard for extradition and encourages the adoption of a variety of mechanisms to streamline extradition processes.

Some of the most important extradition principles and requirements are the following:

- There must be a legal basis for extradition

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 such as the Organized Crime Convention are efficient with regard to extradition, as they require an obligation involving many States at once.

- Sufficient evidence of the alleged crime
In using the Organized Crime Convention as a legal basis for extradition in cases of the smuggling of migrants, the persons sought for extradition must be located in the territory of the requested State party and there must be overwhelming evidence of a person's criminal conduct.
- Dual criminality
The requesting State must prove that the criminal offence for which extradition is requested must be punishable under the domestic law of both the requested and the requesting State. This condition reiterates the need to criminalize smuggling of migrants.
- Specialty
States must specifically detail the offences for which the extradition request is being made. The requesting State is obligated to prosecute only those offences.
With particular regard to migrant smuggling offences, it is essential to achieve convergence in national laws so that relevant criminal conduct is defined in accordance with the definition contained in the Smuggling of Migrants Protocol (article 3 (a)).
- Double jeopardy
A State may deny a request for extradition in cases where the person sought has already been tried for the offence contained in the request.
- Non-extradition of nationals

Article 16, paragraph 11, of the Organized Crime Convention, makes possible the temporary surrender of the person sought on the condition that he or she will be returned to the requested State party to serve the sentence imposed. Where the requested State refuses to extradite on the grounds that the person concerned is its own national, the State is seen to have an obligation to bring the person to trial. This illustrates the principle of *aut dedere aut judicare* (extradite or prosecute) and requires the establishment of an appropriate jurisdictional basis. 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.

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

Contents of the extradition request

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 or 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 lawfully be brought or pursued
- Legal basis:
A description of the basis upon which the request is made (e.g., national legislation, the relevant extradition treaty or arrangement or, in the absence thereof, by virtue of comity (legal reciprocity))

F. Mutual legal assistance

What is mutual legal assistance?

Mutual legal assistance is a type of formal international cooperation through which States seek and provide assistance in gathering evidence for use in the investigation, prosecution and adjudication of criminal cases. It covers a wide spectrum.

According to article 18 of the Organized Crime Convention, mutual legal assistance may include:

- Taking evidence or statements
- Effective service of judicial documents
- Executing searches and seizures
- Examining objects and sites
- Providing information, evidence and expert evaluations, documents and records
- Identifying or tracing proceeds of crime, property, instrumentalities and other material for evidentiary purposes
- Facilitating the appearance of witnesses
- Any other kind of assistance not barred by domestic law

UNODC Mutual Legal Assistance Request Writer Tool

UNODC has developed a Mutual Legal Assistance Request Writer Tool to help practitioners streamline the process of lodging requests. This is a user-friendly computer-based tool which is easily adjustable to a State's laws and practices. It requires almost no prior knowledge of or experience with mutual legal assistance and does not require Internet access.

The Mutual Legal Assistance Request Writer Tool is available free of charge in English, French, Portuguese, Russian and Spanish and selected other languages.

For more information, visit www.unodc.org/mla/index.html.

Contents of mutual legal assistance requests

Drafting requests for mutual legal assistance requires some knowledge of the legislation, processes and requirements of relevant countries. As indicated in the box above, the UNODC Mutual Legal Assistance Request Writer Tool can make this process easier and more efficient.

In general, the requirements of:

- Relevant international treaties such as the Organized Crime Convention
- Domestic law
- The requested State

must be taken into consideration in preparing a request for assistance.

The written request for assistance will need to address the following points:

- Identification:
 - Identify the office or authority making the request, and the authority conducting the investigation or prosecuting in the requesting State
 - Include contact details of responsible officials, including phone, fax and e-mail addresses, if possible
- Prior contact:
 - Detail 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 incorporating the acknowledgement for completion and return to the requesting State

