

## **JOINT INVESTIGATIONS**

### **Legal and Practical Issues Arising in the Implementation of Article 19 of the United Nations Convention against Transnational Organized Crime**

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#### **Article 19 – 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.

## TABLE OF CONTENTS

PREFACE.....	3
LIST OF ABBREVIATIONS AND ACRONYMS.....	4
<b>I INTRODUCTION.....</b>	<b>8</b>
I.1 BACKGROUND.....	8
I.2 PURPOSE OF THIS REPORT.....	10
I.3 STRUCTURE.....	10
I.4 METHOD AND OBSTACLES.....	11
Authorship and acknowledgments.....	11
<b>II JOINT INVESTIGATIONS: CONTEXT AND BACKGROUND.....</b>	<b>12</b>
II.1 CONCEPT AND DEFINITION.....	12
II.2 ARTICLE 19 UNTOC.....	14
III.2.1 Nature of the obligation.....	15
III.2.2 Scope.....	15
III.2.3 Types of joint investigations.....	16
III.2.4 Basis of joint investigations.....	16
III.2.5 Sovereignty and other legal issues.....	17
II.3 OTHER INSTRUMENTS.....	17
<b>III GENERAL CONSIDERATIONS.....</b>	<b>19</b>
III.1 BENEFITS OF JOINT INVESTIGATIONS.....	19
Removing borders and barriers.....	19
Cooperation, integration, trust.....	19
Reduces bureaucracy.....	20
Speed.....	21
III.2 LEGAL CONSIDERATIONS.....	22
Legal basis of the JIT.....	22
Powers of JIT officers.....	22
Impact on suspects, victims, witness (human rights considerations).....	22
Gender considerations.....	23
III.3 PRACTICAL ASPECTS.....	23
Participants and organisation.....	23
Operation and powers.....	23
Resources.....	23
III.4 ALTERNATIVES TO JITS.....	23
Parallel investigations.....	24
<b>IV STAGE 1: PLANNING.....</b>	<b>25</b>
IV.1 NEED AND BACKGROUND.....	25
IV.1.1 Suitable cases.....	25
Cross-border investigation.....	25
Complexity of the case (facts and networks involved).....	26
Connected investigations requiring coordination.....	26
Complexity of the investigative measure needed.....	26
IV.1.2 Stage of investigation.....	27
Prior national investigations.....	27
Prior parallel investigations.....	27
IV.1.3 Suitable offences.....	28
Severity.....	28
Dual criminality.....	28
Specific crime types.....	28
Penalties and punishment.....	30

IV.2	PURPOSE AND GOALS .....	31
IV.3	PARTIES.....	31
	States.....	31
	Agencies.....	31
	Officials .....	32
	Request.....	32
IV.4	LEGAL BASIS .....	33
IV.4.1	International frameworks .....	33
IV.4.2	National laws.....	33
IV.5	RESOURCES .....	35
IV.5.1	Costs.....	35
IV.5.2	Personnel.....	35
IV.5.3	Equipment .....	36
IV.6	AGREEMENT.....	36
IV.6.1	Content of JIT agreements .....	37
	Parties.....	37
	Background, facts, offences.....	37
	Purpose.....	37
	Period of operation, location of operation .....	37
	JIT leaders, members, participants, seconded members.....	37
	Information and evidence gathering, access, and exchange .....	37
	Liability.....	38
	Consultation, dispute resolution, evaluation.....	38
	Other specific arrangements .....	38
	Organisational arrangements .....	38
IV.6.2	Amendments, additional parties, extension .....	38
	Amendments to the agreement .....	38
	Ability of other parties to joint at a later stage .....	39
IV.6.3	Model agreements .....	39
V	STAGE 2: SETTING UP .....	41
V.1	LOCATION .....	41
V.2	DURATION.....	42
V.3	STRUCTURE.....	42
V.2.1	JIT leader(s) .....	44
V.2.2	JIT members.....	44
V.4	OTHER PARTICIPANTS .....	46
V.5	PREPARATION AND TRAINING.....	47
	Preparatory training .....	47
	Team-building:.....	47
V.6	LIABILITY.....	47
V.5.1	Criminal liability .....	47
V.5.2	Civil liability .....	48
V.5.3	Compensation for damages.....	48
VI	STAGE 3: OPERATION .....	49
VI.1	PLANNING AND COORDINATION .....	49
VI.2	POWERS.....	49
	Presence during investigations.....	50
	Taking investigative measures.....	50
	Power to arrest .....	50
	Carrying and use of weapons, including firearms .....	51
	(Parallel) financial investigations .....	51
VI.3	SPECIAL INVESTIGATIVE TECHNIQUES.....	52
VI.4	VICTIMS AND WITNESSES .....	53
V.5	INFORMATION EXCHANGE AND SHARING OF DATA.....	54

