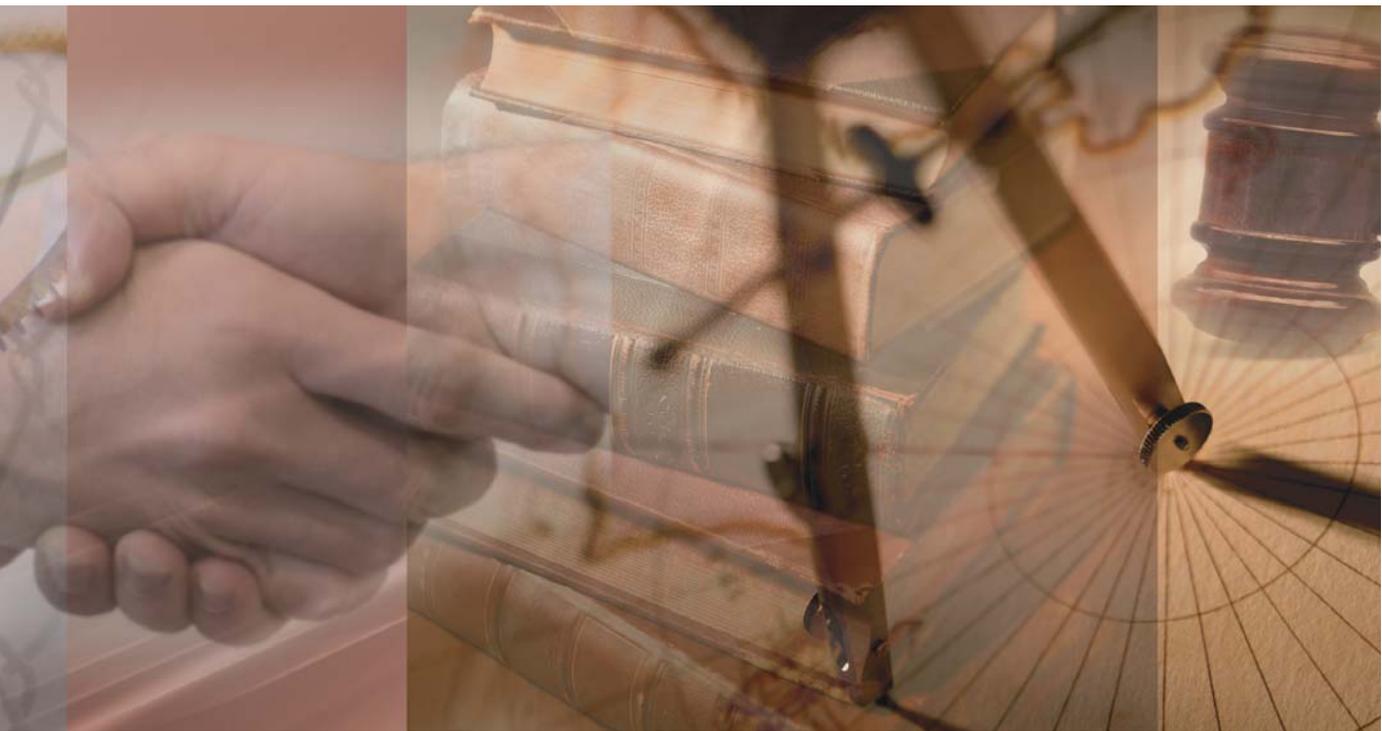




UNITED NATIONS  
*Office on Drugs and Crime*



**CROSS-CUTTING ISSUES**  
**International Cooperation**

Criminal justice  
assessment  
toolkit

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UNITED NATIONS OFFICE ON DRUGS AND CRIME  
Vienna

# **CROSS-CUTTING ISSUES**

## **International Cooperation**

**Criminal Justice Assessment Toolkit**



UNITED NATIONS  
New York, 2006

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This publication has not been formally edited.

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# 1. INTRODUCTION

Globalization and, more specifically, the emergence and expansion of transnational crime confront all justice systems with some new difficulties. Criminal offenders are mobile and often seek to evade detection, arrest, and punishment by operating across international borders. They avoid being caught by taking advantage of those borders and playing on the frequent reluctance of law enforcement authorities to engage in complicated and expensive transnational investigations and prosecutions. The weak capacity of any one country to address effectively some of these new threats translates itself into an overall weakness in the international regime of criminal justice cooperation. For countries with a relatively weak criminal justice capacity, these challenges can sometimes appear insurmountable.

The international community now recognizes international cooperation in criminal matters as an urgent necessity. This demands national efforts to comply with new international standards, to encourage convergence and compatibility of national legislation, to introduce complex procedural reforms, and generally to develop a much greater investigation and prosecution capacity at the national level as well as strengthen the capacity to cooperate at the international level. For some countries, building a capacity for international cooperation within their own criminal justice system is, to say the least, a struggle.

The main mechanisms supporting international cooperation are mutual legal assistance, extradition, transfer of prisoners, transfer of proceedings in criminal matters, international cooperation for the purposes of confiscation of criminal proceeds and asset recovery as provided for in the United Nations Convention against Corruption, as well as a number of less formal measures, including measures in the area of international law enforcement cooperation. These mechanisms are based on bilateral or multilateral agreements or arrangements or, in some instances, on national law. All of them are evolving rapidly to keep pace with new technologies and their evolution over the last decade or so reflects the new determination of Member States to work more closely with each other to face the growing threats of organized crime, corruption and terrorism.

Noticeably, some of the most innovative strategies are coming out of cooperation efforts between countries that have either a crime problem or a geographical border in common. Some of the most significant lessons learned in recent years come from the experience of countries working at the bilateral, sub-regional or regional level to address practical issues on a regular basis. Regional cooperation is evolving rapidly in all parts of the globe.

A consensus is emerging around some of the most promising means of enhancing international cooperation in the investigation and prosecution of serious crimes. Some of them are now included in the international cooperation framework established by the **United Nations Conventions against Transnational Organized Crime; against Corruption; and against the Financing of Terrorism**, and several other multilateral instruments at the global and regional levels, which provide a strong basis for internal cooperation. Having national legislation in place to implement fully these instruments is therefore of paramount importance, as are the development of a capacity to cooperate and the adoption of the administrative measures necessary to support the various modalities of international cooperation.

This assessment tool identifies some practical issues that are typically encountered by a country trying to actively engage in international cooperation. It refers also to some of the practical issues that have recently emerged during the implementation of new international conventions, such as the **UN Convention against Transnational Organized Crime**, whose main purpose is precisely to facilitate international cooperation. Questions are suggested for assessing the capacity and willingness of a particular jurisdiction to cooperate at the international level, as well as the obstacles it is facing with respect to building that capacity.

For the purpose of this tool, international cooperation is defined broadly because it can and should occur at various levels of the criminal justice system. The assessor, however, will frequently need to narrow the scope of the assessment. In doing so, one may consider the nature of the country's existing or anticipated future obligations under various treaties (multi-lateral, regional or bi-lateral).

In spite of the considerable progress accomplished at the bilateral, regional, trans-regional, and international levels, international cooperation in the investigation and prosecution of serious crimes still needs considerable strengthening. Practitioners are well aware of the many obstacles that still exist to international cooperation in criminal matters. They include sovereignty issues, the diversity of law enforcement structures, the absence of enabling legislation, the absence of channels of communication for the exchange of information, and divergences in approaches and priorities. These problems are often compounded by difficulties in dealing with the varied procedural requirements of each jurisdiction, the competitive attitude that often exists between the agencies involved, language, and human rights and privacy issues.

There are also rule of law issues that require attention in relation to international cooperation. Measures to reinforce the rule of law need not be characterized as impediments to international cooperation. A country's commitment to the rule of law and the protection of human rights should not be negotiable or bartered against some international cooperation concessions in fighting transnational crime or terrorism. In fact, a commitment to the rule of law can enhance international cooperation in criminal matters. Measures to enforce the rule of law and adherence to international human rights standards are also directly relevant to enhancing mutual assistance and international cooperation. In matters of extradition, mutual legal assistance, or joint investigations, the agencies and institutions involved retain an obligation to ensure the lawfulness of all actions taken in the name of cooperation.

Integrated approaches are also important in the provision of technical assistance. Smaller countries often experience difficulties implementing the numerous international conventions and bilateral treaties they are expected to comply with. The basic capacity of their criminal justice and law enforcement institutions is often limited. They can benefit from integrated technical assistance activities that focus on building their overall investigation and prosecution capacity as well as their ability to cooperate effectively.

