



**UNODC**

United Nations Office on Drugs and Crime



# **TRAFFICKING IN PERSONS & SMUGGLING OF MIGRANTS**

**Guidelines of International Cooperation**

**TRAFFICKING IN PERSONS  
&  
SMUGGLING OF MIGRANTS**

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**Disclaimers**

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## ***Abbreviations and Acronyms***

ASEAN	Association of Southeast Asian Nations
BiH	Bosnia and Herzegovina
FYROM	Former Yugoslav Republic of Macedonia
JIT	Joint Investigation Team
JPI	Joint Parallel Investigation
JIB	Joint Investigative Body
MLA	Mutual legal Assistance
OFF	Operational Focal Point
RCA	Representative Criminal Analyst
SOM	Smuggling of Migrants
TIP	Trafficking in Persons
UN Smuggling Protocol	Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime
UN Trafficking Protocol	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime



## ***Introduction to the Guidelines***

### **1. Project Background**

The overall objective of the United Nations Office on Drugs and Crime (UNODC) project “Enhancing operational capacity to investigate and disrupt Trafficking in Persons (TIP) and Smuggling of Migrants (SOM) activities in the Western Balkans” is to enhance the capability of law enforcement officials in the region to fight against these crimes, through enhancing regional law enforcement and judicial cooperation.

The current Project is the second phase of a UNODC Project which ran from July 2007 to February 2009, and included the following activities:

- The appointment of Operational Focal Points (OFPs), selected from the specialised Anti- Human Trafficking / Smuggling units of the police and Representative Criminal Analysts (RCAs) from each participating country;
- The organisation of two regional operational meetings of OFPs and RCAs;
- The organisation of further regional meetings also including judges and prosecutors dealing with Trafficking in Persons (TIP) and Smuggling of Migrants (SOM) cases and representatives from various international and regional organisations involved in TIP and SOM. Issues.
- The production of a Law Enforcement Training Manual on TIP Investigations, in English, Albanian, Macedonian, and Serbian;
- The procurement of technical equipment to enhance operational capacity;
- The organization of a two week Training (ToT) course for law enforcement officers, plus a further week of specialized training on Anti-Human Trafficking Investigations;
- Training on criminal intelligence analysis for the RCAs.

The specific objective of Phase II of the project, is to assist the countries of the Western Balkans - Albania, Bosnia and Herzegovina, Croatia, FYR of Macedonia, Montenegro, Serbia (Including Kosovo under UNSCR 1244) - in strengthening Criminal Justice responses to TIP and SOM in the development of a regional framework of cooperation.

The expected outcome of this Phase of the project is the establishment of common working practices allowing the criminal justice institutions of each of the target countries to put in place joint and coordinated mechanisms of investigating, prosecuting, and sentencing cases of TIP and SOM, through strengthening the capacities of the multidisciplinary (law enforcement and judiciary) teams, which are set up on an ad hoc basis, to combat these forms of crime.

To that end, one of the main outputs of this Phase is:

- The development of Regional Guidelines to enhance judicial cooperation among countries/entities in the area of TIP and SOM, especially through the improvement in the use of international legal cooperation instruments.

The content of these Guidelines stems directly from feedback received from the delegations (including law enforcement officers, prosecutors, judges, representatives of the respective ministries of justice, and national anti-trafficking coordinators) from the participating countries/territories at two regional workshops (Budva, October 1-3 2009 and

Belgrade, November 24-26 2009) as well as from field visits to all project beneficiary countries/territories which took place under the auspices of the project in October and November 2009. Such an approach, i.e. a direct consultation process, has hopefully ensured that the Guidelines are tailored to meet the specific needs and requirements of criminal justice practitioners in the region to improve international cooperation in TIP and SOM investigations and prosecutions.

## **2. The Challenge of International Cooperation**

The crimes of TIP and SOM are frequently transnational in both commission and effect. In contrast, criminal justice responses to trafficking in persons (criminal laws, law enforcement agencies, prosecution services and the courts) are typically structured and often only operate within the confines of national borders. This dichotomy presents a significant challenge to the ability of countries to effectively investigate and prosecute case of TIP and SOM.

There are numerous practical and political factors that can hamper international cooperation in criminal investigations and prosecutions. These include the challenges of communicating with counterparts who speak a different language, differences in legal, political and cultural traditions, political considerations and even apprehension about cooperating with colleagues in another country. However, while there are many challenges, there are also important opportunities.

Through national laws and international agreements, most countries have implemented a range of tools that can be used by criminal justice agencies to facilitate cooperation across borders in criminal matters. These include the tools of mutual legal assistance (MLA) - including the recovery of proceeds of crime - and extradition. There are also practical ways in which law enforcement officers, prosecutors and judges from different countries can work together, by exchanging information and criminal intelligence and by the conducting of joint investigations.

## **3. Specific Issues affecting International Cooperation in TIP / SOM Investigations in the Western Balkans**

There are certain historical and geographical features of the Western Balkans which can actually help to facilitate international cooperation in a way that is not the case in other regions. Clearly the countries of the former Yugoslavia share similar languages and similar legal systems – which has distinct advantages for communication and gathering / exchange of evidence. Although Albanian is a completely different language – again its legal system is similar to the one which was in place in the former Yugoslavia.

Additionally, regardless of the fact that all the countries/territories in the region have been adapting their legislations to accommodate changes in criminality, technology and individual national policy, plus to comply with International Conventions and Protocols, the goal that all the countries/territories share in common, of accession to the European Union and participation in a wider European integration, has lead or is leading to largely harmonised and compatible legislation in the region.

In terms of specific issues identified during regional meetings and visits to the participating countries – these are some of the most commonly expressed:

- It is sometimes difficult to find contacts in other countries within the region for the exchange of MLA requests and for informal exchange of criminal intelligence;
- There can be significant delays in responses to MLA requests, some of which can be caused by deficiencies or misunderstandings with regard to the rogatory letters themselves;

- It sometimes happens that evidence collected in accordance with the law of one country/territory of the region is not admissible in another;
- An overview of the international legal framework relevant for the fight against TIP and SOM in local languages is needed;
- Personal contacts between focal points and other representatives of law enforcement and judicial bodies in the countries in the region are extremely important, but it can be difficult to sustain working relationships when personnel changes occur;
- The informal exchange of criminal intelligence is sometimes hampered by uncertainties about the legal basis for such exchange;
- Although there have been some successful joint (coordinated) TIP and SOM investigations in the region, there is a lack of knowledge about the international legal framework and practices related to Joint Investigation Teams (JITs),

#### 4. Scope and organization of the Guidelines

These Guidelines are intended to provide criminal justice practitioners in the Western Balkans with a user friendly guide, in each local language (i.e. Albanian, Bosnian, Croatian, Macedonian, Montenegrin and Serbian), to certain key aspects of international cooperation in the field of TIP and SOM in the Western Balkans.

It is not within the scope of these Guidelines to go into detail about the use of MLA for the recovery of proceeds of crime or the principles and processes involved in extradition. These aspects are covered in other UN publications.<sup>11</sup> However, in order to address the issues hampering international cooperation in the region as reported throughout the consultation process, these Guidelines do look at the international legislative framework for formal and informal cooperation, including the principles and pre-conditions of MLA and the preparation of MLA requests, including the use of the UNODC MLA writer tool. Hand in hand with these guidelines, as part of the project activities, the UNODC MLA writer tool itself has also been translated into local languages and appropriate personnel will be given the necessary access to use the UNODC on line MLA facilities, as well as training on its use.

In addition to the legal and logistical elements of international cooperation in TIP and SOM cases, these guidelines also outline the mechanics and international legislative framework for the informal exchange of criminal intelligence and information, and the way in which police and prosecutors from different countries can work together, with specific reference to the development of joint investigation teams (JITs). More specifically, the Guidelines are divided into four chapters:

**Chapter 1:** summarises the definitions of and distinctions between TIP and SOM and provides an overview of the international legal framework around these criminal activities, with a particular focus on those instruments that are most directly relevant to international cooperation.

**Chapter 2:** provides an introduction to the specific issue of international cooperation in the investigation and prosecution of TIP and SOM cases. It explains the importance of such cooperation; identifies the main forms of cooperation; and provides an overview of its legal basis. It also looks at the specific framework for international cooperation in the region.

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<sup>1</sup> Examples of UNOD C Publications covering these issues include:

- *The Association of Southeast Asian Nations (ASEAN) Publication: Trafficking in Persons: Handbook on International Cooperation.*
- *The UNODC Toolkit to Combat Trafficking in Persons.*

**Chapter 3:** considers the international cooperation tool of mutual legal assistance. It commences by summarising the process and legal basis for MLA and outlining the international and regional legal framework, including relating this to the specific crimes of TIP and SOM. It then identifies the various principles and conditions attached to MLA and makes recommendations for best practice in the implementation of the MLA process. It concludes by considering the preparation of MLA requests, with specific reference to the use of the UNODC MLA writer tool,

**Chapter 4:** deals with joint investigations and joint investigation teams. It outlines the difference between joint (parallel or coordinated) investigations, joint (passive) and joint (active) investigation teams, looks at the international legal framework for the conducting of such activities and suggests how they can best be established within the specific legislative environment of the Western Balkans.

These Guidelines also contain a number of ANNEXES, details of which are provided above.

## **5. Target Audience**

The Guidelines have been designed to assist criminal justice officials within the Western Balkans in the investigation and prosecution of cross border TIP and SOM activities in the region. An increase in willingness and capacity to collaborate across borders will assist countries in the region in the more practical fulfilment of their cooperation obligations as set out in international, regional and bilateral agreements as well as in national laws. It is hoped that the Guidelines will thereby play a part in helping to redress the level of impunity currently enjoyed by offenders.