VI.5	EVIDENCE.....	59
VI.5.1	Gathering of evidence .....	59
VI.5.2	Use of evidence.....	59
VI.5.3	Admissibility of evidence .....	59
VI.5.4	Disclosure rules.....	62
VI.6	COOPERATION WITH OTHER STATES .....	62
VII	STAGE 4: CLOSURE AND EVALUATION .....	64
VII.1	CLOSING A JIT .....	64
VII.2	EVALUATION .....	64
	ANNEX: MATRIX IDENTIFYING LEGAL CONSIDERATIONS AND PRACTICAL ASPECTS RELATING TO JOINT INVESTIGATIONS, ARTICLE 19 UNTOC.....	66
	REFERENCES.....	67
	Conference of the Parties to UNTOC documents.....	67
	United Nations publications .....	67
	Other official sources.....	67
	Secondary sources .....	67
	APPENDICES.....	70
	APPENDIX A: UNITED NATIONS CONVENTIONS ADDRESSING JOINT INVESTIGATIONS .....	70
	United Nations Convention against Transnational Organized Crime, Article 19: Joint Investigations .....	70
	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Article 9: Other forms of co-operating and training, subsection 1 .....	70
	United Nations Convention against Corruption, Article 49: Joint investigations .....	70
	APPENDIX B: REGIONAL LEGISLATIVE APPROACHES AND INITIATIVES .....	71
1	Council of Europe.....	71
	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Article 20: Joint investigation teams .....	71
	Second Additional Protocol to the Cybercrime Convention on Enhanced Co-operation and Disclosure of Electronic Evidence, Article 12: Joint investigation teams and joint investigations.....	72
2	European Union.....	73
	Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, Article 13: Joint investigation teams .....	73
	Council Framework Decision of 13 June 2002 on joint investigation teams .....	75
3	MERCOSUR, Southern Common Market .....	78
	Acuerdo Marco de Cooperación entre los Estados Partes de MERCOSUR y Estados Asociados para la Creación de Equipos Conjuntos de Investigación, firmado San Juan, Argentina, el 2 de agosto de 2010 .....	78
4	Organization of American States (OAS).....	78
	Inter-American Convention on Mutual Assistance in Criminal Matters (1992), Article 7(g) .....	78
5	Commonwealth of Independent States.....	78
	Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, done on 7 October 2002 in Chisinau, Article 63: .....	78
6	Other multilateral treaties .....	78
	Police Cooperation Convention for South-East Europe, Article 27: .....	78
	International Conference on the Great Lakes Region Protocol on Judicial Cooperation.....	78
	Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto;.....	78
	Agreement on Mutual Legal Assistance between the European Union and the United States of America, Article 5 .....	78

# I INTRODUCTION

Joint investigations, in which law enforcement and judicial officials from two or more States work together, can be useful to investigate and prosecute complex transnational organized crime cases and can complement other types of mutual legal assistance and law enforcement cooperation. Joint investigations maximize direct personal contacts and address the practical problem that investigators and prosecutors usually are not able and not authorized to work across borders. In an age where virtually every crime may be committed transnationally, it also appears to be obsolete and counterproductive to restrict law enforcement to national borders.<sup>1</sup>

Agreements and arrangements enabling joint investigations are one way to address this obstacle insofar as they permit foreign law enforcement and judicial officials to work alongside or on behalf of their local counterparts. The creation of joint investigative teams (often referred to by the acronym JIT, also referred to as ‘joint investigation teams’) further permits the direct transmission of information without the need to use formal mutual legal assistance channels.<sup>2</sup>

Article 19 of the *United Nations Convention against Transnational Organized Crime* (UNTOC),<sup>3</sup> which is based on Article 9(1)(c) of the 1988 *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*,<sup>4</sup> encourages the use of joint investigations in order to investigate and prosecute transnational organized crime more effectively and exchange relevant information more swiftly across borders. To that end, Article 19 asks States Parties to consider the development of bilateral or multilateral arrangements or agreements regarding an establishment of joint investigative bodies, mindful of the legal and sovereignty issues involved.<sup>5</sup> If such agreements or arrangements do not (yet) exist, Article 19 further encourages joint investigations on a case-by-case basis. An identical provision to Article 19 can be found in Article 49 of the *United Nations Convention against Corruption* (UNCAC).<sup>6</sup>

## I.1 Background

Article 19 is part of a suite of UNTOC provisions which seek to enable and enhance international cooperation between the States Parties in matters of criminal justice involving transnational organized crime. These measures include extradition (Article 16), mutual legal assistance (Article 18), joint investigations (Article 19), law enforcement cooperation (Article 27), transfer of sentenced persons (Article 17), and transfer of criminal proceedings (Article 21). The Convention thus opens avenues to obtain additional evidence, access information, recover assets, freeze funds, confiscate property, and arrest and return fugitives.