Technical assistance in the area of international cooperation in the context of a broader strategic framework may include work that will support the following:

- Review and enhance the legal framework to include measures that support and strengthen mutual assistance;
- Review and enhance the legal framework to include measures that enable mutual legal assistance as required by instruments to which the country is a party;
- Review and enhance the legal framework to enable extradition as required by any treaty to which the country is a party;
- Review and enhance the legal framework to include measures that authorize law enforcement cooperation as required by any bilateral or multilateral agreements;
- Review and enhance the legal framework to include measures that authorize law enforcement cooperation as required by any bilateral or multilateral agreements;
- Review and enhance the criminal and criminal procedure code to ensure that the predicate proscribed acts described in the instruments above are criminalized under the legislative framework, that legal jurisdiction for them is established;
- Review and enhance the criminal and criminal procedure code to ensure that the appropriate criminal acts are extraditable;
- Review and enhance the criminal and criminal procedure code to ensure that sensitive information received via international cooperation is kept confidential;
- Develop national policies and implement procedures to facilitate exchange of information as well as its analysis and to prevent the disclosure of sensitive information received via such exchanges;
- Develop national policies for and implement mechanisms such as central authorities, liaisons, secondments and exchanges of prosecutors and law enforcement officials, and networks to facilitate mutual cooperation;

- Develop national policies and implement procedures for mutual legal assistance in the absence of treaties and to the extent possible where dual criminality is absent;
- Develop the capacity of existing institutions and agencies to develop, use, and respond to requests for mutual legal assistance and information;
- Train law enforcement personnel, prosecutors and judicial officials regarding legal requirements for mutual legal assistance and extradition;
- Develop the capacity of authorities to cooperate internationally in the protection of victims, their compensation for the harm they suffer, and their safe repatriation when necessary.

## 2. OVERVIEW

The assessor may wish to enquire about the experience of the country and its various criminal justice agencies with various transnational forms of crime, including prevalence, patterns, routes, trends, modus operandi, victims, etc. The assessor should also be curious about the countries experience with international cooperation, both as a provider of assistance and as a requesting State. Furthermore, it is clear that inter-agency cooperation at the national level is not only crucial to effective local action against transnational organized crime, corruption and terrorism, but is also an important precondition for effective cross-border cooperation against these major threats.

Designating a single central authority for all incoming and outgoing legal assistance and extradition requests and strengthening its effectiveness remain crucial to the success of international cooperation in criminal matters. This is how a country, among other things, can coordinate its own requests for assistance and stand ready to respond expeditiously to requests for cooperation it receives from other countries. Increasingly, mutual legal assistance treaties require that States Parties designate a central authority (generally the Ministry of Justice) to which requests can be sent, thus providing an alternative to diplomatic channels. The **Convention against Transnational Organized Crime** and the **Convention against Corruption** makes it mandatory for States Parties in order to ensure the expeditious transmission or execution of the requests. Nevertheless, the role of the central authorities need not necessarily be an exclusive one. Direct exchanges of information and cooperation, to the extent permitted by domestic law, should also be encouraged.

- A. How frequently, in what circumstances and with what results have agencies have been involved in seeking cooperation from another country?
- B. From which countries was international assistance most frequently requested?
- C. What difficulties have agencies typically encountered in trying to seek the assistance of other countries?
- D. How frequently, in what circumstances, for what type of offences are agencies most frequently asked for assistance from other countries? What is the volume of request? Are agencies typically able to reply positively for request for assistance? What are the delays typically involved in responding to a request for assistance?
- E. What are the countries that most frequently request assistance from agencies? For what kind of assistance? What are offences usually involved?
- F. What difficulties have agencies typically encountered in trying to offer technical assistance to other countries? Are some kinds of assistance more problematic than others?
- G. Does the country have a Central Authority for International Cooperation or equivalent? Has another agency been delegated this responsibility?
- H. Does the Central Authority have sufficient resources to achieve its mandate (skilled and trained staff, communication equipment, ongoing training, etc.)? Is it able to collaborate and exchange with other central authorities?

- I. Are law enforcement agencies able to share criminal record and other law enforcement information with each other, directly, in real time, while providing all the required security and human rights safeguards?
- J. Do agencies have access to advanced data communication and storage technologies for the sharing of criminal record information and the exchange of other criminal justice data between agencies?
- K. Are there clear guidelines, rules, and accountability mechanisms to prevent and detect improper or corrupt practices in data sharing?

### 3. LEGAL FRAMEWORK

Whether a country is attempting to prevent organized crime activities, financial and economic crime, computer crime, corruption or terrorism, the establishment of better legal bases for international cooperation is a prerequisite. Strengthening the convergence of criminal law and criminal law procedure is part of any long-term strategy to build more effective international cooperation. Developing stronger bilateral and multi-lateral agreements on mutual legal assistance is also part of the solution. The universal conventions against terrorism, as well as the **United Nations Conventions against Transnational Organized Crime** and **against Corruption** provide a strong basis for legal cooperation and often suggest some of the elements that must be developed as part of a national capacity for effective investigation and prosecution of these crimes. Having national legislation in place to fully implement these instruments is therefore of paramount importance.

In matters of international cooperation, criminal justice agencies must rely, to a large extent, on the treaty network developed by their country. The various conventions mentioned above call upon their States Parties to widen their treaty network by entering into new bilateral and multilateral treaties to facilitate international cooperation in criminal matters. Making this network work for them in a practical manner is often still a challenge for prosecution services.

It is important to note, however, that mutual legal assistance can be provided without the existence of a specific treaty if national laws are flexible enough.

Existing treaties and laws should be reviewed periodically and amended as necessary to keep pace with rapidly evolving practices and challenges in international cooperation. They should provide maximum flexibility to enable broad and expeditious assistance. To facilitate these efforts, the General Assembly adopted a **Model Treaty on Mutual Assistance in Criminal Matters**.

The country may require technical assistance in adopting measures to establish under their domestic law a number of offences called for by the conventions and protocols relating to terrorism and other related forms of crime, and to ensure that these offences are punishable by appropriate penalties that take into account the grave nature of the offences. This is also important where a dual criminality requirement may exist. Countries may require assistance to help them define the material and mental elements of the offences in accordance with the general criminal law of each State Party. Part of an assessment may be concerned with verifying whether the country has in place the criminal law provisions it needs to comply with its obligations under international law in particular international human rights, refugee, and humanitarian law.

- A. Does national legislation allow or support lawful and effective exchanges of data on an international basis? Does national legislation authorize or provide mechanisms for the exchange of such information among domestic law enforcement agencies?
- B. Where the country is not a party to mutual legal assistance or extradition treaties, does the national legislation authorize such activities? Under what circumstances? Are these circumstances defined by law?

## **3.1 ESTABLISHING OFFENCES UNDER NATIONAL LAW**

### **3.1.1 Terrorism Offences Under National Law**

- A. Have terrorist acts been criminalized as required by Resolution 1373?
- B. Have offences relating to civil aviation been incorporated into national law?
- C. Have offences based on status of victims (protected persons) and the **Convention on the Safety of United Nations and Associated Personnel** (1994) been incorporated into national law?
- D. Have the necessary offences relating to dangerous materials, such as explosives, nuclear materials, etc., been created?
- E. Have the necessary offences relating to the protection of vessels and fixed platforms been created?
- F. Have the necessary offences contained under the universal anti-terrorist instruments been incorporated into national legislation?
- G. Have the following offences been criminalized:
  - The financing of terrorism?
  - The provision or collection of property to commit terrorist acts?
  - The provision of services for commission of terrorist acts?
  - The use of property for commission of terrorist acts?
  - The making of arrangements for the retention or control of terrorist property?
  - The soliciting and giving of support to terrorist groups or for the commission of terrorist acts?
  - The harbouring of persons committing terrorist acts?
  - The provision of weapons to terrorist groups?
  - The recruitment of persons to be members of terrorist groups or to participate in terrorist acts?
  - The provision of training and instruction to terrorist groups and persons committing terrorist acts?
  - The incitement, promotion or solicitation of property for the commission of terrorist acts?
  - The provision of facilities in support of terrorist acts?
  - Conspiracy to commit offences?
  - Membership in terrorist groups?
  - The arrangement of meetings in support of terrorist groups?
  - Participation in the commission of terrorism-related offences?
  - The taking of hostages?

### **3.1.2 Organized Crime Offences Under National Law**

- A. Has the participation in an organized criminal group been criminalized?
- B. Has the liability of legal persons been established in law?

### **3.1.3 Money Laundering Offences Under National Law**

- A. Has the conversion, concealment or disguise of the proceeds of crime been criminalized?
- B. Has the acquisition, possession or use of proceeds of crime been criminalized?

- C. Has the participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating and counselling the commission of money laundering offences been criminalized?
- D. How are the predicate offences defined?

#### **3.1.4 Obstruction Of Justice Offences Under National Law**

- A. Has the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the production of evidence in relation been criminalized?
- B. Has the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official been criminalized?

#### **3.1.5 Corruption Offences Under National Law**

- A. Have active bribery, passive bribery, complicity in bribery offences, and other forms of corruption been criminalized?
- B. Have embezzlement, misappropriation or other diversion of property by a public official been criminalized?
- C. Has the bribery of foreign public officials and officials of public international organizations been criminalized?
- D. Has the trading in influence been criminalized?
- E. Has the abuse of functions been criminalized?
- F. Has illicit enrichment been criminalized?
- G. Has bribery in the private sector been criminalized?
- H. Has the liability of legal persons involved in acts of corruption been established?