As such, these Guidelines are aimed at law enforcement officers, prosecutors, judges, central authority lawyers and other legal practitioners who may be involved in investigating and prosecuting TIP and/or SOM cases, or in processing or considering requests for assistance across borders. While they are intended primarily for the Western Balkan region, the Guidelines address issues that are relevant to all countries engaged in combating TIP and SOM through a more effective transnational criminal justice response.

# CHAPTER 1: Definitions of Trafficking in Persons and Smuggling of Migrants and the Applicable International / Regional Framework

## 1.1. Definitions of Trafficking in Persons and Smuggling of Migrants

It is important to distinguish between Trafficking in Persons (TIP) and Smuggling of Migrants (SOM) for two reasons:

- the constituent elements of the respective offences are different; and
- the response required of your authorities will vary, depending on the offence.

### 1.1.1. Internationally Recognised Definitions

The definitions of TIP and SOM are found in the *United Nations Protocol to Prevent Suppress and Punish Trafficking in Persons, especially women and children (Trafficking Protocol)* and the *United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol)* respectively.

#### **Trafficking Protocol, Article 3(a)**

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

#### **Smuggling Protocol, Article 3(a)**

"Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

It should be noted, however, that in practice, the distinction between TIP and SOM is not always easy to establish and maintain. For example, many trafficked persons, men as well as women, begin their journey as smuggled migrants – having contracted an individual or group to assist their illegal movement in return for financial benefit. In a classic migrant smuggling situation, the relationship between migrant and smuggler is a voluntary, short-term one – coming to an end upon the migrant's arrival in the destination country. However, some smuggled migrants are compelled to continue this relationship in order to pay off large transportation costs. It is at this late stage that the end-purposes of TIP (debt bondage, extortion, use of force, forced labour, forced criminality, forced prostitution) becomes apparent.

## DEFINITIONS MATRIX

	<b>Trafficking in persons (adults)</b>	<b>Trafficking in persons (children)</b>	<b>Migrant smuggling</b>
<b>Victim's age:</b>	Over 18	Below 18	Irrelevant
<b>Mental element</b>	Intention	Intention	Intention
<b>Material element:</b>	<ul style="list-style-type: none"> <li>• Act</li> <li>• Means</li> <li>• Exploitative Purpose</li> </ul>	<ul style="list-style-type: none"> <li>• Act</li> <li>• Exploitative Purpose</li> </ul>	<ul style="list-style-type: none"> <li>• Act: Procurement of an <i>illegal</i> entry</li> <li>• Purpose: For financial or other material benefit</li> </ul>
<b>Consent of the trafficked or smuggled person:</b>	Irrelevant once the means are established.	Irrelevant. Means do not need to be established.	The smuggled person consents to the smuggling
<b>Transnationality</b>	Not required	Not required	Required
<b>Involvement of an organized crime group</b>	Not required	Not required	Not required

### 1.1.2. Trafficking in Persons

Article 3 of the *Trafficking Protocol* clarifies that trafficking in persons has three constituent elements:

- (1) an act (what is done);
- (2) the means (how it is done); and
- (3) exploitative purpose (why it is done).

Article 5 further requires countries to ensure that the conduct contained in article 3 is criminalized in their domestic legislation. It is important to remember that the definition contained in the *Trafficking Protocol* is meant to provide a level of consistency and consensus around the world on the phenomenon of TIP; domestic legislation, however, need not follow the precise language of the *Trafficking Protocol*. Rather, domestic legislation should be adapted in accordance with domestic legal systems and give effect to the meaning and concepts contained in the *Trafficking Protocol*.

#### **Elements of a Case of TIP**

The *Trafficking Protocol* requires that the crime of trafficking be defined through a combination of the three constituent elements and not the individual components, though in some cases these individual elements will constitute criminal offences independently. For example, the act of abduction or the non-consensual application of force (assault) will likely constitute separate criminal offences under domestic criminal legislation.

1. The offence must include any one of the following processes:

- recruiting;
- transporting;



- transferring;
- harbouring;
- or receiving a person.

Some or all of these terms are likely to have a clearly defined meaning in your domestic legal system.

2. It must also contain at least one of the following acts:

- Use of force;
- Threat of force;
- Coercion;
- Abduction;
- Fraud;
- Deception;
- Abuse of Power or of a Position of Vulnerability; or
- Giving or Receiving of Benefits

3. The third constituent element in a TIP case is that the person committed the material act(s) with the *intention* that the victim be “exploited” (as defined by a country’s domestic anti-trafficking legislation).

- The *Trafficking Protocol* does not define exploitation but gives a non-exhaustive list of forms of exploitation:

“Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, or practices similar to slavery, servitude or the removal of organs.”

Again, it is important to remember that the *Trafficking Protocol* obligation to criminalize TIP does not require that domestic legislation use the precise language contained in the definition of TIP. Rather, domestic legislation should be drafted in a way that is consistent with the domestic legal framework, provided it contains a combination of the constituent elements contained in the definition.

An offence of TIP should not require that actual exploitation take place. As is clear from the *Trafficking Protocol*, actual exploitation need not occur. All that is required is that the accused committed one of the constituent acts, employing one of the listed means **for the purpose** or, put another way, with the intention that the individual be exploited.

The mental element can be proven in a number of ways. It should be noted that the *Trafficking Protocol* requires that countries only criminalize TIP when conducted intentionally as per Article 5(1). However, countries are not precluded from allowing the requirement to be established on a lesser standard, i.e. via recklessness, wilful blindness or even criminal negligence, subject to the requirements of the domestic legal system.

### **Components of TIP**

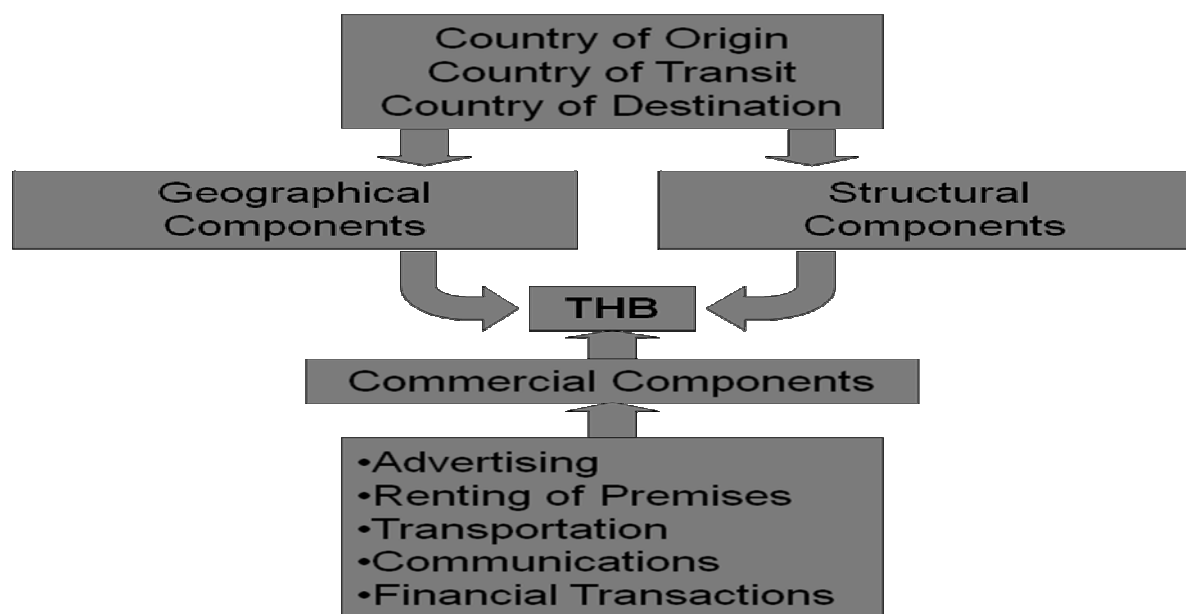
The crime of TIP is made up of geographical, structural and commercial components. In the case of cross border trafficking, the geographical and structural components can be expressed as follows:

- Country of origin (recruitment and export);
- Country of transit (transportation);
- Country of destination (import and reception).

Within these three areas, the commercial characteristics inherent in this type of crime mean that the traffickers are compelled to become involved in one or more of the following activities

- Advertising (as part of the recruitment or exploitation process)
- Renting of premises (safe houses, brothels, sweatshops, factories etc.)
- Transportation (identity and travel documents and the transit process)
- Communications (organizing the recruitment and exploitation)
- Financial transactions (applicable to all of the above)

Evidential material may exist at any one of these stages in the trafficking process and investigators must find ways to exploit fully these evidential opportunities and thereby secure the rescue of the victims and the apprehension and conviction of the traffickers and the confiscation of their criminal assets.



NB All these processes can also, of course, take place within one country or locality.

### 1.1.3. Smuggling of Migrants

Article 3 of the *Smuggling Protocol* establishes that SOM is comprised of the following elements:

- procuring the illegal entry of another person;
- into another state;
- for the purpose of financial or material gain.

Article 3(b) further defines “illegal entry” as the crossing of (international) borders without complying with the necessary requirements for legal entry into the receiving State.

Article 6 of the *Smuggling Protocol* requires, amongst other things, the criminalization of the offence of migrant smuggling.

#### **1.1.4. Key Differences between TIP and SOM**

In practice, it may be difficult to distinguish between these two crimes in the first instance. In many cases, victims of trafficking may first start out as smuggled migrants. Consequently, in investigating TIP cases, it may sometimes be necessary to rely on measures against smuggling. It is critical, however, that those investigating smuggling cases be familiar with the crime of trafficking in persons as the consequences of treating a trafficking case as one of migrant smuggling can be severe for the victim.