Article 32 establishes the Conference of the Parties (CoP) as the institutional body to facilitate and review the implementation of UNTOC by States Parties (as mandated by Article 34(1)). The

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<sup>1</sup> Cf Toine Spapens, ‘Joint Investigation Teams in the European Union: Article 13 JITS and the Alternatives’ (2011) 19 *European Journal of Crime, Criminal Law and Criminal Justice* 239, 245.

<sup>2</sup> UN, Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on International Cooperation, *The use and role of joint investigative bodies in combating transnational organised crime*, UN Doc CTOC/COP/WG.3/2020/2 (12 May 2020) 9–10 [46].

<sup>3</sup> Opened for signature 15 November 2000, 2225 UNTS 209 (entry into force 29 September 2003), also referred to as ‘Organized Crime Convention’.

<sup>4</sup> Opened for signature 20 December 1988, 1582 UNTS 95 (entry into force 11 November 1990).

<sup>5</sup> UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime* (UNODC 2<sup>nd</sup> edn 2017) [583].

<sup>6</sup> Opened for signature 31 October 2003, 2349 UNTS 41 (entry into force 14 December 2005).

Conference, which first met in 2004, provides a forum for States Parties to meet regularly, share information on transnational organized crime, review the implementation, and make recommendations to improve UNTOC and the three Protocols which supplement the Convention. In 2005, the CoP decided to establish an open-ended working group to hold substantive discussions on practical issues pertaining to extradition, mutual legal assistance and international cooperation for the purpose of confiscation. The group first met in 2006 and later became a constant element of the CoP.

Since 2008, the CoP and its working groups have repeatedly explored and discussed the topic of joint investigations and the obligations arising from Article 19 of the UNTOC. In 2008, the CoP convened an Informal Expert Working Group to examine the subject of joint investigations in more detail. The Group met from 2 to 4 September 2008 in Vienna, Austria and presented a 34-page report of its discussions, findings, considerations and recommendations to the fourth session of the CoP in October 2008.<sup>7</sup>

In 2020, UNODC (the United Nations Office on Drugs and Crime and Secretariat of the UNTOC) prepared a background paper on ‘The use and role of joint investigative bodies in combating transnational organised crime’ for the Working Group on International Cooperation.<sup>8</sup> This paper presents an overview of the international framework related to joint investigations in relation to transnational organized crime, including but not limited to the UNTOC, and of legal and practical aspects pertaining to it, with a view to enabling further dialogue on good practices and challenges encountered in this field. In the same year, UNODC prepared a further background paper on ‘Best Practices in joint investigations and specialized prosecutions’ for the Working Group on Trafficking in Persons.<sup>9</sup>

In 2020, the CoP adopted Resolution 5/8 ‘Implementation of the provisions on international cooperation of the United Nations Convention against Transnational Organized Crime’. This Resolution, inter alia, recommends

(d) Building, based on existing cases and experiences, a matrix identifying legal and practical issues that could arise in the implementation of article 19 of the Organized Crime Convention and by establishing modalities for conducting joint investigations, including by creating joint investigative bodies, as well as possible solutions to those issues, including by collecting examples of arrangements or agreements concluded between States parties for that purpose;

In 2022, the CoP further adopted Resolution 11/1 ‘Implementation of the provisions on international cooperation of the United Nations Convention against Transnational Organized Crime’, stating:

(i) In accordance with the mandates contained in Conference resolution 5/8 and relevant guidance stemming from the deliberations of the Working Group, the Secretariat should develop, subject to the availability of resources, a matrix identifying legal and practical issues that could arise in the implementation of article 19 of the Convention, as well as possible solutions for those issues, including by collecting examples of arrangements or agreements concluded between States parties for that purpose, and, upon request, should assist States parties in developing a set of legal, practical and operational guidelines for the implementation of article 19.

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<sup>7</sup> UN, Conference of the Parties to the United Nations Convention against Transnational Organized Crime, *Informal Expert Working Group on Joint Investigations: Conclusions and Recommendations*, UN Doc CTCP/COP/2008/CRP.5 (2 October 2008).

<sup>8</sup> UN, Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on International Cooperation, *The use and role of joint investigative bodies in combating transnational organised crime*, UN Doc CTOC/COP/WG.3/2020/2 (12 May 2020).