#### **3.1.6 Smuggling Of Migrants And Human Trafficking Offences Under National Law**

- A. Has the smuggling of migrants (including attempts, participation as an accomplice, organizing, and directing others) been criminalized?
- B. Has the enabling of illegal residence been criminalized?
- C. Has the production and the procuring, providing, or possession of fraudulent travel and identity documents been criminalized?
- D. Has trafficking in persons been criminalized?

#### **3.1.7 Trafficking in Firearms Trafficking Offences Under National Law**

- A. Has the illicit manufacturing of firearms been criminalized?
- B. Has the illicit trafficking in firearms been criminalized?
- C. Has the tampering with markings on firearms been criminalized?

### **3.1.8 Illicit Drugs Offences Under National Law**

- A. Have the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery, transport, importation or exportation of illicit narcotic drugs or psychotropic substances been criminalized?
- B. Have the illicit cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs been criminalized?
- C. Have the illegal possession or purchase of narcotic drugs or psychotropic substances been criminalized?
- D. Have the manufacture, transport or distribution of equipment, materials or substances knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances been criminalized?
- E. Have the organization, management or financing of drug offences been criminalized?

### **3.1.9 Cybercrime Offences Under National Law**

- A. Have illegal access to computer data and systems, illegal interception, data interference, and system interference been criminalized?
- B. Have computer related forgery and frauds been criminalized?
- C. Have the necessary substantive and procedural laws to prevent and punish terrorist and other criminal activities perpetuated with the aid of computers and computer networks been enacted?

### **3.1.10 Jurisdiction Under National Law**

- A. Does the law establish jurisdiction for the above criminal offences? What courts may hear such offences?
- B. Under the law, how does the state obtain jurisdiction over those individuals and entities committing these offences?

## 4. INTERNATIONAL COOPERATION MECHANISMS

### 4.1 EXTRADITION

Multilateral Conventions dealing with extradition have been developed within the framework of various regional and other international organizations, such as the African Malagasy Common Organization, the Benelux Countries, the Council of Europe, the Commonwealth, the European Union, the Nordic States, the Organization of American States, the Arab League and the Southern African States. Extradition provisions are also included in a number of international conventions dealing with specific types of crime, including the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the UN Convention against Corruption, the UN Convention against Transnational Organized Crime and the universal conventions against terrorism. Bilateral treaties on extradition are too numerous to keep track of. In spite of all this, there are still numerous situations where existing legal instruments are insufficient or do not cover the offence or the country concerned. The existing regime of international cooperation in criminal matters is still in need of major improvements to avoid legislative loopholes and eliminate safe havens. There also remain numerous obstacles to quick and predictable extradition. The often-cumbersome processes of extradition need to be streamlined. For that purpose, model treaties have been made available to countries wishing to enter into new bilateral agreements including the **United Nations Model Treaty on Extradition**.

Furthermore, the **UN Conventions against Transnational Organized Crime and against Corruption** address some of the extradition issues that have arisen and recommend means to simplify evidentiary requirements and keep the burden of proof to a minimum in extradition proceedings. These conventions set basic minimum standards for extradition for offences they cover and also encourage the adoption of a variety of mechanisms designed to streamline the extradition process.

Countries need to continue to develop and refine their treaty network and modernize their extradition treaties. Nevertheless, it is the domestic law of the requested States that ultimately governs extradition works. According to the UNODC Informal Expert Working Group on Effective Extradition Casework Practice, “the sheer size and scope of the resulting domestic variations in substantive and procedural extradition law create the most serious ongoing obstacles to just, quick and predictable extradition”. Countries tend to have widely differing preconditions for granting extradition and have in place a number of procedural requirements and practices that impede expeditious collaboration. Recent trends in extradition treaties have focused on relaxing the strict application of certain grounds for refusal of extradition requests.

Reviewing the national these laws and renegotiating existing treaties are often necessary to ensure maximum flexibility in dealing with extradition requests. In many instances, changes to national extradition legislation are required as a procedural or enabling framework in support of the implementation of the relevant international treaties. In cases where a country can extradite in the absence of a treaty, a national legislation is often useful as a supplementary, comprehensive and self-standing framework for surrendering fugitives to requesting States. The UNODC has prepared a model law on extradition to assist interested Member States in drafting such legislation.

- There are often unnecessary obstacles to cooperation and extradition in existing laws and treaties. For example, the concept of “dual criminality” has been a procedural backbone of many, if not most, existing treaties on extradition and mutual legal assistance, but can also preclude more cooperative relationships in the investigation and prosecution of criminal matters. The use of the principle varies from one country to another, with some requiring dual criminality for all requests for assistance, some for compulsory measures only, some having discretion to refuse assistance on that basis, and some with neither a requirement or discretion to refuse. One of the innovations of the **UN Convention against Corruption** is to allow States Parties to depart from the application of the double criminality requirement (Art. 44, para. 2) The newly established framework on surrender (**Framework Decision on the European Arrest Warrant (EAW)**) among the Member States in the European Union introduces several innovations to previous extradition procedures, including: **Expeditious proceedings**: The final decision on the execution of the EAW should be taken within a maximum period of 90 days after the arrest of the requested person. Where the subject of the warrant consents, the maximum period is within 10 days after consent has been given (Art. 17).
- **Abolition of double criminality requirement in prescribed cases**: The double criminality principle shall not be verified for a list of 32 offences, (Art. 2, para. 2), should be punishable in the issuing Member State for a maximum period of at least 3 years of imprisonment and defined by the law of this Member State. These offences include participation in a criminal organization, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in weapons, munitions and explosives, corruption, fraud including that affecting the financial interests of the European Communities, laundering of the proceeds of crime, computer-related crime, environmental crime, facilitation of unauthorized entry and residence, murder and grievous bodily injury, rape, racism and xenophobia, trafficking in stolen vehicles, counterfeiting currency, etc.. For offences that are not included in the abovementioned list or do not meet the 3-year threshold, the double criminality principle still applies (Art. 2, para. 4).

- **“Judicialization” of the surrender:** The new surrender procedure based on the EAW is removed from the realm of the executive and has been placed in the hands of the judiciary. The judicial authorities are competent to issue or execute an EAW by virtue of the law of the issuing or executing Member State (Art. 6). Consequently, since the procedure for executing an EAW is primarily judicial, the administrative stage inherent in extradition proceedings, i.e. the competence of the executive authority to render the final decision on the surrender of the person sought to the requesting State, is abolished.
- **Surrender of nationals:** The European Union Member States can no longer refuse to surrender their own nationals. The Framework Decision does not include nationality as either a mandatory or optional ground for non-execution. Furthermore, Art. 5 para. 3, provides for the option of making execution conditional on a guarantee that, upon conviction, the individual is returned to his/her State of nationality to serve the sentence there.
- **Abolition of the political offence exception:** The political offence exception is not enumerated as mandatory or optional ground for non-execution of an EAW. The sole remaining element of this exception is confined to the recitals in the preamble of the Framework Decision (Recital 12) and takes the form of a modernized version of a non-discrimination clause.
- **Additional deviation from the rule of speciality:** (Art. 27 para. 1 of the Framework Decision enables Member States to notify the General Secretariat of the Council that, in their relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to carrying out of a custodial sentence or detention order for an offence committed prior to surrender, other than that for which the person was surrendered.

- Does the country require a treaty, under its law, to extradite an individual? Is a lawful extradition of an individual to another country possible without a treaty?
- Is there a national legislation governing extradition? What is it? What does it cover?
- On what grounds, according to national legislation, can extradition be refused? Are exceptions based on certain types of offences or punishment, political exceptions, prohibitions concerning extradition of nationals, etc.? Modern multilateral treaties addressing organized crime, corruption, terrorism or drug trafficking explicitly render certain offences ineligible for the political offence exclusion with respect to extradition.
- What are the main requirements of the country for granting an extradition request?
- Is there a dual criminality requirement in domestic law and bilateral treaties? Modern extradition legislation and treaty practice adopts a simple “punishability test” of both the foreign offence and equivalent domestic offence, regardless of their name or characterization in domestic legislation.
- Does the country recognize arrest warrants of other countries?
- What treaties does the country have with other countries? Are there countries that are obviously missing with which a treaty would be important?
- How recent are the country’s existing extradition treaties?
- Do existing treaties cover the offences that need to be covered by the international conventions to which the country has become a State Party, e.g. **UN Convention against Transnational Organized Crime**?
- Does the country’s current system impose complex authentication and certification requirements?
- Who or what agency deals with extradition requests? How is this obligation coordinated? Have the relevant personnel been trained in the legal requirements of extradition?
- Does the national law allow the temporary surrender of persons sought by a requesting State, e.g., temporarily extraditing someone serving a prison sentence?
- Is there a simplified process for the surrender of persons sought who voluntarily consent to stand trial or punishment in the requesting State?