Fuller definitions of both offences and a more detailed consideration of the differences between them are to be found in Chapter 1 of the *Training Manual for Investigations into Trafficking in Persons* produced in May 2008 under Phase I of this project. This Manual has been translated into Serbian, Macedonian and Albanian (as well as English).

### ***1.2. Overview of the Relevant International Legal Framework around Trafficking***

This section seeks to provide an overview of the international legal frameworks concerning, TIP and SOM.

#### **1.2.1. International Treaties**

A treaty is an agreement, almost always between two or more States that creates binding rights and obligations in international law. Treaties can be universal (open to as many States as want to join) or restricted to a smaller group of two or more States. A treaty may go by many different names, such as 'convention', 'covenant' and 'protocol'. The obligations contained in a treaty are based on consent. States are bound because they agree to be bound. States that have agreed to be bound by a treaty are known as 'States Parties' to that treaty.

By becoming a party to a treaty, States undertake binding obligations in international law. In the case of most treaties relevant to TIP or SOM this means that States Parties undertake to ensure that their own national legislation, policies or practices meet the requirements of the treaty and are consistent with its standards.

Depending on their source, these obligations may be enforceable in international courts and tribunals with appropriate jurisdiction, such as the International Court of Justice, the International Criminal Court, or the European Court of Human Rights. Whether the obligations are enforceable in national courts is a separate question, to be determined by domestic law. In some countries, legislation is required to incorporate treaties into domestic law while in other countries, the Constitution provides that treaties automatically have the status of domestic law.

Most multilateral treaties (involving more than just a few States) are concluded under the auspices of international organisations such as the United Nations (UN), or regional organisations such as the Council of Europe (CoE) or the European Union (EU) or elsewhere in the an example is the Association of Southeast Asian Nations (ASEAN). Bilateral treaties or those developed between a smaller group of States are generally negotiated through the relevant foreign ministries without the involvement of an external or facilitating agency such as the UN.

## 1.2.2. International Treaties on Transnational Organized Crime, TIP and SOM

The three main international treaties of direct relevance to TIP and SOM in the broader context of transnational organized crime are the *United Nations Convention against Transnational Organized Crime* (UNTOC), the *UN Trafficking Protocol* and the *UN Smuggling Protocol*, all concluded in December 2000. Their major provisions are outlined in detail below. Note that additional information on the international legal cooperation aspects of these instruments is provided in subsequent chapters.

## 1.2.3. United Nations Convention against Transnational Organized Crime (UNTOC)

This Convention is the central instrument in a package of treaties developed to deal with transnational organized crime. The individual Protocols attached to the UNTOC specifically address, in turn, trafficking in persons, smuggling of migrants and trafficking in small arms. The provisions of the Convention apply to all three forms of crime. The purpose of the UNTOC is to promote inter-state cooperation in order to combat transnational organized crime more effectively. The UNTOC seeks to eliminate 'safe havens' where organized criminal activities or the concealment of evidence or profits can take place by promoting the adoption of basic minimum measures.

There are two principal pre-requisites for the application of the UNTOC. First, the relevant offence must be "serious" and have some kind of transnational aspect. Second, it must involve an organized criminal group. Both elements are defined very broadly. 'Serious crime' is defined in such a way as to include all significant criminal offences. As a result, States are able to use the Convention to address a wide range of modern criminal activity including TIP and SOM. This is especially important in view of the fact that States may become Parties to the Convention without having to ratify any or all of the Protocols and that ratification of the Convention must precede ratification of any of the Protocols.

The primary obligation of the Convention relates to criminalization of specific conduct. States Parties are required to criminalize:

- Participation in an organized criminal group;
- Laundering of the proceeds of crime;
- Public sector corruption; and
- Obstruction of justice.

These offences are also to be made subject to appropriate sanctions.

One of the principal obstacles to effective action against transnational organized crime, including TIP, has been the lack of communication and cooperation between national criminal justice agencies. The UNTOC sets out a range of measures to be adopted by States Parties to enhance effective law enforcement cooperation. The practical application of these provisions is likely to be enhanced by the inclusion of a detailed legal framework on MLA in investigations, prosecutions and judicial proceedings in relation to applicable offences.

States Parties are able to use the Convention to request MLA for a range of purposes including:

- The taking of evidence;
- Effecting service of judicial documents;
- Execution of searches;
- Identification of the proceeds of crime;
- Production of information and documentation.

States Parties are also encouraged to:

- Establish joint investigative bodies;
- Come to formal agreements on the use of special investigative techniques;
- Consider the transfer of criminal proceedings;
- Consider the transfer of sentenced persons;
- Facilitate extradition procedures for applicable offences;
- Enhance and, where necessary, to establish channels of communication to facilitate the secure and rapid exchange of information

#### **1.2.4. The UN Trafficking Protocol**

The *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* is the most important of all international treaties on trafficking. The Protocol entered into force in 2003 and as at 1 January 2009, it had over 124 States Parties. It requires States to criminalize trafficking in persons as defined in that instrument, as well as related offences.

The purposes of the Protocol are:

- To prevent and combat trafficking in persons, paying particular attention to women and children;
- To assist the victims of such trafficking, with full respect for their human rights; and
- To promote cooperation among States Parties in order to meet those objectives.

The main obligations of States Parties to the Protocol are as follows:

- To criminalize 'trafficking in persons' as defined in the Protocol and to impose penalties which take into account the grave nature of that offence.
- To protect, to the extent possible under domestic law, the privacy and identity of victims of trafficking in persons and to consider the provision of a range of social services to enable their recovery from trauma caused by their experiences.
- To ensure that the legal system contains measures that offer victims the possibility of obtaining compensation.
- To strengthen such border controls as might be necessary to prevent trafficking, without prejudice to other international obligations allowing the free movements of people.
- To ensure the integrity of national travel or identity documents and to act promptly in response to requests for verification of such documents.
- To strengthen, as appropriate, cooperation with other States in exchange of information regarding identities, fraudulent use of documents, and means and methods employed by traffickers. The provision and / or strengthening of training for officials in the recognition and prevention of trafficking, including human rights awareness training, is also required.
- To consider allowing victims to remain in their territory, whether permanently or temporarily, taking into account humanitarian and compassionate factors.
- To accept the return of any victims of trafficking who are their nationals, or who had permanent residence in their territory at the time of entry to the receiving State. When returning a victim, due regard must be taken of their safety, with the return preferably being voluntary.

### 1.2.5. The UN Smuggling Protocol

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

- To prevent and combat the smuggling of migrants, as well as to promote cooperation amongst the States Parties to that end.

The main obligations of States Parties to the Protocol are as follows:

- To criminalize ‘smuggling of migrants’, use of fraudulent travel or identity documents (for the purposes of smuggling) and facilitating smuggled migrants in remaining illegally in a country - whilst recognising that migration itself is not a crime.
- To boost international cooperation to prevent migrant smuggling and to seek out and prosecute the smugglers.
- To adopt such legislative and other measures as may be necessary to facilitate more severe punishment when the activities of the smugglers endanger, or are likely to endanger, the lives or safety of the migrants concerned; or entail inhuman or degrading treatment, including exploitation, of such migrants.
- To exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters relating to routes, modus operandi and identity of organised criminal gangs involved in migrant smuggling as well as legislative experiences and practices and scientific and technical experiences useful to law enforcement so as to enhance ability to prevent, detect, investigate such activities and prosecute the perpetrators;
- To strengthen such border controls as may be necessary to prevent and detect the smuggling of migrants, without prejudice to international commitments in relation to the free movement of people.

### 1.2.6. The Relationship between the UNTOC and the UN Trafficking and Smuggling Protocols

The following are the main principles governing the relationship between the UNTOC and the UN Trafficking and Smuggling Protocols:

- As the Protocols were not intended to be independent treaties, States must ratify UNTOC before ratifying one or any of its protocols.
- The UN Trafficking and Smuggling Protocols must be interpreted together with the UNTOC. In interpreting the Protocols, their stated purpose must be considered, which may result in modification to the meaning applied to the UNTOC.
- The provisions of the UNTOC apply, *mutatis mutandis*, to the Protocols. This means that in applying the Convention to the Protocols, modifications of interpretation or application should only be made when necessary and to the extent necessary.

Offences established by the Protocols are to be regarded as offences established by the UNTOC. This means that once a State ratifies either of the aforementioned Protocols, its obligations under that instrument in relation to TIP or SOM are supplemented by the general obligations set out in the Convention. For example, ratification of a Protocol will result in the State also being required to apply the Convention’s provisions regarding MLA, extradition, witness protection and money laundering to the crimes of TIP or SOM.

## 1.2.7. Regional TIP / SOM Specific Treaties

The international legal framework around TIP includes specialist treaties that have been concluded between regional groupings of States. One very significant example is the 2005 *Council of Europe Convention on Action against Trafficking in Human Beings* (European Trafficking Convention) that entered into force in February 2008. This Convention has the potential to bind more than forty countries of Western, Central and Eastern Europe to a much higher level of obligation, particularly with regard to victim protection, than that required by the UN Trafficking Protocol. All the participating countries have implemented the Convention - Albania, Bosnia & Herzegovina (BiH), Croatia and Montenegro in 2008 and Serbia and the Former Yugoslav Republic of Macedonia in 2009.