<sup>9</sup> UN, Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Working Group on Trafficking in Persons, *Best practices in joint investigations and specialized prosecutions*, UN Doc CTOC/COP/WG.4/2020/3 (26 June 2020).

The present report executes these calls to examine the issues associated with the implementation of Article 19.

## I.2 Purpose of this report

Pursuant to CoP resolutions 5/8, paragraph 2(d), and 11/1, Annex I, paragraph (i), the purpose of this report is to map the legal and practical issues that could arise in the implementation of Article 19 of the UNTOC and to provide possible solutions for those issues, including by collecting examples of arrangements or agreements concluded between States Parties. These issues are summarised in a concise manner in a matrix annexed to this report.

To this end, this report explains the concept and legal bases of joint investigations with a focus on joint investigation teams, outlines general considerations and concerns when establishing and operating JITs, and explores in detail the legal and practical issues associated with the planning, setting up, operation, and closing and evaluation of JITs. Furthermore, the report highlights a range of case examples, best practice studies, and model arrangements and agreements involving JITs and provides references to additional legal and scholarly material on joint investigation teams.

This report is aimed at national authorities and international organisations with a mandate relating to the prevention and suppression of transnational organized crime, chief among them law enforcement authorities, departments of justice and home/interior affairs, prosecution services, and the judiciary. The report is also intended for use by legislators and policy makers seeking to enable and improve international cooperation in criminal justice matters and to create the legal, regulatory, and institutional bases for such cooperation. Furthermore, this report seeks to assist those charged with the protection of witnesses and victims of organized crime and those protecting the rights of the accused and, by extension, fundamental human rights and civil liberties, especially in a criminal justice context. Lastly, the report is aimed at research institutions and experts working on organized crime, transnational criminal law, cross-border law enforcement and judicial cooperation.

## I.3 Structure

This report is divided into seven main parts, I to VII. Following this introduction, part II provides some general context on joint investigations, explaining the concept, relevant terminology, and the obligations under Article 19 of the UNTOC. Part III sets out some general considerations and concerns pertaining to the use of joint investigation teams. The following parts examine the main features of JITs and relevant legal considerations and practical issues concerning the planning, setting up, operation, closing and evaluation of JITs. These four distinct stages of JITs, and the legal and practical issues arising in their context, are discussed separately in parts IV to VII. A matrix summarising the main issues for each stage follows in the Annex.

Examples of past and present JITs and their activities, case studies and best practice examples, model agreements and their elements, along with samples of national law can be found throughout the report and are set out in separate textboxes. The report closes with a list of references to relevant primary and secondary sources, and an appendix setting out multilateral (international and regional) instruments containing provisions directly relating to joint investigations.

## I.4 Method and obstacles

The research and analysis for this report involves desk-based collection and consideration of primary and secondary sources as well as consultation with representatives of law enforcement agencies and experts from other national authorities and international organisations, including participants of an informal expert group meeting on international cooperation which met at the United Nations Vienna International Centre on 23 and 24 October 2023, inter alia, to discuss the design and content of the present report.

The starting point for the concept and analysis of this report is Article 19 of UNTOC, its express wording, official explanatory material (*Interpretative Notes*,<sup>10</sup> *Travaux préparatoires*<sup>11</sup>) and the extensive range of interpretative and implementation tools produced by UNODC, the CoP and its Working Groups. The report also takes due account of provisions relating to joint investigations found in other international instruments and regional frameworks along with the explanatory material for these instruments. Several international bodies, chief among the Eurojust, the European Union Agency for Criminal Justice Cooperation and its Joint Investigation Teams Network and the Asociación Ibero American de Ministerios Públicos (AIAMP) Red de Cooperación Internacional (REDCOOP) have also published a range of tools, guidelines, evaluation reports and other materials that contain a wealth of experiences and ideas relevant for the purposes of the present report.

The academic literature on the topic of joint investigations, comprising a few dozen book chapters and journal articles, remains manageable but is noticeably growing — along with the use of JITs in jurisdictions around the world. The academic literature offers invaluable insight into the concept of and experiences with JITs and critical perspectives identifying important legal and practical issues that warrant consideration when establishing and operating JITs.

The sources of the information provided for and used in this report are referenced extensively in footnotes and also in the list of references set out at the end of the report. This report does not involve the use of any classified information and does not contain any personal information about investigators or others involved in JITs. In some instances, the persons consulted for the purposes of this report are referred to by their rank, office, or agency rather than their given and family names.

### *Authorship and acknowledgments*

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<sup>10</sup> UN General Assembly, *Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions, Addendum: Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* UN Doc A/55/383/Add.1 (3 November 2000).

<sup>11</sup> UNODC, *Travaux préparatoires of the negotiations of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (United Nations, 2006).