- N. Does the country recognize its duty, in certain cases, to “extradite or submit to prosecution”?
- O. Are extradition requests subject to unduly lengthy juridical review and appeals processes, notwithstanding the fundamental right to review or appeal by the person sought?
- P. What kind of results is the country currently receiving to its requests for extradition?
- Q. Are modern means of communication and other technological means available to expedite the transmission of requests and responses?
- R. What is the language capability of key officials involved in processing requests (e.g. within the central authorities and prosecution services in general)?
- S. Is the country usually able to ensure that requests for extradition are executed within the deadlines specified by the requesting State?

## 4.2 MUTUAL LEGAL ASSISTANCE

Mutual legal assistance, as is the case with extradition, is generally based on bilateral and multilateral treaties, as well as on national legislation that either gives full effect to the relevant treaties or enables mutual assistance in absence of a treaty. Multilateral instruments such as the **UN Convention against Transnational Organized Crime**, the **UN Convention against Corruption**, or the **UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances** include detailed provisions concerning mutual assistance. Instruments on mutual legal assistance in criminal proceedings have also been adopted within the framework of the Commonwealth, the Council of Europe, the European Union, the Organization of American States, the South-East Asian Region (see the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters, signed on 29 November 2004), the Economic Community of West African States, and the Southern African Countries.

Further action is often required to minimize obstacles to the provision of effective assistance. Many jurisdictions are taking legislative, judicial and administrative initiatives to enhance their ability to give, receive, and effectively use mutual legal assistance. A key component of such efforts is the establishment of, at the national level, an effective and comprehensive legal basis for mutual legal assistance and, at the international level, the necessary treaties to create binding obligations to cooperate with respect to a range of modalities. These treaties and laws should be reviewed periodically and amended if necessary to keep pace with rapidly evolving practices and challenges in international cooperation. They should provide maximum flexibility to enable broad and expeditious assistance. To facilitate these efforts, the General Assembly has adopted the **Model Treaty on Mutual Assistance in Criminal Matters**. A model law on mutual legal assistance is also under preparation.

The current trend in international cooperation mechanisms is to favour arrangements which: (1) allow direct transmission of requests for mutual assistance and expedite the sending and service of procedural documents; (2) require compliance with formalities and procedures indicated and deadlines set by the requesting Member State; (3) facilitate the cross-border use of technical equipment (for observation purposes) and the interception of communications; (4) authorize controlled deliveries and allow covert investigations to take place across borders; (5) encourage the establishment of joint investigation teams; (6) permit, under certain circumstances, the hearing of witnesses by video or telephone conferences; and, (7) permit the temporary transfer of persons held in custody for purposes of investigation.

There is an increasing awareness of the need to limit the scope of any conditions or evidentiary requirements that may hinder the provision of effective legal assistance within the framework of human rights and other relevant international standards. The **UN Conventions against Transnational Organized Crime and against Corruption** include provisions on the freezing of assets, the use of video-conferences, and the “spontaneous transmission of information” without a request, which are finding their way into other bilateral and multilateral agreements.

Mutual assistance is often hindered by the fact that procedural laws of cooperating countries can vary considerably. For instance, the requesting State may require special procedures that are not recognized under the law of the requested State, or the latter may provide evidence in a form or manner which is unacceptable under the procedural law of the requesting State. Member States should strive to ensure that their current framework for providing assistance does not create unnecessary impediments to cooperation.

At the operational level, designating a single central authority for all incoming and outgoing legal assistance and extradition requests is crucial to international cooperation in criminal matters. In this way, a country can coordinate its own requests for assistance and stand ready to respond expeditiously to requests from other countries. Increasingly, mutual legal assistance treaties require that States Parties

designate a central authority (generally the ministry of justice) to which requests can be sent, thus providing an alternative to diplomatic channels.

The **UN Convention against Corruption** (as well as other instruments) calls for the widest measure of mutual legal assistance among States Parties. There may also be some “corruption-specific” obstacles to international legal assistance. For one thing, the offenders involved in a corruption case may well be part of or closely associated with the government officials whose cooperation is being sought. They may try to use their power and influence to hide, suppress or destroy relevant information or evidence or otherwise derail international cooperation attempts. They may have contacts or influence in the national financial institutions and be able to count on their complicity to cover their own wrongdoings. Finally, there may also be instances where “national interests” may be invoked against cooperation (e.g. to protect a national industry, employment, etc.). All this points at the need for strong relationships between law enforcement authorities based on a shared commitment to cooperate and to take all the measures necessary to stamp out corruption wherever it occurs.

There are a number of best practices that can facilitate the timely and efficient response of a state to a request from another states. Similarly, there are steps that a country can take to increase the likelihood that it will receive assistance from another state.

Criminal justice agencies understand the vital importance of receiving a timely response to their request for assistance. When delays are inevitable, they need to be informed about the reasons. All recent treaties emphasize the need for promptness in responding to requests for assistance. One should look for practical and procedural means of addressing the problem. Some of the solutions reside in building the capacity within each State to respond and to deal with some frequently occurring problems: improved communication channels; enhanced translation capacities; language training; use of standardized forms and guidebooks; development and use of checklists of evidentiary requirements to be satisfied for a request to be accepted; secondment and exchanges between personnel in central authorities or between executing and requesting agencies; training material and courses; bi-lateral and regional seminars and information exchange sessions; and, the use of liaison officers and liaison magistrates to facilitate the preparation of the requests for assistance and any follow-up communications.

Cooperation can also be expedited through the use of alternatives to formal mutual assistance requests, such as informal police channels and communication mechanisms, or when evidence is voluntarily given or publicly available, or the use of joint investigation teams with a capacity to directly transmit and satisfy informal requests for assistance.

- A. Could measures be taken by the country to minimize the grounds upon which assistance may be refused, e.g. finding ways to minimize the consequences of the principle of *ne bis in idem* as a ground of refusal? (*Ne bis en idem* stands for the proposition that once a person has been the subject of a decision on the facts and legal norms in a criminal case, then he or she should not be the subject of further decisions on the same matter.)
- B. Could the country reduce existing limitations on the use of evidence in response to a request for mutual assistance and streamline the grounds upon which and the process whereby limitations are imposed?
- C. Is the country ensuring, as much as possible, that requests are executed in compliance with procedures and formalities specified by the requesting State to ensure that the request achieves its purpose.
- D. Are existing measures sufficient for the protection of confidential data and information relating to requests of mutual assistance? (Also, is the confidentiality of requests for assistance received protected when possible and, when not possible, is the requesting State advised that its request may not be kept confidential?)
- E. Does the existing national legal framework provide fortuitous opportunities for third parties to unduly delay cooperation and to completely block the execution of a request for assistance on technical grounds?
- F. What is the current capability/capacity of the central authority, if one exists? If there is no central authority, are there plans to create one?
- G. Are justice officials aware of national legislation, existing treaties and their requirements?
- H. Have steps been taken to make sure that foreign officials are aware of the national legal requirements in international cooperation (e.g. be developing guidelines, simple forms,

checklists, and procedural guides on the requirements that must be met in order to obtain assistance)?

- I. Have the relevant personnel been trained in mutual legal assistance?
- J. Are direct contacts between justice officials with foreign officials encouraged/ permitted/facilitated?
- K. Are prosecutors and other officials encouraged to avoid a rigid interpretation of the prerequisites to mutual assistance in a way that can impede the granting of assistance?
- L. What kind of results is the country currently receiving to its request for extradition and mutual legal assistance?
- M. Are modern means of communication and other technological means available to expedite the transmission of requests and responses?
- N. What is the language capability of key officials involved in processing requests (e.g. within the central authorities and prosecution services in general)?
- O. Is the country usually able to ensure that requests for legal assistance and/or extradition are executed within the deadlines specified by the requesting State?
- P. Are officials generally able to coordinate multi-jurisdictional cases with the jurisdictions involved?

### 4.3 TRANSFER OF SENTENCED PERSONS

It often important to be able to transfer persons sentenced to imprisonment from one country to another. Transfer may also be used in a manner that complements other forms of cooperation. Depending on national law it is sometimes necessary to have a treaty as a basis for such exchange. Bilateral treaties vary considerably among themselves. International treaties, such as the **Conventions against Transnational Organized Crime and against Corruption** also have dispositions meant to encourage that kind of international justice collaboration when appropriate. Model treaties also exist, including the **Model Agreement on the Transfer of Foreign Prisoners**.

- A. What does national law provide concerning the transfer of prisoners to another country?
- B. To what treaties (bilateral or multilateral) is the State a party?
- C. Are there any restrictions to the prisoner exchanges in which the country will engage?
- D. What difficulty have justice officials encountered in obtaining the transfer of prisoners?
- E. What difficulty have justice officials encountered in negotiating treaties with other countries for the transfer of prisoners?
- F. How frequent are transfer of prisoners?

## 4.4 TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS

The possibility of transferring proceedings in criminal matters from one country to another is another interesting option upon which to build stronger international cooperation. Such a transfer can be used to increase the likelihood of the success of a prosecution, when for example another country appears to be in a better position to conduct the proceedings. It can also be used to increase the efficiency and effectiveness of the prosecution in a country that is initiating proceedings in lieu of extradition. Finally, it can be a useful method of concentrating the prosecution in one jurisdiction and increasing its efficiency and the likelihood of its success in cases involving several jurisdictions.