There is no specific regional treaty relating to SOM. However the Police Cooperation Convention for South East Europe (PCC) does cover all aspects of international cooperation between law enforcement agencies in connection with all forms of crime – including TIP and SOM. The PCC has been ratified by all the participating countries, with the exception of Croatia, together with Bulgaria, Moldova and Romania and is in various stages of implementation by the Contracting Parties. The Convention commits the Contracting Parties to strengthening their cooperation with respect to fighting threats to public security and/or order as well as with respect to prevention, detection and police investigation of criminal offences.

While regional treaties only impose obligations on the States that are party to them, they can provide all countries with a useful insight into evolving standards. They can also contribute to the development of customary international law on a particular issue or area.

## 1.2.8. Human Rights Treaties

International human rights treaties form an important part of the applicable legal framework around TIP. Two of the major international human rights treaties contain specific references to TIP and related exploitation:

- *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW): Article 6 explicitly prohibits trafficking and exploitation of the prostitution of women.
- *Convention on the Rights of the Child* (CRC): prohibits trafficking in children as well as sexual exploitation of children and forced or exploitative labour. This Convention also contains important protections for children who have been trafficked.

Other human rights treaties<sup>2</sup> prohibit certain behaviours or practices that have been linked to TIP including: ethnic, racial and sex-based discrimination; slavery; forced labour and servitude; sexual exploitation of children; forced marriage; torture and inhuman treatment and punishment; and arbitrary detention.

International human rights treaties also identify and protect certain rights that are particularly

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<sup>2</sup> Examples of international human rights treaties include:

- *International Covenant on Civil and Political Rights* (ICCPR).
- *International Covenant on Economic, Social and Cultural Rights* (ICESCR).
- *Convention on the Elimination of Racial Discrimination* (CERD).
- *Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Convention against Torture).
- *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (Migrant Workers Convention).

important in the context of TIP such as: the right to own and inherit property; the right to education; the right of opportunity to gain a living through work freely chosen or accepted; and the right to a remedy. The right to a fair trial is a core human right that is particularly important in the context of international cooperation including MLA and extradition.

Whilst there is less direct reference to SOM in International human rights treaties, some of the rights referred to above are also relevant to the crime of SOM and it is an accepted fact that the human rights of migrants can be violated in the course of the smuggling process, and that significant numbers lose their lives at the hands of profit-seeking smugglers. One potential category of smuggled migrant whose rights are specifically referred to in International Treaties is that of Refugees, the most of important of which is:

*1951 UN Convention Relating to the Status of Refugees*: Article 31 states that ‘The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence’.

### **1.2.9. Criminal Law / Crime Control Treaties**

Over the past decade, a number of international treaties dealing with criminal matters (both generally and in specific relation to individual criminal responsibility) have been adopted. Those most relevant to TIP and SOM are the previously mentioned Protocols to the UNTOC.

The complex web of criminal law / crime control instruments that have been developed at the bilateral and regional levels to address specific issues such as MLA and extradition are considered in the following Chapters.

### **1.2.10. Non-Treaty Instruments**

Not all international instruments relevant to TIP or SOM (or indeed to the specific matter of international cooperation) are legally enforceable treaties. Bi-lateral or multi-lateral declarations, codes, memoranda of understanding, ‘agreements’ and United Nations resolutions are all important sources of guidance in formulating strategic coordinated action against the perpetrators of these crimes. As ‘soft law’ these instruments can also help to contribute to the development of new legal norms and standards.

In the area of TIP, the most important non-legal international instrument is the 2002 *United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking* (Trafficking Principles and Guidelines). Many aspects of the Trafficking Principles and Guidelines are based on international treaty law. However, parts of this document go further: using accepted international legal standards to develop more specific and detailed guidance for States in areas such as legislation, criminal justice responses, international cooperation, victim detention and victim protection and support. Recently, the United Nations Children’s Fund released a set of *Guidelines for Protection of Child Victims of Trafficking* (UNICEF Guidelines) that provide additional guidance on the specific issue of child victims.

Important quasi-legal and non-legal instruments have also been developed at the regional level. As with their international equivalents, these instruments often reiterate and expand existing legal principles and sometimes go beyond what has been formally agreed between States. In the latter case however, they can help to ascertain the direction in which international law is moving with respect to a particular issue.



## CHAPTER 2: Overview of the issues relevant to International Cooperation in the Investigation and Prosecution of Trafficking in Persons and Smuggling of Migrants

### 2.1. The Importance of International Cooperation

It is possible for all elements of the crime of TIP to take place within national borders and for offenders, victims and evidence to be located within the same country. However, trafficking cases are typically more complicated than this. Alleged offenders, victims and evidence can be located in two or more countries, which can lead to criminal investigations and prosecutions in multiple jurisdictions. By its nature, SOM is always a transnational crime. The trans-nationality of these criminal phenomena therefore render various forms of international cooperation, such as police-to-police cooperation, as well as more formal legal tools like MLA or extradition, vital for successful transnational investigations, prosecutions and sentencing.

The importance of international cooperation has been recognized at the international level (as well as at the regional level, including within South East Europe). Examples include the following:

- International cooperation to prevent and combat transnational organized crime is a primary aim of the *United Nations Convention Against Transnational Organized Crime*.
- One of three basic purposes of the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* is to promote international cooperation to prevent, suppress and punish trafficking in persons.
- The stated purpose of the *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime* is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants. Included in the Convention is a declaration that effective action to prevent and combat the smuggling of migrants ..... requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures,.
- Other key international instruments, including the *United Nations Convention Against Corruption* (UNCAC), highlight the central importance of international cooperation as a critical means of eliminating safe havens for criminals.
- The *European Conventions on Mutual Assistance in Criminal Matters and Extradition*, and their Protocols oblige their signatories to adopt common laws in the fields of MLA and extradition.
- The *Police Cooperation Convention for South East Europe* states that Parties shall strengthen the cooperation of the Contracted Parties with respect to fighting threats to public security and/or order as well as with respect to prevention, detection and police investigation of criminal offences.

All the Western Balkans countries have signed and ratified all the above treaties, with the exception of Croatia, which has not (at the time of publication) signed the PCC SEE.

## 2.2. The Issue of Jurisdiction in TIP and SOM Cases

The rules related to the exercise of criminal jurisdiction are an important aspect of international cooperation. These rules identify the circumstances under which a State may, or is required to assert its criminal justice authority over a particular situation. The application of these rules to TIP and SOM may be more complicated than for many other crimes because of the fact that they often involve the commission of multiple offences in two or more countries whereby the alleged perpetrators or the victims are not citizens of one and the same country.

The international legal rules on jurisdiction in TIP and SOM situations are set out in the major international and regional treaties. Their objective is to reduce or eliminate jurisdictional safe havens for traffickers by ensuring that all parts of the crime can be punished wherever they took place. Another concern is to ensure that coordination mechanisms are effective in cases where more than one country may have grounds to assert jurisdiction. The main rules extracted from the major TIP and SOM treaties are as follows:

- A State is *required* to establish jurisdiction over TIP and SOM offences when the offence is committed in the territory of that State or on board a vessel flying its flag or on an aircraft registered under its laws (the territoriality principle).
- A State *may* exercise jurisdiction over TIP and SOM offences when such offences are committed outside the territorial jurisdiction of that State against one of its nationals (the principle of passive personality).
- A State *may* exercise jurisdiction over TIP and SOM offences when such offences are committed outside the territorial jurisdiction of that State by one of its nationals (the principle of nationality).
- A State *may* exercise jurisdiction over TIP and SOM offences when such offences are committed outside the territorial jurisdiction of that State but are linked to serious crimes and money laundering planned to be conducted in the territory of that State.
- A State *must* establish jurisdiction over TIP and SOM offences when the offender is present in its territory of the State and the State does not extradite the offender on grounds of nationality (the principle of: 'extradite or prosecute').

Mindful of the transnationality of the TIP and SOM phenomenae, it is possible that more than one country will be in a position to assert jurisdiction over a particular trafficking case. Consultation and cooperation are important from the outset in order to coordinate actions, and more specifically, to determine the most appropriate jurisdiction within which to prosecute a particular case. In some cases, it will be most effective for a single State to prosecute all offenders, receiving support and assistance from other involved countries. In others cases it may be preferable for one State to prosecute some participants, while one or more other States pursue the remainder. Issues such as: nationality; the location of witnesses; the applicable legal framework; resource availability; and location of offender when apprehended, will need to be taken into consideration. The UNTOC provides that where several jurisdictions are involved, State Parties are to consider transferring the case to the best forum in the 'interests of the proper administration of justice' and 'with a view to concentrating the prosecution.

## **2.3. Forms of International Cooperation relevant to TIP and SOM Cases**

There are various forms of international cooperation. These include informal processes such as police-to-police cooperation and formal processes such as MLA and extradition. These Guidelines concentrate on certain aspects of international cooperation, as outlined above, and the relevance of these aspects to TIP and SOM cases as summarized below. A more extensive description and analysis of MLA is provided in Chapter 3.

### **2.3.1. Informal Cooperation including ‘Police-to-Police’ Cooperation**

The term ‘informal cooperation’ when used in this context refers to the exchange of information that occurs directly between law enforcement and regulatory agencies with their foreign counterparts. It is sometimes also referred to as *police-to-police* or *agency-to-agency* assistance.

Informal cooperation is a separate, less rule-bound international crime cooperation tool, which is available outside the formal MLA regime. Informal cooperation enables law enforcement and regulatory agencies (such as taxation and revenue authorities; companies and financial service regulators) to directly share information and intelligence with their foreign counterparts without any requirement to make a formal MLA request. In this sense, informal cooperation complements MLA regimes. This international cooperation tool can be used prior to an investigation becoming official and prior to the commencement of court proceedings, for example to conduct surveillance, take voluntary witness statements or check intelligence databases. In circumstances where coercive measures are not required, it is usually faster, cheaper and easier to obtain information or intelligence on an informal basis than via formal MLA channels.