- Indication of urgency and/or time limit:
A prominent indication of and reason for any particular urgency or time limit within which the request must be complied with
- Confidentiality:
A prominent indication of any need for confidentiality and the reason for this, and the requirement of consulting with the requesting State, prior to execution, if confidentiality cannot be maintained. More information about classifying information is contained in module 6.E
- Legal basis for the request:
A description of the basis on which the request is made (e.g., bilateral treaty or multilateral convention or scheme or, in the absence thereof, 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(s)
- 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 of the evidence or other assistance requested
- Clear link between the proceeding(s) and evidence or assistance sought:
A clear and precise explanation of the connection between the investigation, prosecution or proceedings and the assistance sought (that is, 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 of 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 for such a request
- Language:
All requests for assistance should be made in or accompanied by a certified translation into a language specified by the requested State

The ECOWAS Convention on Mutual Assistance in Criminal Matters

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 ECOWAS 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

G. Central authorities

Requests for assistance are to be made by designated central authorities. Designated central authorities 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 have a unit (generally staffed by law enforcement officers) that processes enquiries through “informal” arrangements such as memorandums of understanding, bilateral agreements and the like. This procedure is likely to be distinct from that of the central authority which deals only with “formal” requests as defined by the Organized Crime Convention.

Where it becomes apparent that the request involves substantial cost, the requesting and requested States should consult with each other 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 encouraged by the Organized Crime Convention article 14, paragraph 3.

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

In drafting written requests in accordance with the above requirements, it must be borne in mind that requests that are overly lengthy may not achieve the desired outcome. Bearing this in mind, the following basic steps should be considered:

- Be highly specific.
- Link the existing investigation or proceedings to the assistance required.
- Specify the precise assistance sought.
- Focus on the end result rather than on the method of securing it. It may be possible, for instance, for the requested State to obtain the evidence by means of a production or other court order, rather than by means of a search warrant.

The basics that must be addressed in a request are as a minimum:

- The legal basis for the request.
- The type(s) of assistance you are requesting and details of each.
- The national authority dealing with the case.
- Prior case-related contact between you and the requested State's authorities.
- Alleged offences and related provisions in national laws.
- Available information on suspects or alleged offenders and entities or organizations.
- Summary of the facts and procedural history of the case.
- Whether and why the request is urgent and/or confidential.
- The particular execution and procedural requirements that the requested State should fulfil.

UNODC provides a database of competent national authorities at www.unodc.org/compath/en/index.html.

H. Information-sharing

States are required to share information

States are required to share information either on a voluntary basis or in accordance with existing agreements or arrangements.

Without the presence of effective channels of communication, operational and general information cannot be obtained. Article 27 of the Organized Crime Convention encourages States to cooperate closely with one another. Article 10 of the Smuggling of Migrants Protocol requires States to exchange information with each other about:

- Embarkation and destination points as well as routes, carriers and 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 the smuggling of migrants.
- Scientific and technological information useful to law enforcement, so as to increase the capacity of States to enhance each other's abilities to prevent, detect and investigate the smuggling of migrants.

To enhance international cooperation in this respect, effective systems of information-sharing should be developed at regional and international levels.



Case study

Europol Analytical Work Files (AWFs)

Europol operates a system of Analytical Work Files (AWFs). AWFs are operational support tools for active investigations, in which information derived from investigations of Member States is stored. Europol can then analyse the information that enters the AWF and provide this analysis to Member States to add value to their investigations. For instance, an AWF specifically on smuggling networks operating from place A to place B could be established. All information about these particular networks would be fed into this dedicated AWF by participating Member States. A particular AWF has a minimum of 2 participating States but all 27 European Union (EU) Member States may participate. Participating Member States would decide whether to allow new members to enter the group. There is also the possibility that partners with operational agreements could join the Work File almost as full members.

An AWF is the primary means by which Europol offers operational analytical support to investigations within Member States. AWF CHECKPOINT is the relevant database for combating the smuggling of migrants. Its purpose is to assist Member States in preventing and combating the forms of criminality associated with the facilitation of irregular immigration within and into EU by organized criminal groups. AWFs utilize a “target group”-oriented approach.

Information on how to request the opening of a target group is available in all EU languages via the Europol National Units. Operational and personal data can be exchanged between the members of an AWF, with analytical support provided by Europol. Any third State or international organization can contribute data to be used in an AWF and may, under special conditions, be invited to be an associated member of an AWF. Contributions to the AWF have to be forwarded via the Europol National Units. Operational data accepted by an AWF can be shared only between the members of the AWF or the members of a specific target group.