The **UN Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Article 8)** against **Transnational Organized Crime (Article 21)** and against **Corruption (Article 47)** contain provisions enabling States Parties to transfer proceedings where this is in the interest of the proper administration of justice. Please see also the **UN Model Treaty on the Transfer of Proceedings in Criminal Matters**.

- A. Is the transfer of criminal proceedings possible under national law?
- B. Are there any restrictions, under law, to the possible transfer of criminal proceedings?
- C. What treaties is the country currently party to which refer to or call for transfers of proceedings?
- D. What difficulties/issues have been encountered in attempting to transfer proceedings?
- E. Does the country frequently receive requests for transfer of proceedings? From predominantly which countries?
- F. Does the country frequently request a transfer of proceedings from other countries? On what basis? From most often which countries?

## 4.5 INVESTIGATION OF BRIBERY; CORRUPTION; ECONOMIC AND FINANCIAL CRIME; AND MONEY-LAUNDERING

Given that organized criminal groups and terrorist organizations make use of illegal financial transactions to both transfer and fraudulently acquire funds, higher levels of international cooperation between States are required to prevent and punish financial crimes without disrupting legitimate commerce. Advances in technology and new opportunities for criminal activities present constant challenges for prosecutors and stretch the capacity of existing international cooperation mechanisms to their limit. International cooperation has focused in part on controlling money laundering. The international regime against money laundering is the result of a framework and international standards adopted in the context of various regional and international organizations. Recent United Nations conventions against organized crime and against corruption also include provisions against money laundering. There is also growing international interest in exploring the viability of building a tighter international cooperation framework to combat financial and economic crimes in general.

The gathering and exchange of information by Member States to detect financial networks linked to organized crime groups and terrorist actors, including exchange of information between law enforcement and regulatory bodies, are necessary to a strategic approach to combating organized crime. Establishing financial intelligence units (FIUs) is essential for financial investigations and international cooperation. It is also important to identify innovative and technologically advanced methods of direct cooperation between FIUs, as well as cooperation between FIUs and prosecution services across national borders.

The successful investigation and prosecution of financial and economic crime and money laundering offences require the quick identification and communication of information from banks and other financial institutions. In many instances, changes to bilateral treaties or national legal frameworks are required to allow for the lawful and expeditious exchange of that information across borders. Treaties and international arrangements include provisions not only for prompt responses to requests for information on banking transactions of natural or legal persons, but also for the monitoring of financial transactions at the request of another State and for the spontaneous transmission of information on instrumentalities or proceeds of crime to another State. Spontaneous transmission of information, even in the absence of a request, should be encouraged when they may assist the receiving State in initiating or carrying out investigations or proceedings that might lead eventually to a formal request for cooperation. Article 56 of the **UN Convention against Corruption** requires States parties to endeavour to enable themselves to forward information on proceeds of corruption offences to

another State Party without prior request, when such disclosure might assist the receiving State in investigations, prosecutions or judicial proceedings or might lead to a request by that State under this chapter of this Convention.

Finally, the existence of offshore centres presents practical problems from the point of view of cooperation among prosecution services. Difficulties are frequently experienced in dealing with the differences in company laws and other regulatory norms. There are also issues with cyber-payments, "virtual banks" operating in under-regulated offshore jurisdictions, and shell companies operating outside of the territory of the offshore centre. Finally, control agencies have been trying to improve measures to curb money laundering in countries where participation in the "formal" financial system is low. Understanding these informal financial networks and how criminal actors can abuse them is a priority.

**PLEASE SEE ALSO POLICING: CRIME INVESTIGATION and POLICE INFORMATION AND INTELLIGENCE SYSTEMS; AND ACCESS TO JUSTICE: THE PROSECUTION SERVICE.**

- A. Is there a FIU in the country? How is it staffed, funded, resourced, etc?
- B. Does national legislation criminalize money laundering?
- C. Is national legislation in compliance with the standards set by international treaties?
- D. Is there a regulatory regime that requires banks and financial institutions to ensure: customer identification, record keeping, and mechanisms to report suspicious transactions?
- E. What measures did the country establish to monitor cross-border movement of cash and other monetary instruments?
- F. Is there any data of the functioning and efficiency of the country's FIUs?
- G. Is the FIU collaborating directly with other national FIUs?
- H. Is the intelligence collected by the FIUs used by law enforcement and prosecutions services?
- I. What is the situation in the country with respect to informal value transfer systems?
- J. What are the typical requests the country receives or sends out for financial information? What are the average delays in receiving that information or in responding to a request for financial information?
- K. What bank secrecy laws exist that may impede investigations or become a basis for refusing a request for cooperation?
- L. Are there offshore centres in the country? If yes, how and where do they operate and under what regulations?
- M. What evidence is there of money laundering activities in the country?
- N. What evidence is there of financial and economic crime in the country?
- O. What evidence is there of bribery and corruption in both public life and in commercial transactions in the country?

## 4.6 CONFISCATION OF CRIME-RELATED ASSETS

Confiscation within a jurisdiction and internationally is made difficult by the complexities in the banking and financial sector and by technological advances. The **UN Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; against Transnational Organized Crime; against Corruption; and for the Suppression of the Financing of Terrorism** contain provisions on the tracing, freezing, seizing and confiscation of instrumentalities and proceeds of crime. Other international efforts against money laundering and terrorist finance are based on the **Forty + Nine Recommendations of the Financial Action Task Force on Money Laundering** and the Basel Committee on Banking Regulations and Supervisory Practices.

Effective action against corruption must include measures to deprive perpetrators of the proceeds of corruption and targeting such proceeds by rigorous international cooperation to enable the freezing, seizing and recovery of assets diverted through corruption. The **UN Convention against Corruption** contains some innovative and far-reaching provisions on asset recovery, including provisions to facilitate the return of stolen government assets to their countries of origin.

International cooperation in confiscation continues to pose particular difficulties. The **UN Convention against Transnational Organized Crime (UNTOC)** and, most importantly, the **UN Convention against Corruption (UNCAC)** offer standards along which national laws and practices can be aligned. A ground-breaking innovation of the Convention against Corruption is the entire chapter devoted to asset recovery, which addresses the cooperation between jurisdictions where assets are located and victims, including States and other parties. The objective is to develop national legislative frameworks and practices that provide flexibility in providing international cooperation while protecting the legitimate interests of third parties. Efforts should also be made to enlist the cooperation of the banking and financial sectors and to ensure that relevant law enforcement authorities are familiar with the cooperation currently available from other countries and with the means to seek and obtain that cooperation.

Article 57 of UNCAC is a provision on the return and disposal of assets that departs from the UNTOC and other earlier Conventions under which the confiscating State is deemed to have ownership of the confiscated proceeds. (Article 14 para. 1 of the UNTOC, for example, leaves the return or other disposal of confiscated assets to the discretion of that State in accordance with its domestic law and administrative procedures). In the case of asset recovery, the return of confiscated property to the requesting State depends on how closely this property is linked to that State, but there is an obligation to return the confiscated property in the case of embezzlement of public funds or laundering of embezzled public funds. For other offences established in accordance with UNCAC, the obligation for return exists where the requesting State establishes prior ownership or where the requested State recognizes damage to the requesting State as a basis for the return. In all other cases, priority consideration shall be given to returning confiscated property to the requesting State, returning such property to prior legitimate owners or compensating the victims of the crime.

Art. 53 of UNCAC requires States Parties to enable other States Parties to seek for the direct recovery of property and permit: a) other States parties to initiate civil action to establish title to or ownership of property acquired through corruption offences (no more dependence on mutual legal assistance request); b) national courts to order corruption offenders to pay compensation or damages to another State Party; and c) national courts, when deciding on confiscation issues, to recognize other State Party's claim as a legitimate owner of property acquired through corruption. UNCAC extends international cooperation to cover investigations of or proceedings in civil and administrative matters as well

The European Union also took decisive steps to improve cooperation for the confiscation of proceeds of crime. In May 2005, a comprehensive regional framework for international cooperation in such matters was also adopted in the **Council of Europe Convention on Laundering, Search and Confiscation of the Proceeds of Crime and on the Financing of Terrorism**.

These international instruments are to ensure that each Party adopts such legislative and other measures as may be necessary to trace, identify, freeze, seize, confiscate criminal assets, manage these assets, and extend the widest possible cooperation to other States Parties in relation to tracing, freezing, seizing or confiscating proceeds of crime. A similar ability must also exist among cooperating states with respect to assets of a licit or illicit origin, used or to be used for the financing of terrorism.

The implementation of effective measures against terrorism financing remains a priority for the international community. The **International Convention for the Suppression of the Financing of Terrorism** requires States Parties to establish the offence of financing of terrorism and to enact certain requirements concerning the role of financial institutions in the detection and reporting of evidence of financing of terrorist acts. In addition, States Parties are required to engage in wide-ranging cooperation with other States Parties and to provide them with legal assistance in the matters covered by the Convention. The G-8 Lyon Group has put forward a set of best practice principles on tracing, freezing and confiscation of crime related assets, including terrorism. These principles emphasize the need for multi-disciplinary cooperation between legal, law-enforcement, and financial and accountancy experts within and across jurisdictions. They underline the necessary specialization of competent authorities to deal with complex cooperation issues.