Various international and regional instruments provide for ‘informal cooperation’ and the sharing of information between agencies without formal ‘letters of request’ in TIP and SOM cases.

The UN Convention against Transnational Organised Crime states, *inter alia*:

#### **UNTOC, Article 27 (Law Enforcement Cooperation)**

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

- a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;
- b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:
  - (i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
  - (ii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences; .....

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending

them. In the absence of such agreements or arrangements between the State Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Wherever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organisations, to enhance the cooperation between their law enforcement agencies.

The UN Trafficking Convention states, *inter alia*:

**UN Trafficking Convention, Article 10 (Information Exchange and Training)**

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

- a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
- b) The types of travel document that individuals have used or attempted to use to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons; and
- c) The means and methods used by organised criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

The UN Smuggling Convention states, *inter alia*:

**UN Smuggling Convention, Article 10 (Information)**

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

- b) The identity and methods of organisations or organised criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;
- c) Embarkation and destination points, as well as routes, carriers and means of transportation, known or suspected of being used by an organised criminal group engaged in conduct set for the in article 6 of this Protocol.

The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters states, *inter alia*:

**ECMA, 2nd Additional Protocol, Article 11 (Spontaneous Information)**

1. Without prejudice to their own investigations or proceedings, the competent authorities of a Party may, without prior request, forward to the competent authorities of another Party information obtained within the framework of their own investigations, when they consider that that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings, or might lead to a request by that Party under the Convention or its Protocols.

**PCC SEE, Article 5.1(a)**

**Scope of Information Exchange**

1. In the course of cooperation aiming at preventing, detecting and investigating criminal offences, in particular of organized crime, the law enforcement authorities of the Contracting Parties shall, upon request, exchange the following information:

a) on data of individuals involved in organized crime, intelligence on links between the suspects and persons under suspicion or suspect groups and groups under suspicion. Information on prepared, attempted, or accomplished criminal offences, especially time, scene and type of crime, details on victims or victimized property, intelligence on the particular circumstances and about the relevant legal provisions, if required to prevent, detect and investigate criminal offences, .....

**Article 6**

**Information Exchange without Request**

In certain cases, the law enforcement authorities of the Contracting Parties shall provide each other with information without being requested, if, based on proven facts, there is reason to assume that such information is needed to counter concrete threats to public order and/or security or to prevent, detect and investigate criminal offences.

**2.3.2. Formal cooperation: Mutual Legal Assistance**

MLA, which is sometimes called mutual assistance or judicial assistance is the process States use to formally ask other States to provide information and evidence for the purpose of an investigation or prosecution. MLA is a very formal cooperation tool because it generally involves one State asking another State to exercise coercive powers on its behalf, and / or taking steps to obtain evidence that must be admissible in a criminal trial. For these reasons, it operates under different and much stricter rules than those that apply to less formal agency-to-agency or police-to-police cooperation. The principles and conditions attached to MLA are described in Chapter 3.

**2.3.3. Formal Cooperation: Extradition**

Extradition is the formal name given to the process whereby one State (the Requesting State) asks another State (the Requested State) to return an individual to face prosecution or to serve a sentence in the Requesting State. Because of the nature of the TIP and SOM processes, suspects wanted for prosecution in one State will often be present in another State. This may be because they are nationals of that other State or because they have deliberately taken steps to avoid prosecution or sentencing by fleeing to another State. Extradition will therefore sometimes be essential for the successful prosecution of TIP and SOM cases. For a detailed description of the principles and processes of extradition, please refer to the *UNODC ASEAN Handbook on International Cooperation in TIP cases*.

### **2.3.4. The Interdependence of International Cooperation Tools**

The various informal and formal means of international cooperation in criminal cases are interdependent. Investigators, prosecutors and central authority lawyers should consider their complementary roles and uses, for example:

- Informal assistance can lay the foundation for subsequent formal MLA requests.
- Formal MLA and informal agency-to-agency assistance can occur at the same time.
- MLA often occurs after direct agency-to-agency cooperation.
- MLA can complement extradition where both the alleged offender and the evidence of a crime are in a foreign country.
- MLA can be used to obtain evidence to bolster a case where it is possible that a request for extradition will be made.
- In situations where a Requested State refuses to extradite a person (for example, because that person is a national of the Requested State), the Requesting State may subsequently provide MLA support to the Requested State to enable it to investigate or prosecute the person sought.

Cooperation is as much of a way of thinking and working as it is a collection of 'tools' or processes. States that are committed to cooperation will generally find a whole range of opportunities, mechanisms and resources to help each other in the investigation and prosecution of TIP offences.

## ***2.4. The Legal Basis for International Cooperation***

It is essential to determine the legal basis for international cooperation. By establishing the legal basis of an action or intended action, the criminal justice official can be sure that authority is being exercised properly and that the results of the cooperation can be used in the way in which they are intended. Verification of legal basis will also usually provide important information on the scope and nature of the relevant cooperation tool.

### **2.4.1. Treaty-Based Cooperation**

States and groups of States working through intergovernmental organisations have created a complex network of bilateral and multilateral treaties that provide a legal basis for international cooperation. There are practical and strategic advantages to treaty-based cooperation. First, a treaty obliges a Requested State to cooperate under international law. Second, treaties usually contain detailed provisions on the procedure and parameters of cooperation, and thus provide greater certainty and clarity than most non-treaty based arrangements. Finally, treaties may also provide for forms of cooperation that are otherwise unavailable.

#### **Bilateral Treaties**

States can negotiate bilateral extradition and / or MLA treaties. Bilateral treaties can be very useful because they can be tailored to precisely reflect the legal systems and specific needs of the two countries. They are also easier to amend to meet future requirements. However, negotiating bilateral treaties can be time-consuming and resource-intensive. A State may need to conclude many such treaties in order to secure sufficient coverage of its potential interests.

## Multilateral treaties

Multilateral treaties have always been important in the context of international legal cooperation. However, over the past decade there has been an increasing emphasis, by the international community, on developing multilateral frameworks of cooperation in relation to issues of global concern. Examples include terrorism, drug trafficking, corruption, trade, environment and transnational crime. The major international and regional treaties creating obligations for States with respect to international cooperation on TIP and SOM, are described briefly below

### The United Nations Convention against Transnational Organized Crime

The UNTOC acknowledges the need to foster and enhance close international cooperation in order to tackle problems of transnational organized crime. States Parties to the Convention commit themselves to taking a series of measures against transnational organized crime, including the criminalisation of: participation in an organized criminal group; money laundering; and corruption and obstruction of justice. States Parties also commit to new and detailed frameworks for extradition, MLA and law enforcement cooperation. The following is a listing of the international cooperation issues covered by the UNTOC:

- International cooperation for the purposes of confiscation.
- Jurisdiction
- Extradition. Transfer of sentenced persons
- Mutual legal assistance.
- Joint investigations.
- Special investigative techniques.
- Transfer of criminal proceedings.
- Establishment of criminal record.
- Law enforcement cooperation.
- Collection, exchange and analysis of information on the nature of organized crime.

The UNTOC creates binding obligations between State Parties to cooperate on these issues, whilst leaving room for the continued operation of existing bilateral treaties and arrangements.

### The UN Trafficking Protocol

The UN Trafficking Protocol is a comprehensive international agreement to address the crime of TIP, especially women and children, on a transnational level. The Protocol establishes a framework within which States can take legislative, policy and practical measures to assist victims of trafficking, apprehend, prosecute and penalize those responsible for trafficking, and prevent future trafficking. The Protocol also establishes the parameters of judicial cooperation and exchanges of information among countries.

In addition to the UNTOC provisions on international cooperation, which *mutatis mutandis* apply to The UN Trafficking Protocol, The UN Trafficking Protocol details a number of specific forms of cooperation that are considered particularly appropriate to TIP cases. These include:

- Informal cooperation and information exchange between law enforcement, immigration and other relevant authorities for a range of purposes including identification of both victims and perpetrators;

- Cooperation to help establish information and insights into the means and methods used by organized criminal groups for the purposes of trafficking;
- Strengthened cooperation among border control agencies including through establishment and maintenance of direct channels of communication;
- Cooperation in the verification of travel and identity documents; and
- Cooperation to facilitate confiscation of proceeds of crime, property, equipment or other instrumentalities of crime.

### **The UN Smuggling Protocol**

In addition to the UNTOC provisions on international cooperation, which *mutatis mutandis* apply to The UN Smuggling Protocol, The UN Smuggling Protocol also details forms of cooperation specifically beneficial in SOM cases. These include:

- Exchange of information on suspected smugglers and smuggling gangs;
- Exchange of information on routes, carriers and means of transportation used by smugglers;
- Exchange of information on misuse of travel documents;
- Exchange of information on means and methods of concealment and transportation of persons,
- Liaison on, and exchange of, legislative experiences and practices and measures to prevent and combat SOM;
- Sharing of scientific and technological information useful to law enforcement, to enhance capacity to prevent, detect and investigate SOM;
- Strengthening of cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

### **The UN Convention against Corruption**

The *United Nations Convention against Corruption* (UNCAC), which entered into force in 2005, seeks to promote and strengthen measures to combat public sector and private corruption at both domestic and international levels. It represents a broad international consensus on what is required with respect to prevention and criminalization of corruption as well as international cooperation and asset recovery. It applies to several forms of corruption as well as complicity in corruption. States Parties are required to establish specific corruption-related offences including: bribery of domestic and foreign public officials; embezzlement of funds; abuse of functions; trading in influence; and the concealment and 'laundering' of the proceeds of offences established in accordance with the UNCAC. States Parties are also required to establish obstruction of justice in relation to the commission of offences under the UNCAC as a criminal offence and to put in place a range of preventive measures directed at both the public and private sectors.