The INTERPOL colour-coded notice system

INTERPOL has a colour-coded notice system which is used to inform all 187 member countries about a specific fact. The system can be a powerful law enforcement weapon as the notices are widely circulated and can be used to inform countries of individuals or methods involved in the smuggling of migrants. The details are as follows:

Colour of notice: *Information to be shared:*

Red	A request to seek the arrest or provisional arrest of a wanted person with a view to extraditing 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.

Colour of notice: *Information to be shared:*

Green	Warnings or criminal intelligence about persons who have committed criminal offences and are likely to repeat those crimes in other countries.
Yellow	A request for help to locate missing persons, especially minors, or to help identify persons who are not able to identify themselves.
Black	Request for information about unidentified bodies.
Orange	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 provides for a quick diffusion of information about smuggling of migrants. For instance, if INTERPOL learned of a new modus operandi for smuggling of migrants, the General Secretariat would disseminate an orange notice to all countries informing them of what it had learned. In this way, police from all countries can always contribute to improving international capacity to fight smuggling. When information is diffused on an international basis, countries are empowered to combat smuggling networks.

INTERPOL Stolen and Lost Travel Documents Database

The INTERPOL Stolen and Lost Travel Documents Database (INTERPOL SLTD) is a powerful tool for detecting the smuggling of migrants. Borders and ports around the world can be directly linked to the database through a secure INTERPOL channel. Countries can also contribute data to the database when they become aware of lost or stolen passports or travel documents.

In July 2009, a man attempting to enter a country in Southern Africa was arrested at the airport after a check against the INTERPOL SLTD revealed that he was travelling on a passport that had been stolen in a West Asian country eight years previously. This country had registered the stolen passport in the INTERPOL SLTD, enabling front-line enforcers in the Southern African country to apprehend the man after running a direct check against the SLTD.

The database currently contains nearly 19 million entries, of which 10.5 million are passports, submitted by 145 countries.

Principal considerations when sharing information

When sharing information with or receiving it from another State

- Find out what procedures are in place in your State and follow them.
- Do not share information in a way that would breach your domestic legislation.
- Use information only in a way that complies with the sending State's wishes.

- Always look for opportunities to share information that may help stop or disrupt the smuggling of migrants in other jurisdictions.
- When communicating through INTERPOL, if you wish to ensure that direct contact is made with you, be sure to include your personal contact details so that you are quickly and easily reachable.

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

For more on classification of information, see module 6.E.



Questions and exercises

- Does your country use a system of information-sharing with respect to the smuggling of migrants?
- Is your country a member of any regional information-sharing networks?
- *Scenario 1.* You receive a phone call from a law enforcer of Anyland requesting information about a smuggling network that smuggles migrants from and through your country, often using techniques that endanger the lives of migrants.
- *Scenario 2.* You are tracking a migrant smuggling network that smuggles people from your country into Anyland, often endangering the lives of migrants. You would like information about this group from Anyland.

What do you do?

Whom do you contact?

Are permissions needed?

What are the risks of cooperating in these situations?

How do you minimize risks?

Why should you cooperate with Anyland?

Why should you not cooperate with Anyland?

What arrangements must be entered into before cooperation with Anyland can proceed?

I. Joint investigation teams

Principal considerations when establishing joint investigations

Article 19 of the United Nations Convention against Transnational Organized Crime, joint investigations

“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.”

There are some key points to keep in mind when planning joint investigations, namely:

- You need not have in place large-scale multilateral agreements or investigative teams in order to conduct joint investigations.
- If you have no previous experience of joint investigations, consider running one on a case-by-case basis. This is allowed by the Organized Crime Convention and may be a basis for a more formal bilateral or multilateral agreement in future.
- Always ensure that the relevant authorities are involved in developing agreements or agreeing to the conduct of case-by-case joint investigations.

Highly informal and local joint investigation practices run the risk of causing problems for particular investigations and, possibly, between States. Always ensure that the relevant authorities within each participating State are aware of what is happening. It may be possible to formalize these joint investigations by referring to or relying on the Organized Crime Convention.

The means of establishing joint investigation teams operating between countries varies greatly. However, certain emerging practices or models of joint investigation have emerged around the globe.