Finally, international cooperation can be substantially facilitated by the development of equitable arrangements for the sharing of forfeited assets and confiscated proceeds of crime. See as well the Model Bilateral Agreement on the Sharing of confiscated proceeds of crime or property covered by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, [http://www.unodc.org/pdf/ECOSOC\\_resolution\\_2005-14.pdf](http://www.unodc.org/pdf/ECOSOC_resolution_2005-14.pdf).

- A. What is the legal framework regarding asset recovery, confiscation, and forfeiture? Is it adequate?
- B. What are the treaties to which the State is a party that create obligations with respect to asset confiscation and forfeiture?
- C. What mechanisms exist in the country to identify, trace, seize or freeze property/assets, including bank, financial, or commercial records, as well as equipment and other instrumentalities used in, or destined to be used in the commission of crimes?
- D. What bank secrecy laws exist that may impede investigations or become a basis for refusing a request for cooperation?
- E. Are agencies able to use investigative strategies that target the assets of organized crime through inter-connected financial investigations?
- F. Is there a national capacity to engage in active and continuous exchanges of relevant financial intelligence information and analyses with other countries?
- G. Can there be informal (and not formally requested) exchanges of information between the country and other jurisdictions?
- H. Are there dispositions in national law that enable confiscation or forfeiture of assets proceedings that are independent from other criminal proceedings?
- I. Has the country entered into bilateral or other agreements for asset sharing among countries involved in tracing, freezing and confiscation of assets originating from organized crime activities?
- J. What is the legislated authority of law enforcement agencies to seize property used in the commission of criminal offences?
- K. Is there any data on the confiscation of crime-related assets facilitated by international cooperation?
- L. Any data on the value of assets seized/recovered? How these assets were distributed or returned?
- M. What problems have been encountered in seeking or offering international cooperation in relation to crime-related assets?

## 4.7 PROTECTION OF WITNESSES AND VICTIMS

As many criminal and terrorist groups operate across borders, the threat they represent to witnesses and collaborators is not confined to national borders. Physical and psychological intimidation of witnesses and their relatives can take place in a variety of contexts. Furthermore, witnesses need at times to move from to another country during lengthy criminal proceedings. Victims of human trafficking, for example, may need to return to their country of origin while waiting for a hearing or a trial during which they are to provide evidence. Finally, there are cases where a State, because of its size, means or other circumstances, may not be able on its own to provide the required protection and safety to the witnesses.

For all these reasons, cooperation in the protection of witnesses and their relatives, including repatriated victims/witnesses of trafficking and their relatives, and collaborators of justice becomes a necessary component of cooperation between prosecution services. Furthermore, international cooperation may also be required at times in order to protect interpreters, the prosecutors themselves and other judicial and correctional personnel.

Effective protection of witnesses, victims, and collaborators of justice involves legislative and practical measures to ensure that witnesses testify freely and without intimidation: the criminalization of acts of intimidation, the use of alternative methods of providing evidence, physical protection, relocation programmes, permitting limitations on the disclosure of information concerning their identity or whereabouts, and in exceptional circumstances, protecting the anonymity of the person giving evidence.

The **UN Conventions against Transnational Organized Crime** and **against Corruption** require States Parties to take appropriate measures within their means to effectively protect witnesses in criminal proceedings who give testimony concerning offences covered by the Conventions. The cooperation of corporate information sources and protection of "whistle-blowers" are often crucial in the prosecution of corruption offences.

To ensure greater international cooperation in effective witness protection, bilateral and multilateral instruments can be adopted for the safe examination of witnesses at risk of intimidation or retaliation and to implement temporary or permanent relocation of witnesses. Offering effective protection to collaborators of justice, including members or former members of criminal organizations, is also part of that equation.

- A. Is the intimidation of witnesses and victims criminalized?
- B. Does national law allow the use of alternative methods of providing evidence?
- C. What capacity is there to offer effective physical protection to victims and witnesses?
- D. Are there victim/witness assistance and protection programmes? Are they available to victims/witnesses of crime in other countries?
- E. Does national law establish limitations on the disclosure of information concerning victims' and witnesses' identity or whereabouts, and in exceptional circumstances, protecting the anonymity of the person giving evidence?
- F. Can agencies assist other countries in safely repatriating victims, particularly children?
- G. Can agencies offer international assistance in evaluating the threat against a witness or victim? Can they promptly communicate information concerning potential threats and risks to other jurisdictions?
- H. Can the country offer assistance to other jurisdictions in relocating witnesses and ensuring their ongoing protection?
- I. Can the country offer protection to witnesses who are returning to a foreign country in order to testify and collaborate in the safe repatriation of these witnesses?
- J. Can the country cooperate in the safe repatriation of victims of human trafficking and international kidnapping?
- K. Can the country offer protection to prisoners who will be or have been witnesses in cases in other countries?
- L. Any data on international cooperation in the protection of witnesses and victims?
- M. What the problems most frequently encountered?

## 4.8 USE OF SPECIAL INVESTIGATIVE TECHNIQUES

Obstacles to law-enforcement cooperation include the diversity of national policing structures and big differences between the regulations governing special investigative methods. Proactive law enforcement strategies and complex investigations frequently involve special investigative techniques. When a case requires international cooperation, differences in the law regulating the use of these techniques can become a source of difficulties. Major efforts are made in the process of implementing the **UN Convention against Transnational Organized Crime** and other international initiatives to identify and remedy these difficulties.

The effectiveness of techniques such as electronic surveillance, undercover operations and controlled deliveries cannot be overemphasized. These techniques are especially useful in dealing with sophisticated organized criminal groups because of the inherent difficulties and dangers involved in gaining access to information and gathering intelligence on their operations. Technological advances, such as cross-border surveillance using satellites or the interception of telephone conversations through satellite connections, make cross-border investigation possible without physical presence of a foreign investigating officer.

Domestic arrangements and legislation relating to these techniques must be reviewed to reflect technological developments, taking full account of any human rights implications, and to facilitate international cooperation.

The use of DNA analyses is playing an important role in resolving complex criminal cases and in supporting the prosecution of serious offences. Not all jurisdictions have legislation allowing the use of this tool as part of criminal investigations. Some of them have the necessary legislation, but do not have the forensic analysis capacity to collect, analyze and make use of that kind of evidence. International cooperation, in many instances, is taking the form of sharing that analytical capacity. The exchange of expertise regarding scientific and technological developments such as advances in forensic sciences is to be encouraged. The country may need to review its legislation to ensure that it provides for the gathering, analysis, storage and lawful sharing of DNA information on offenders.

In addition to the admissibility of evidence collected in other countries through methods that are not accepted in another country, there is also the question of whether violations of national laws by investigation officers from other countries affect the admissibility of the evidence. The answer to that question varies from country to country. The verification of the legitimacy of evidence obtained as a result of international police cooperation is replete with procedural and practical difficulties. With a few regional exceptions, international cooperation in the field of covert investigations tends to take place in a juridical vacuum. Member States increasingly seek to provide a legal basis for judicial cooperation in criminal matters for officers acting under cover or false identity.

- A. Is the use of modern investigation techniques allowed under national law? If not, how has it created problems for international cooperation?
- B. What legislative amendments would be required to facilitate international law enforcement cooperation?
- C. Are the police making use of the facilities of other countries (forensic labs, analytical expertise, etc.)?
- D. If special investigative techniques are allowed under national law, what is the experience of the country in using them in the context of international cooperation?

## 4.9 LAW ENFORCEMENT COOPERATION

International law enforcement cooperation can be enhanced through the development of more effective systems of information sharing at the regional and international levels. In many instances, international cooperation is hindered by the absence of clear channels of communication. In other instances, channels exist but their inefficiency prevents the timely exchange of both operational (data useful in responding to specific offences, offenders, or criminal groups) and general information (data on criminal networks, on trends and patterns of trafficking, extent of known criminal activity in a particular sector and typical modus operandi). The development of regional or sub-regional databases could also be considered.

The establishment of joint investigative teams represents a major new trend in the development of an effective capacity to investigate and prosecute transnational crimes of all sorts. It offers one of the most promising new forms of international cooperation against organized crime, corruption and terrorism, even if there are still some remaining issues in terms of making it fully functional on a broad scale. There are legal issues, as well as issues of attitude and trust among law enforcement agencies, or even procedural questions such as whether a foreign investigation official who participated in a joint investigative team may be compelled to take the witness stand subsequently during the criminal proceedings.

There are also some practical problems in the organization of joint investigations, including the lack of common standards and accepted practices, issues around the supervision of the investigation, and the absence of mechanisms for quickly solving these problems. For joint investigative teams to become an effective tool for international cooperation States must put in place the required legal framework, both at the national and international levels, although such a framework need not necessarily be very complicated.