The UNCAC aims to promote strong international cooperation. States Parties are required to cooperate with one another in every aspect of the fight against corruption including prevention, investigation and prosecution of offenders. Countries are bound to render specific forms of MLA in gathering and transferring evidence for use in prosecutions, to extradite offenders and to support the tracing, seizure and confiscation of the assets of corruption.

The UNCAC builds on and reinforces a number of regional agreements on these issues including the Council of Europe *Criminal Law Convention on Corruption* (criminalizing acts of corruption); and the Council of Europe *Civil Law Convention on Corruption* (providing for compensation for victims of corruption).



### **2.4.1. Non-Treaty-Based Arrangements**

International legal cooperation does not necessarily need to be based on treaties. By dispensing with the requirement for a treaty, States can speed up the international cooperation process and tailor it to the needs and requirements of individual cases. The following are examples of frameworks or mechanisms that can provide both authority and structure for legal cooperation between States.

#### **Cooperation Based on Domestic Law**

Many countries have passed national MLA laws and / or national extradition laws that provide a basis for that country to cooperate with other States, even in situations where there is no pre-existing treaty or other arrangement with that other State. The application of these laws will vary: the laws of some countries designate a list of specified foreign States to whom they will provide assistance; the laws of some other countries provide that assistance can be provided to any State, on a case by case basis, provided that sufficient assurances are given of future reciprocal cooperation. Domestic legislation usually prescribes the procedure for sending, receiving, considering and executing requests and any mandatory or discretionary preconditions to the provision of that assistance.

It has been noted that international cooperation based upon domestic law can be faster and less expensive than treaty-based assistance. However, the domestic law of one State does not create binding relationships between it and another State in the same way that two State Parties to a treaty are bound to cooperate with each other. A State therefore cannot use its domestic laws to influence or shape the behaviour of other States.

#### **Cooperation Based on Reciprocity**

Reciprocity is a customary principle which is essentially an assurance by the State making a request for assistance that it will comply with the same type of request and provide similar cooperation to the Requested State in a similar case in the future. Reciprocity is one expression of the broader customary principle of 'comity': the idea that actions and practices can be based on considerations of good will and mutuality rather than strict application and enforcement of rules. Cooperation based on reciprocity is considered further in Chapter 3.

## **2.5. Sovereignty, Safeguards and Human Rights**

While recognizing the need for international cooperation to counter serious crimes such as TIP and SOM, international law upholds the sovereignty and territorial integrity of States. This is an important principle to keep in mind when considering permissible forms of cooperation, particularly in relation to law enforcement. For example, under current rules of international law, one State has no right to undertake law enforcement action in the territory of another State without the prior consent of that State. These principles are clearly re-stated in the major international cooperation treaties.

The boundaries of State sovereignty are not, however, limitless. State action is subject to certain restraints imposed by international law, including human rights obligations and procedural guarantees set out in bilateral and multilateral treaties. These restraints are intended to protect all individuals from oppression and injustice, including those who are the subject of (or otherwise implicated in) requests for international cooperation.

For example, liberty of the person is one of the oldest basic rights. Under the *International Covenant on Civil and Political Rights* (ICCPR), all individuals have a right to liberty and security of the person. This is not an absolute right, as States are permitted for example, to restrict individual liberty through mechanisms such as arrest, detention and imprisonment. However, international human rights law provides that in every case, any such restriction of liberty is only justifiable if the restriction is both lawful and not arbitrary. Other rights that tend to be particularly relevant in the context of international cooperation include: the right to life; the right not to be subjected to torture or cruel, inhumane or degrading punishment; the right to equality before the law; the right to a fair and public hearing, legal representation and interpreters; the presumption of innocence; and the right to not be held guilty of retrospectively operative offences or penalties.

Treaties on international cooperation typically provide some measure of protection for individuals who are the subject of a request for international cooperation. The limits on cooperation that are typically found in treaties on international cooperation are discussed in the following chapters. However, it is important to understand that the protections specified in international cooperation treaties do not exist in isolation. They have to be understood as part of a much larger system of human rights protections, which include the obligations in relevant treaties such as the ICCPR, the *Convention Relating to the Status of Refugees* (Refugee Convention) and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Convention Against Torture).

Violations of accepted human rights standards during investigations, prosecutions and adjudications have the potential not only to ruin individual cases, but also to diminish the preparedness of countries to cooperate in the future. Accordingly, whilst the vigorous pursuit of transnational traffickers and smugglers is to be encouraged globally, requests for international cooperation must be handled in a way that has full regard for the international criminal justice and human rights standards.

## CHAPTER 3: Mutual Legal Assistance and the Use of the UNODC MLA Writer Tool

### ***3.1. The Process of Mutual Legal Assistance***

Mutual legal assistance is the process States use to provide and obtain formal government-to-government assistance in criminal investigations and prosecutions. Mutual legal assistance is sometimes also called ‘mutual assistance’ or ‘judicial assistance’. For consistency, the acronym MLA is used throughout these Guidelines.

The exact type of MLA that States will provide to one another is subject to national law, treaties and other international arrangements. However, there are a number of common types of MLA that States will often be prepared to provide to other States to facilitate their criminal investigations and prosecutions. These include the following:

- Taking evidence or statements.
- Locating and identifying witnesses and suspects.
- Effecting service of judicial documents.
- Executing searches and seizures of property.
- Examining objects and sites.
- Providing information, evidentiary items and expert evaluations.
- Providing originals or certified copies of relevant documents and records.
- Identifying or tracing proceeds of crime.
- Facilitating the voluntary appearance of persons in the Requesting State.
- Transfer of prisoners to give evidence.

The scope of traditional forms of assistance has been widened in recent years by international treaties such as the UNTOC to include additional means such as freezing of assets, video conferencing and what has come to be known as the ‘spontaneous transmission of information’ whereby authorities are permitted, even without a prior request, to pass on information to the competent authorities of another State.

From a legal perspective, MLA is fundamentally different from more informal means of cooperation between government officials across borders. Law enforcement and other officials will frequently seek assistance from their foreign counterparts through informal channels, but there are limits to what can be achieved lawfully through informal channels. For example, informal cooperation will generally not be sufficient where the assistance involves coercive or compulsory measures. In addition, evidence gathered through this method might not necessarily be admissible in criminal proceedings. For these reasons, it is essential that practitioners dealing with TIP or SOM cases understand not only what can be achieved through informal mechanisms but also through the more formal MLA channels.

### ***3.2. The Relationship between Formal and Informal Cooperation Mechanisms***

The process of seeking assistance through MLA channels is both formal and frequently slow. Accordingly, experts recommend that where possible, practitioners should give consideration to whether it may be possible to lawfully get the desired outcome through

informal cooperation mechanisms. If the assistance required *does not* involve coercive measures (such as search and seizure or obtaining testimony from an uncooperative witness), then informal police-to-police or agency-to-agency assistance might be faster, cheaper and more convenient. In many cases, informal channels can be used at an early stage of an investigation or prosecution process, with the formal MLA request being made at a later stage. This may allow the rapid exchange of information at critical junctures, while also ensuring that information or evidence is properly sourced through the official channels. However, it is essential that any informal request is made and executed lawfully.

In determining whether to make a formal request practitioners should consider the following:

- Will the information or evidence be admissible as evidence in court if it is not obtained through formal channels?
- Could the same result be achieved through informal cooperation (for example, through ringing up a colleague in a foreign police service or financial intelligence unit)?
- Would obtaining background information through informal channels help to improve any subsequent MLA request?
- Could relevant information be obtained from public records or other open source information?
- Could the same result be achieved, without compromising the process or results, through other means such as asking the witness to come to the Requesting State to give evidence?

Some of the risks that may need to be considered when pursuing informal cooperation include the following:

- Unnecessary, frivolous or time-consuming informal requests could be perceived as time wasting. This might limit the willingness of counterparts to assist in future requests.
- Informal requests could lead to imprecise, unreliable facts and elements of proof if the most appropriate or highly trained person to access reliable information was not properly identified (as they are likely to be if identified through formal channels).<sup>3</sup>
- Informal requests could inadvertently compromise other ongoing investigations if they are not handled with the requisite level of confidentiality.

### **3.3. Legal basis for Mutual Legal Assistance**

The principles of sovereign equality and territorial integrity are firmly entrenched in international law and practice. In the present context, those principles prevent any State from exercising jurisdiction or undertaking actions in the territory of another party without the prior consent of that party.

Accordingly, where a State requires evidence, information or other assistance with an

investigation or prosecution from another country, such information or assistance will need to be requested from the State that is in possession of the information, in a position to render assistance, or otherwise has the relevant jurisdiction.

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<sup>3</sup> This is an argument for the use of nominated Operational Focal Points as channels for the informal exchange of information.

An effective legal basis to provide MLA is critical to ensuring effective action. Before proceeding with any application for MLA, it is important to identify the legal basis for that cooperation. The legal basis for MLA may be found in domestic law, in bilateral or multilateral treaties or a combination of these sources.

### **3.3.1. Domestic Law**

Many States have domestic laws that regulate the provision of MLA. These laws usually specify the preconditions and the procedure for making, transmitting and executing incoming and outgoing requests. In many situations, such laws are sufficient to support an application for MLA even without a treaty between the States in question.