Co-located and non-co-located joint investigation teams

Joint investigation teams can be co-located in either or both of the countries involved, while non-co-located virtual teams can conduct parallel investigations in close cooperation with each other. The decision on 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. A joint investigation team does not need to be co-located if it has ready and open lines of communication.

Non-co-located

Non-co-located joint investigation teams are not physically in the same location.

This model encompasses parallel coordinated investigations operating from their respective jurisdictions with a common goal, assisted by a liaison officer network or through personal contacts and supplemented by formal mutual legal assistance requests aimed at obtaining evidence. The officials involved are non-co-located and are able to work jointly on the basis of long-standing cooperative practices and/or existing mutual legal assistance legislation. This depends on the nature of the legal system(s) involved.

Co-located

Co-located joint investigation teams work together in the same location.

This model comprises integrated joint investigation teams with officers from at least two jurisdictions.

- This structure can be further divided and characterized either as passive or as active. In this regard: An “integrated passive” team could, for example, involve the integration of a foreign law enforcement officer with officers from the host State in an advisory or consultancy role or in a supportive role based on the provision of technical assistance to the host State.
- An “integrated active” team would include officers from at least two jurisdictions with the ability to exercise operational powers under host State control in the territory or jurisdiction where the team is operating. The integrated active model could best be described as a specially created infrastructure enabling officials from at least two countries to work in one jurisdiction with at least some equivalent operational powers.

Integrated passive teams are usually co-located on the basis either of national legislation enabling an officer to be appointed or designated or of a technical assistance agreement. In the case of the integrated active team, officers may also be designated based on an existing agreement or national legislation.

Cooperation on a case-by-case basis

This third model of cooperation may be subsumed under the two models above. The cases concerned may be either reactive or proactive. In general, cooperation will be relatively limited but it will involve some mutual exchange of information and coordination of activities directed against a particular criminal group. A form of agreement that defines roles and responsibilities may already exist or be established; but, more commonly, cooperation will entail the use of existing mechanisms to exchange information. Establishing some form of agreement is the recommended approach.



Case study

EU-wide operation

A network responsible for recruiting illegal migrants and transporting them to various EU Member States was uncovered. The migrants had to pay between €2,000 and €20,000, 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 with a view to dismantling as much of the organized criminal network as possible. The undertaking in question was referred to as operation XY. In advance of the operation XY action day (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 action day, 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 over a period of 24 hours. In total, more than 1,300 EU law enforcement officers were involved, including 6 officers from Europol. Many different types of items were seized during the house searches, such as mobile phones, notebooks, computers and address books and directories. Operation XY 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 demonstrates what transnational law enforcement cooperation can achieve.

Practical guidance: establishment of joint investigation teams

In investigating cases of the smuggling of migrants, there is often a need to act quickly, owing to the fact that the operational information upon which a joint investigation can be based is of value only for a limited period. The relevant practical guidance can facilitate the process.

When considering the establishment of a joint investigation team:

- Identify contacts for the purposes of initiating discussions and making decisions on the establishment of joint investigations. There are instances where investigations have been found to be linked to other countries but no action can be taken to develop cooperation owing to lack of infrastructure and identifiable contacts within the other country.
- Aim to establish trust, preferably before the start of the joint investigation.
- Establish common goals for the joint investigation at the outset. Planning must be supported at the strategic, tactical and political levels.
- Ensure commitment at all levels so as to guarantee that assistance will continue to be available when the investigation develops into a prosecution.

- Consider the availability and sharing of resources at the outset, as these factors can determine the extent of the cooperation possible.
- Decide on the working language for the joint investigation.
- Negotiate and document your agreements.
- Reduce bureaucracy to the minimum level.



Example: joint investigation team

After a protocol for a specific case has been signed between the judicial authorities of two EU countries, teams of investigators from the two countries can be mixed. The processes that evolve and the information provided by the two parties can be integrated under the umbrella of a single case and have the same judicial value. Such a joint investigation team targeting an Asian network of migrant smugglers has been formed between France and Germany.