Law enforcement liaison officers provide direct contact with the law enforcement and government authorities of the host State. They can develop professional relationships, build confidence and trust, and generally facilitate the liaison between the law enforcement agencies in the States involved. When the legal systems of the States concerned are very different, liaison officers can also advise law enforcement and prosecutorial authorities, both in their own State and in the host State, on how to formulate a request for assistance. The role of such liaison officers can be enhanced by ensuring that they have access, in accordance with the law of the host country, to all agencies in that country with relevant responsibilities.

Reciprocal arrangements can also be made by States to facilitate the exchange of "liaison magistrates" or other criminal justice liaison personnel. These appointments aim to encourage cooperation between countries, particularly but not exclusively in international criminal law and mutual legal assistance in criminal matters. They can alleviate the misunderstandings created by real and perceived differences between legal systems and facilitate and expedite requests and other communications between the participating States.

- A. Is the country capable of establishing joint investigation teams with other countries? If not, why not? What are the obstacles?
- B. Does the country have arrangements with other countries for the exchange of liaison police officers, or liaison magistrate?
- C. Do the national police participate in the activities of INTERPOL?
- D. What is the situation in the country with respect to the collection and analysis of DNA evidence?
- E. Is the country involved in arrangements with other countries for the exchange of information and intelligence? If so, which ones?
- F. What is the experience of law enforcement agencies of the country with international cooperation?
- G. Have law enforcement agencies been involved in international joint investigation teams? What was the experience?
- H. Has the country entered into bilateral or multilateral agreements on law enforcement cooperation?
- I. Is the national law enforcement agency a member of Interpol? How does it cooperate with the agency?
- J. Does the country have law enforcement liaison officers in other countries?
- K. Are there foreign police liaison officers in the country? From what country? How do they work with the police? What is their view on the quality of existing law enforcement cooperation with the country?
- L. Does the national police cooperate with police agencies in other countries in the collection, exchange and analysis of criminal intelligence information?

#### 4.10 CRIME PREVENTION

Several international instruments call for law enforcement and other international forms of cooperation in the prevention of crime. The **UN Convention against Corruption**, for example, calls for cooperation between preventive anti-corruption bodies.

- A. Is the country engaged in international cooperation for the purpose of crime prevention? What are these activities? With what countries, regional or international bodies?
- B. To what extent is the public aware of these efforts? How is the public being reached? Is there evidence that these cooperative activities are effective in preventing crime?
- C. What has been the international cooperation experience of the country in the field of crime prevention?
- D. Has the country participated in the development of regional crime prevention strategies (e.g. the CARICOM Strategy)?

## 5. COORDINATION OF ASSISTANCE

- A. Identify the donor strategy papers for the justice sector and amount of money set aside in support.
- B. Is international cooperation/compliance with treaty obligations discussed in individual donor country action plans/or strategy papers? Are donors responding to nationally set priorities?
- C. Where direct budget support is supplied, is part of it earmarked for the justice sector? If so, how much?
- D. Where a Medium Term Expenditure Framework is in place, indicate what is set aside for justice in general and international cooperation/compliance with treaty obligations in particular?
- E. Which donor/development partners are active in criminal justice issues? Is the approach by donors targeted to the institution concerned and divided between donors, or sector wide (i.e. taking the issue of criminal justice reform as a whole)?
- F. What projects have donors supported in the past; what projects are now underway? What lessons can be derived from those projects? What further coordination is required?

## ANNEX A. KEY DOCUMENTS

### UNITED NATIONS

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- United Nations Convention against Transnational Organized Crime and the Protocols thereto
- United Nations Convention against Corruption
- International Convention for the Suppression of the Financing of Terrorism (1999), G.A. res. 54/109
- The 13 Universal conventions against terrorism (see: UNODC compendium of legislation)
- UNODC (2005). Corruption - Compendium of International Legal Instruments
- UNODC (2005). Legislative Guides for the Implementation of the UN Convention against Transnational Organized Crime and the Protocols thereto
- UNODC (2006). Legislative Guide for the Implementation of the UN Convention against Corruption
- UNODC (2005), Guide for the Legislative Incorporation and Implementation of the Universal Instruments against Terrorism
- United Nations Office on Drugs and Crime (2004). Report of the Informal Expert Working Group on Effective Extradition Casework Practice, Vienna
- The United Nations Model Treaty on Extradition (General Assembly resolution 45/116, subsequently amended by resolution 52/88). See also the manual on the Model treaty in the UNODC website: [http://www.unodc.org/unodc/en/legal\\_advisory\\_tools.html](http://www.unodc.org/unodc/en/legal_advisory_tools.html)
- United Nations Office on Drugs and Crime (2004). Model Law on Extradition. [www.unodc.org/pdf/model\\_law\\_extradition.pdf](http://www.unodc.org/pdf/model_law_extradition.pdf)
- Model Treaty on Mutual Assistance in Criminal Matters, General Assembly resolution 45/117, annex, and 53/112, annex 1
- Model Treaty on the Transfer of Proceedings in Criminal Matters. G.A. resolution 45/118 of 14 December 1990
- Model Bilateral Agreement on the Sharing of confiscated proceeds of crime or property covered by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, [http://www.unodc.org/pdf/ECOSOC\\_resolution\\_2005-14.pdf](http://www.unodc.org/pdf/ECOSOC_resolution_2005-14.pdf)
- Model Checklists and Forms for Good Practice in Requesting Mutual Legal Assistance, developed by the UNDCP Informal Expert Working Group on Mutual Legal Assistance Casework Best Practice (Vienna, UNDCP, December 3-7, 2001)
- United Nations Office for Drug Control and Crime Prevention (2001). Report of the UNDCP Informal Expert Working Group on Mutual Legal Assistance Casework Best Practice, Vienna, December 3-7, 2001

### REGIONAL

- The European Convention on the Transfer of Proceedings in Criminal Matters (Council of Europe) came into force in 1978.
- Council of Europe, Council of Europe Convention on Laundering, Search and Confiscation of the Proceeds of Crime and on the Financing of Terrorism. Warsaw, 16.5.2005.

**OTHER USEFUL SOURCES:**

- International Monetary Fund (2003). *Suppressing the Financing of Terrorism – A Handbook for Legislative Drafting*. New York
- G8 – Best Practice Principles on Tracing, Freezing and Confiscation of Assets [http://www.usdoj.gov/ag/events/g82004/G8\\_Best\\_Practices\\_on\\_Tracing.pdf](http://www.usdoj.gov/ag/events/g82004/G8_Best_Practices_on_Tracing.pdf)
- International Association of Prosecutors (2004). *International Co-operation –Basic Guide to Prosecutors in Obtaining Mutual Legal Assistance in Criminal Matters*. The Hague: IAP

## ANNEX B. ASSESSOR'S GUIDE / CHECKLIST

	TOPIC	▪ SOURCES	CONTACTS	COMPLETED
2.	OVERVIEW	<ul style="list-style-type: none"> <li>▪ UN conventions and international treaties to which country is a party</li> <li>▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party</li> <li>▪ Constitution</li> <li>▪ National legislation, criminal code, criminal procedure code</li> <li>▪ Governmental reports</li> <li>▪ Policy/procedure manuals</li> <li>▪ Donor reports</li> </ul>	<ul style="list-style-type: none"> <li>▪ Foreign Ministry</li> <li>▪ Ministry of Justice/ Attorney General's Office</li> <li>▪ Minister of Interior</li> <li>▪ National Police</li> <li>▪ Head of Prosecution Service, senior prosecutors</li> <li>▪ Senior law enforcement officials</li> <li>▪ Central Authority personnel, if any</li> <li>▪ Judges</li> <li>▪ Senior justice officials</li> <li>▪ Law schools/Academics</li> </ul>	
3.	LEGAL FRAMEWORK			
3.1	ESTABLISHING OFFENCES UNDER NATIONAL LAW	<ul style="list-style-type: none"> <li>▪ Conventions as above</li> <li>▪ Constitution</li> <li>▪ National legislation, criminal code, criminal procedure code</li> </ul>	<ul style="list-style-type: none"> <li>▪ Attorney General's Office</li> <li>▪ Ministry of Justice</li> <li>▪ Ministry of Interior</li> <li>▪ Senior justice officials</li> <li>▪ Senior prosecution personnel</li> <li>▪ Law schools</li> <li>▪ Academics</li> </ul>	
4.	INTERNATIONAL COOPERATION MECHANISMS			