Domestic laws will generally provide important information about the scope of assistance that can be provided and grounds for refusal. They will also usually specify preconditions that have to be met and procedures that should be followed, for example where the requests should be sent and how the request should be structured.

An example of such domestic law in the Western Balkan region can be found in the Law on International Legal Assistance in Criminal Matters of Serbia from 2009<sup>4</sup> which defines the procedures (including institutions in charge) for a number of types of legal assistance.

### **3.3.2. The Customary Principle of Reciprocity**

If there are no treaties or domestic laws in place, a State wishing to request the assistance of another may need to rely upon reciprocity. As noted in the previous chapter, reciprocity is essentially an assurance by the State making a request for assistance that it will comply with the same type of request and provide similar cooperation to the Requested State in a similar case in the future.

### **3.3.3. Treaties**

MLA is governed by a network of treaties, international, regional and bilateral, that either supplement domestic laws or provide a separate legal basis for such assistance.

#### **Bilateral Mutual Legal Assistance Treaties**

Bilateral treaties for MLA are common, especially between States that share land borders or that have close ties or historical relations. By negotiating bilaterally, States are able to shape an agreement that matches their particular legal system and requirements, while also ensuring a higher degree of certainty and predictability.

The Government of Bosnia and Herzegovina, for example, concluded a number of such bilateral agreements on cooperation in civil and criminal matters, including with Croatia, FYR of Macedonia, Montenegro, Serbia.

#### **Multilateral Mutual Legal Assistance Treaties**

Over the past half century, a number of multilateral instruments (both international and regional) have been drafted with the specific purpose of promoting and regulating cooperation between States in the judicial process. They may deal with single issue such as

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<sup>4</sup> Official Gazette of the Republic of Serbia, Nr. 20/2009.

terrorism, drug trafficking or organized crime or provide a general framework of rules within which MLA matters are dealt with between two or more States.

### **Multilateral Treaties: Regional**

The European Convention on Mutual Assistance in Criminal Matters was opened for signature by member States of the Council of Europe in April 1959. It deals with such matters as rogatory letters for the examination of witnesses or experts, service of official documents and judicial verdicts, summoning of witnesses, experts, or persons in custody and transmission of information from judicial records.

A number of guiding principles were laid down for MLA in criminal matters. It was decided that such assistance should be independent of extradition in that it should be granted even in cases where extradition was refused. For example, it was agreed that MLA should be granted in the case of minor offences as well as serious offences and that as a general rule the offence need not be an offence under the law of both countries. The Second Additional Protocol to the Convention, which was opened for signature in November 2001 modernised the existing provisions governing MLA, extending the range of circumstances in which MLA may be requested, facilitating assistance and making it quicker and more flexible.

For Example:

#### **Article 15,1 of the 1959 Convention, states the following**

Letters Rogatory referred to in Articles 3,4 and 5 as well as the applications referred to in Article 11 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.

#### **However, the Second Protocol replaces this paragraph with the following:**

Requests for mutual assistance, as well as spontaneous information, shall be addressed in writing by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels. *However they may be forwarded directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party and returned through the same channels.*

Both Treaties have been signed and ratified by all countries in the Western Balkans.

### **Multilateral Treaties: International**

The most important international treaties in the present context are the UNTOC (and its Trafficking and Smuggling Protocols) and the *United Nations Convention against Corruption* (UNCAC).

The UN Trafficking and Smuggling Protocols do not specifically deal with the issue of MLA. It is therefore necessary to turn to its parent instrument, the UNTOC, to consider the provisions that would apply to States Parties. The relevant provisions of the UNTOC are sufficiently detailed to characterize them as a 'mini-treaty' (or a treaty within a treaty) that could (or, in cases where no

alternative agreement is in place, should) be used by States Parties as the sole legal basis for MLA in relation to the offences to which they apply.

The following is a summary of the main elements of the MLA regime established by the UNTOC.<sup>2</sup>

**Scope of Application:**

The MLA obligations in the UNTOC apply to offences established in accordance with that Convention, including the offences of:

- Participating in an organised crime group;
- Laundering proceeds of crime;
- Corruption;
- Obstruction of Justice;
- ‘Serious Crime’

..... where these involve an organised crime group and there are reasonable grounds to suspect that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the Requested State Party.

‘Serious crime’ is defined as conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

**Types of Assistance Available:**

Article 18(3) of the UNTOC provides that State Parties can request MLA from one another, in relation to offences established by the Convention, for any of the following purposes:

- Taking evidence or statements from persons.
- Effecting service of judicial documents.
- Executing searches and seizures, and freezing.
- Examining objects and sites.
- Providing information, evidentiary items and expert evaluations.
- Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records.
- Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes.
- Facilitating the voluntary appearance of persons in the Requesting State Party.

The Convention also includes a ‘catch-all’ provision enabling States Parties to request any other type of assistance that is not contrary to the domestic law of the Requested State Party.

Note that international cooperation for the purposes of confiscation is the subject of a separate article (Article 13).

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<sup>2</sup> The mutual legal assistance regime established by UNCAC is in many ways similar to the regime established by UNTOC. However, please note that the UNCAC legal assistance is related to different criminal offences i.e. Corruption, such as bribery of officials, embezzlement of public funds, trading in influence and Laundering ‘proceeds of crime’ (this includes proceeds from *any* crime, which potentially includes the crimes of TIP, SOM or related crimes). Additionally, the UNCAC extends the obligation for MLA to situations where legal persons, such as companies or other corporate structures, are involved. Note also that two key forms of assistance - identification, freezing and tracing of proceeds of crime, and recovery of assets – defined by UNCAC are not defined by UNTOC.

## **Conditions on MLA:**

The MLA regime established by the UNTOC is intended to complement rather than replace any MLA regimes that already exist by virtue of any other treaty, whether bilateral or multilateral. At the same time, becoming a State Party to the UNTOC gives rise to separate obligations that States Parties must comply with amongst themselves. This includes the obligation to not decline a request for MLA on the ground of bank secrecy.

Where the UNTOC requires the provision of a *higher* level of assistance than is required under other MLA treaties that may already exist between States Parties, then its provisions will prevail. Conversely, where another treaty provides for a higher level of assistance from a Requested State then the provisions of that treaty will determine the extent of the Requested State's obligations. Article 18(7) of the UNTOC provides that where there is no MLA treaty already in force between a States Party seeking cooperation and the States Party from whom cooperation is sought, the rules of MLA set forth in Article 18, paragraphs 9-29 will apply. These rules, which, taken together, can usefully be considered as forming a mini MLA treaty, address issues such as the content and form of MLA requests, and grounds of refusal. Where another treaty is already in force between the State Parties concerned, then the rules of that treaty will apply instead (unless the parties specifically agree to apply paragraphs 9- 29). State Parties are strongly encouraged, but not obliged, to apply any of the terms of Article 18(9)-(29) if they facilitate cooperation to a greater extent than the terms of a MLA treaty in force between them.

## **Selecting the Appropriate Instrument of Cooperation**

Throughout the consultation process in the Western Balkans, the delegations reported problems in international cooperation caused by lengthy case processing through diplomatic channels. Despite the problems, some countries nevertheless stick to the formal procedures prescribed by the domestic legislation. In an attempt to overcome the existing problems, other countries are trying to apply alternative approaches. The most commonly used alternative is the direct application of the international instruments (mainly the Second protocol to the CoE MLA convention) which enables direct communication between judicial bodies. However, countries are not sure if such cooperation will be accepted by courts.

The regimes of the UNTOC and the UNCAC are intended to operate alongside other regimes of international cooperation, such as the Second Protocol to the CoE MLA Convention and pre-existing bilateral treaties. Accordingly, it is very likely that where the Requested and Requesting State are parties to some or all of these treaties, there will be very little or even no inconsistency between the various obligations.

Where the Requested and Requesting State are both Member Countries of the Second Protocol to the CoE MLA Convention, then the obligations of the Second Protocol to the CoE MLA Convention will apply, alongside or in addition to any other obligations in the UNTOC and the UNCAC. In situations where one of the States is not Party to the Second Protocol to the CoE MLA Convention, then the parties will be governed by an applicable MLA arrangement between them. In TIP and SOM cases, this is most likely to be the UNTOC, assuming both States are parties to this treaty. As noted above, in TIP or SOM cases concentrated around corruption or money laundering, the UNCAC could be a suitable alternative. It is also possible that a bilateral treaty between the Requested and Requesting States is the most appropriate cooperation vehicle. It should be noted that the UNTOC and the UNCAC cannot be replaced by States Parties with instruments requiring a lower level of obligation. In cases where a choice of



instrument is available, it is important to consider which best meets the cooperation requirements of the circumstances at hand.

The *2001 UNODC Experts Working Group Report on MLA Casework Best Practice* (further details below) recommended that where there were legal impediments to the effective exchange of MLA requests, States should where possible expand the number of States with which they have bilateral treaties or consider developing regional treaties and/or develop domestic legislation to facilitate effective exchange of MLA requests. It has been noted that International Treaties can, if domestic legislation allows, be used as a legal basis for the exchange of MLA requests.

### **3.4. Mutual Legal Assistance Principles and Conditions**

For an MLA request to succeed, there are a number of principles that must be followed or preconditions that must be met. These generally reflect State practices that have developed over time in response to concerns about the need to safeguard the interests of both the Requested and Requesting States and to protect human rights in the criminal justice process. There follows a list of the major principles and conditions that apply to MLA. For a detailed description of each of these principles and examples drawn from various Treaties, please refer to the *UNODC ASEAN Handbook on International Cooperation in TIP cases*.