Questions and exercises

- What authorities are relevant in your country for facilitating joint investigations?
- Has your country been involved in the operations of any joint investigation teams?
In what ways was the joint investigation team successful?
In what ways could the joint investigation team have been more successful?
- What were the biggest challenges you encountered in establishing the joint investigation team?
- What were the biggest challenges you encountered during joint investigations?
- If your colleague asked you for advice on establishing a joint investigation team, what advice would you give?

J. Challenges of international cooperation

General challenges

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

- Lack of trust
- Diversity of legal systems
- Diversity of law enforcement structures

- Misuse of or failure to use existing channels of international communication
- Non-existent or poorly established direct channels of communication between countries
- Diversity in approaches and priorities
- Resource-intensity of operations

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 with each other proactively and appropriately.

You might face a situation in which a country holding information that would be of great use to you is reluctant to share that information. This is often owing to concerns about the security of information. When seeking cooperation, an investigator must be mindful of these concerns. Having suitable methods in place to protect the information passed on may encourage a better flow of information.

Challenges of formal cooperation

The main advantage of well-developed formal cooperation is the acquisition of evidence that is admissible in court.

However, legal issues pose a significant challenge to formal cooperation, given that different laws and different legal systems are often involved. Often, the bureaucratic structure is significant and sometimes interferes with the timeliness of results.

It is unlikely that a formal letter of request will be appropriate in cases where a person's safety is at risk, given the significant amount of time that may be needed to achieve the desired result.

Challenges of informal cooperation

The fact that informal cooperation (direct officer-to-officer contact) often proceeds more rapidly than formal cooperation can have many benefits, particularly with respect to operations related to the smuggling of migrants, as it can yield prompt responses in situations that pose risks to people.

However, there are certain risks and challenges associated with this form of cooperation, such as:

- Exposure of law enforcers in other countries to risks if they cooperate with you
- Diplomatic incidents when action is not properly thought out
- Exposure of victims and others to increased risks through unwitting or deliberate leakage of information from the agency involved
- Increased risk of compromising other operations and law enforcement staff

Such risks can be minimized by:

- Prohibiting individual officer-to-officer contact if this is specifically forbidden by one of the jurisdictions concerned
- Determining what arrangements for cooperation exist between your countries. Where liaison officers or units exist, their advice should be sought

- Never passing on information that may expose someone to danger without first establishing the risks involved in contacting a particular unit or
- Keeping liaison units informed of what you are doing

It may be difficult to assess the level and impact of the risk at a distance. Where possible, speak to liaison departments and officers in order to identify whom you can contact safely.

For more on risk assessment see annex II and module 5 of the *UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners*, available at <http://www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html>



Questions and exercises

- Have you had any experience of formal cooperation in investigations into the smuggling of migrants? Write a short case study based on your experience. On a separate page, list the challenges involved and the methods utilized to address them.
- Are there liaison units or officers in your country that can facilitate formal international cooperation?
 - If so, how do you contact them?
 - If not, whom would you contact in the event that you needed to seek cooperation with another country?
 - If you do not know the answer, how would you find out?

K. Concluding remarks

It is often the case that international cooperation is often difficult to achieve and may be viewed as an area fraught with challenges. Nonetheless, in investigations into the smuggling of migrants, effective international cooperation can often be the key to a successful prosecution and is usually essential for the complete disruption of an organized criminal group.

International cooperation can be either formal or informal. There are benefits and risks associated with both types of cooperation and neither should be entered into before full consideration has been given to which would be the most appropriate means of achieving clear criminal justice objectives.

As was seen earlier, the results are excellent in cases where international cooperation has been achieved. While lawmakers and policymakers have key roles to play in the process of bringing about effective cooperation, the role of investigators is also vital. Clearly identifying your objectives in seeking a particular form of assistance, and responding with timeliness and in good faith to the requests made, will help strengthen the criminal justice response of all parties concerned.



Self-assessment questions

- What types of international cooperation are supported by the Organized Crime Convention?
- What is the difference between formal and informal cooperation?
- What are the pros and cons of formal cooperation?
- What are the pros and cons of informal cooperation?
- Who is responsible in your country for making a request for extradition or mutual legal assistance?
- What is the basis for establishing a joint investigation team?
- What are the possible challenges posed by international cooperation?
- How can the risks associated with international cooperation be minimized?



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