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.1	EXTRADITION	<ul style="list-style-type: none"> <li>▪ Extradition treaties to which country is a party</li> <li>▪ National legislation, criminal code, criminal procedure code</li> <li>▪ Governmental reports</li> <li>▪ Policy/procedure manuals</li> <li>▪ Donor reports</li> </ul>	<ul style="list-style-type: none"> <li>▪ Foreign Ministry</li> <li>▪ Ministry of Justice/ Attorney General's Office</li> <li>▪ Minister of Interior</li> <li>▪ Central Authority personnel, if any</li> <li>▪ National Police</li> <li>▪ Head of Prosecution Service, senior prosecutors</li> <li>▪ Senior law enforcement officials</li> <li>▪ Central Authority personnel, if any</li> <li>▪ Judges</li> <li>▪ Senior justice officials</li> <li>▪ Defence Attorneys</li> <li>▪ Law schools/Academics</li> </ul>	
4.2	MUTUAL LEGAL ASSISTANCE	<ul style="list-style-type: none"> <li>▪ UN conventions and international treaties to which country is a party</li> <li>▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party</li> <li>▪ Constitution</li> <li>▪ National legislation, criminal code, criminal procedure code</li> <li>▪ Governmental reports</li> <li>▪ Policy/procedure manuals</li> <li>▪ Donor reports</li> </ul>	<ul style="list-style-type: none"> <li>▪ Foreign Ministry</li> <li>▪ Ministry of Justice/ Attorney General's Office</li> <li>▪ Minister of Interior</li> <li>▪ National Police</li> <li>▪ Head of Prosecution Service, senior prosecutors</li> <li>▪ Senior law enforcement officials</li> <li>▪ Central Authority personnel, if any</li> <li>▪ Judges</li> <li>▪ Senior justice officials</li> <li>▪ Law schools/Academics</li> </ul>	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.3	TRANSFER OF SENTENCED PERSONS	<ul style="list-style-type: none"> <li>▪ UN conventions and international treaties to which country is a party</li> <li>▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party</li> <li>▪ Constitution</li> <li>▪ National legislation, criminal code, criminal procedure code</li> <li>▪ Governmental reports</li> <li>▪ Policy/procedure manuals</li> </ul>	<ul style="list-style-type: none"> <li>▪ Foreign Ministry</li> <li>▪ Ministry of Justice/ Attorney General's Office</li> <li>▪ Minister of Interior</li> <li>▪ National Police</li> <li>▪ Central Authority personnel, if any</li> <li>▪ Head of Prosecution Service, senior prosecutors</li> <li>▪ Special Investigation/Prosecution Units</li> <li>▪ Senior law enforcement officials</li> <li>▪ Central Authority personnel, if any</li> <li>▪ Judges</li> <li>▪ Senior justice officials</li> <li>▪ Defence Attorneys</li> <li>▪ Law schools/Academics</li> </ul>	
4.4	TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS	<ul style="list-style-type: none"> <li>▪ UN conventions and international treaties to which country is a party</li> <li>▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party</li> <li>▪ Constitution</li> <li>▪ National legislation, criminal code, criminal procedure code</li> <li>▪ Governmental reports</li> <li>▪ Policy/procedure manuals</li> </ul>	<ul style="list-style-type: none"> <li>▪ Foreign Ministry</li> <li>▪ Ministry of Justice/ Attorney General's Office</li> <li>▪ Minister of Interior</li> <li>▪ Central Authority personnel, if any</li> <li>▪ National Police</li> <li>▪ Head of Prosecution Service, senior prosecutors</li> <li>▪ Special Investigation/Prosecution Units</li> <li>▪ Financial Intelligence Unit Leader/Staff</li> <li>▪ Senior law enforcement officials</li> <li>▪ Central Authority personnel, if any</li> <li>▪ Judges</li> <li>▪ Senior justice officials</li> <li>▪ Defence Attorneys</li> <li>▪ Law schools/Academics</li> </ul>	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.5	INVESTIGATION OF BRIBERY; CORRUPTION; ECONOMIC AND FINANCIAL CRIME; AND MONEY-LAUNDERING	<ul style="list-style-type: none"> <li>▪ UN conventions and international treaties to which country is a party</li> <li>▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party</li> <li>▪ Constitution</li> <li>▪ National legislation, criminal code, criminal procedure code, administrative codes, including banking law</li> <li>▪ Governmental reports</li> <li>▪ Policy/procedure manuals</li> <li>▪ Donor reports</li> </ul>	<ul style="list-style-type: none"> <li>▪ Foreign Ministry</li> <li>▪ Ministry of Justice/ Attorney General's Office</li> <li>▪ Minister of Interior</li> <li>▪ National Police</li> <li>▪ Central Authority personnel, if any</li> <li>▪ Special Investigation/Prosecution Units</li> <li>▪ Financial Intelligence Unit Leader/Staff</li> <li>▪ Head of Prosecution Service, senior prosecutors</li> <li>▪ Senior law enforcement officials</li> <li>▪ Central Authority personnel, if any</li> <li>▪ Judges</li> <li>▪ Senior justice officials</li> <li>▪ Law schools/Academics</li> </ul>	
4.6	CONFISCATION OF CRIME-RELATED ASSETS	<ul style="list-style-type: none"> <li>▪ UN conventions and international treaties to which country is a party</li> <li>▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party</li> <li>▪ Constitution</li> <li>▪ National legislation, criminal code, criminal procedure code, administrative codes, including banking law</li> <li>▪ Governmental reports</li> <li>▪ Policy/procedure manuals</li> <li>▪ Donor reports</li> </ul>	<ul style="list-style-type: none"> <li>▪ Foreign Ministry</li> <li>▪ Ministry of Justice/ Attorney General's Office</li> <li>▪ Minister of Interior</li> <li>▪ National Police</li> <li>▪ Special Investigation/Prosecution Units</li> <li>▪ Financial Intelligence Unit Leader/Staff</li> <li>▪ Head of Prosecution Service, senior prosecutors</li> <li>▪ Senior law enforcement officials</li> <li>▪ Central Authority personnel, if any</li> <li>▪ Judges</li> <li>▪ Senior justice officials</li> <li>▪ Law schools/Academics</li> </ul>	

	TOPIC	SOURCES	CONTACTS	COMPLETED
4.7	PROTECTION OF WITNESSES AND VICTIMS	<ul style="list-style-type: none"> <li>▪ UN conventions and international treaties to which country is a party</li> <li>▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party</li> <li>▪ Constitution</li> <li>▪ National legislation, criminal code, criminal procedure code, administrative codes, including banking law</li> <li>▪ Governmental reports</li> <li>▪ Policy/procedure manuals</li> <li>▪ NGO reports</li> <li>▪ Donor reports</li> </ul>	<ul style="list-style-type: none"> <li>▪ Foreign Ministry</li> <li>▪ Ministry of Justice/ Attorney General's Office</li> <li>▪ Minister of Interior</li> <li>▪ Central Authority personnel, if any</li> <li>▪ National Police</li> <li>▪ Head of Prosecution Service, senior prosecutors</li> <li>▪ Senior law enforcement officials</li> <li>▪ Central Authority personnel, if any</li> <li>▪ Heads of victim/witness assistance and protection programmes</li> <li>▪ Judges</li> <li>▪ Senior justice officials</li> <li>▪ Defence Attorneys</li> <li>▪ Law schools/Academics</li> <li>▪ NGOs serving victims</li> </ul>	
4.8	USE OF SPECIAL INVESTIGATIVE TECHNIQUES	<ul style="list-style-type: none"> <li>▪ UN conventions and international treaties to which country is a party</li> <li>▪ Bilateral and multilateral treaties, incl. mutual legal assistance to which country is a party</li> <li>▪ Constitution</li> <li>▪ National legislation, criminal code, criminal procedure code, administrative codes, including banking law</li> <li>▪ Governmental reports</li> <li>▪ Policy/procedure manuals</li> <li>▪ NGO reports</li> <li>▪ Donor reports</li> </ul>	<ul style="list-style-type: none"> <li>▪ Foreign Ministry</li> <li>▪ Ministry of Justice/ Attorney General's Office</li> <li>▪ Minister of Interior</li> <li>▪ Central Authority director/staff</li> <li>▪ National Police</li> <li>▪ Head of Prosecution Service, senior prosecutors</li> <li>▪ Senior law enforcement officials</li> <li>▪ Central Authority personnel, if any</li> <li>▪ Special Investigation/Prosecution Units</li> <li>▪ Financial Intelligence Unit Leader/Staff</li> <li>▪ Judges</li> <li>▪ Senior justice officials</li> <li>▪ Defence Attorneys</li> <li>▪ Law schools/Academics</li> </ul>	

	TOPIC	▪ SOURCES	CONTACTS	COMPLETED
4.9	LAW ENFORCEMENT COOPERATION	SEE ABOVE	SEE ABOVE	
4.10	CRIME PREVENTION	SEE ABOVE	SEE ABOVE PLUS Directors of Crime Prevention for Ministry Interior/JUSTICE/POLICE/	
5	COORDINATION OF ASSISTANCE	<ul style="list-style-type: none"> <li>▪ Governmental reports</li> <li>▪ Policy/procedure manuals</li> <li>▪ NGO reports</li> <li>▪ Donor reports</li> </ul>	<ul style="list-style-type: none"> <li>• Donors</li> <li>• Ministry of Justice</li> <li>• Ministry of interior</li> <li>• Foreign Ministry</li> <li>• Head of prosecution, prosecutors</li> <li>• Senior law enforcement officials</li> <li>• Central Authority personnel</li> <li>• Judges</li> </ul>	





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