- Evidentiary tests;
- Dual / double criminality;
- Double jeopardy;
- Reciprocity;
- Speciality or use limitation;
- General human rights considerations;
- The rights of suspects and persons charged with criminal offences;
- Consideration of the likely severity of punishment, including torture and death penalty cases;
- Political offences;
- National or public interest;
- Bank secrecy and fiscal offences.

### **3.5. MLA Casework Best Practice**

The 2001 UNODC Experts Working Group Report on MLA Casework Best Practice made a series of recommendations. Some of which are summarised below, together with other observations on the subject by the authors and based on subsequent UN publications

#### **3.5.1. Strengthening Effectiveness of Central Authorities**

##### **Establishing Effective Central Authorities**

The UN Drug and Crime Control Conventions contain extensive and broadly similar provisions relating to MLA. Included in their provisions are requirements for each Party to notify the Secretary-General of the United Nations of the central authority designated by it

to receive, transmit or execute requests for MLA. This is critical information for Requesting States in planning and drawing up requests. It must be accurate, up to date and widely available to those who frame or transmit MLA requests.

States that have not already done so should establish a central authority that facilitates the making, under Article 7 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, of requests for MLA to, and speedy execution of requests received from, other Parties. Central authorities should be staffed with practitioners who are legally trained, and who have developed institutional expertise and continuity in the area of MLA. A central authority need not be established by legislation – an administrative structure would suffice.

### **Ensuring Updating of Contact Information for Central Authorities**

Parties to the 1988 Convention should ensure that contact information contained in the UN Directory of competent authorities is kept up-to-date, and, to the extent possible, provides information for contacting its central authority via phone, fax and Internet.

(See paragraph 3.6.2.)

### **Ensuring Round the Clock Availability**

Both with respect to the 1988 Convention and generally, a State's central authority should, to the greatest extent possible, provide for a means of contacting an official of the central authority if necessary for the purposes of executing an emergency request for MLA after working hours. If no other reliable means is available, States may consider ensuring that their Interpol National Central Bureau or other existing channel is able to reach such an official after working hours.

### **Consistency of Central Authorities for MLA purposes under Different Treaties**

States are urged to ensure that their central authorities are a single entity, in order both to make it easier for other States to contact the appropriate authority for all kinds of MLA assistance in criminal matters, and to facilitate greater consistency of MLA practice for different kinds of criminal offences.

### **Reducing Delay**

States should take appropriate action to ensure that requests are examined and prioritized by central authorities promptly upon receipt and transmitted to executing authorities without delay. States should consider placing time limits upon processing of requests by central authorities. States should also ensure that executing agencies do not unreasonably delay processing of requests.

The international community has identified TIP a criminal offence and human rights violation requiring the urgent attention of all States and a high level of cooperation between States. It is widely accepted that requests for assistance relating to trafficking in persons cases should be prioritized by the Requested State. SOM cases also frequently involve human rights violations and should be dealt with expeditiously.

### **3.5.2. Ensuring Awareness of National Legal Requirements and Best Practices**

#### **Practical Guides to National MLA Legal Framework and Practices**

It is important that domestic authorities be aware of the availability of MLA and know the procedures to follow to obtain that assistance in relation to an investigation or prosecution. The provision of information to foreign authorities is an important measure to facilitate effective cooperation. Useful measures recommended are the production of manuals / guidelines, including publication on websites.

#### **Training of Personnel Involved in the MLA process**

Effective implementation of MLA instruments and legislation is not possible without personnel who are well trained with respect to the applicable laws, principles and practices. States are urged to use a broad range of methods to provide such training, in a manner that will allow for the expertise to be sustained.

### **3.5.3. Cooperation through use of Alternatives to Formal MLA Requests**

#### **Value of Police Channels where Formal Measures are not Required**

As previously highlighted, except for coercive measures normally requiring judicial authority,<sup>4</sup> a formal MLA request will not always be necessary to obtain assistance from other States, so whenever possible, information or intelligence should initially be sought through police to police contact, which is faster, cheaper and more flexible than the more formal route of MLA. Such contact can be carried out through ICPO/Interpol, Europol, through liaison officers, under any applicable treaties or memoranda of understanding, or through any regional arrangements, formal and informal, that are available.

#### **Particularly where Evidence is Voluntarily Given, or Publicly Available**

Informal channels can be used to obtain evidence given voluntarily (such as statements), or evidence from public records or other publicly available sources. Also, certain categories of evidence or information may be obtained directly from abroad without the need for police channels, for example, publicly available information stored on the internet or in other repositories of public records.

#### **Or to help Accelerate Urgent Formal Requests**

Many States will also permit urgent requests to be made orally or by fax between law enforcement officers so that advance preparations can be made or urgent non-coercive assistance given, at the same time as a formal request is routed between central authorities. However, the formal request should state that a copy has been sent by the informal route to prevent duplication of work.

It is relevant to note that TIP is often an extremely violent crime and that victims, particularly those cooperating with law enforcement, can be under serious risk of intimidation and retaliation. In SOM cases, frequently the means of transportation are dangerous and the health and safety of migrants is at serious risk. These factors may be important considerations in deciding whether to use these direct avenues of communication.

### **Use of Joint Investigation Teams**

States should consider the use of JITs where there is a transnational aspect to the offence (see Chapter 4)

### **3.5.4. Maximizing effectiveness through personal contacts**

#### **Maintaining Direct Contact throughout all Stages of the Request**

Personal contacts to open communication channels and between members of central authorities, judges, prosecutors and investigators from the requesting and requested States are critically important at every stage in the MLA process, so that the familiarity and trust, necessary to achieve best results, is developed.

It may be desirable to establish contact with the official in the Requested State before sending the request, in order to clarify legal requirements or simplify procedures, and personal contacts are also essential for the processing of urgent requests through direct channels.

It is vital, therefore, that an up to date list of contact points amongst judges, prosecutors and police dealing with TIP and SOM cases, is maintained and circulated within the region and outside. Include on this list should also be contact points for the central authorities (in addition to their details being sent for inclusion in the UN Directory, as mentioned above). A current list of all relevant contact points is attached at **Annex C**. Clearly this will change over time, and a mechanism should be introduced to ensure the list is updated and circulated whenever there are personnel changes. However the office phone and fax details and any generic email addresses are likely to remain constant.

#### **Benefits of Liaison Magistrates, Prosecutors and Police Officers**

States are encouraged to take initiatives such as the exchange of liaison police officers, magistrates or prosecutors, either by posting a permanent member of staff to the central authority of that country, or by arranging short term exchanges.

### **3.5.5. Preparing Effective MLA requests**

Preparation of a request for assistance involves consideration of a number of requirements, which are detailed in Section 3.6 below.

### **3.5.6. Eliminating /Reducing Impediments to Execution of Requests**

#### **Interpreting Legal Requirements Flexibly**

States should strive to provide extensive cooperation to each other, in order to ensure that national law enforcement authorities are not impeded in pursuing criminals who may seek to shield their actions by scattering evidence and proceeds of crimes in different States. Efforts should be made to minimise any impediments to cooperation, within the framework of applicable laws and treaties.

Note, however, that flexible interpretation of legal requirements should never operate to the detriment of the legal rights of any individual involved in the process including suspects and accused persons.

#### **Minimizing Grounds for Refusal and Exercising them Sparingly**

The grounds upon which a request may be refused should be minimal, limited to protections that are fundamental to the Requested State.

#### **Reducing Use Limitations**

Traditionally, evidence transmitted in response to a request for MLA could not be used for purposes not described in the request unless the Requesting State contacted the Requested State and provided express consent to other uses. However, many modern MLA treaties instead require the Requested State to advise that it wishes to impose a specific use limitation; if the limitation is not deemed necessary, it should not be imposed

#### **Ensuring Confidentiality in Appropriate Cases**

Some States are not in a position to maintain confidentiality of requests, with the result that the contents of requests could be inappropriately disclosed to the subjects of the foreign investigation/ proceedings, thereby potentially prejudicing the investigation/ proceedings. Confidentiality of requests is often a critical factor in the execution of requests.

Where Article 18(20) of UNTOC or Article 46(20) of UNCAC apply between the parties (i.e. there is a requirement for confidentiality from the Requesting State) ,the Requesting State Party may require that the Requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the Requested State Party cannot comply with the requirement of confidentiality, it is obliged to promptly inform the Requesting State Party.

#### **Execution of Requests in Accordance with Procedures specified by Requesting State**

It is important to comply with formal evidentiary/admissibility requirements stipulated by the Requesting State to ensure the request achieves its purpose. Where this is not possible (for example, because of conflict with domestic law), the Requested State should consult with the Requesting State at the earliest possible stage.

## Importance of Anticipating Legal and Procedural Difficulties in Requested State

When preparing an MLA request, it is important for the Requesting State to clearly identify in advance if there are any domestic laws, procedures or time requirements that have to be met. It is equally important for the Requesting State to try to anticipate if the Requested State may have difficulties meeting these requirements. This may be the case if, for example:

- The processes and procedures that are being requested are *prohibited* by the laws of the Requested State; or
- The processes and procedures that are being requested are *different* to the Requested State's usual processes and procedures.

If what is being requested is likely to be *prohibited* by the laws of the Requested State, there may be little point proceeding. However, if what is being requested is just *different* to the usual practice of the Requested State, then it may still be possible to secure cooperation. In this latter case, it is important to try to understand the differences, and to suggest / agree a way forward, in respect of which personal contacts are extremely valuable.

Investigative techniques available to law enforcement agencies vary between States and this is particularly so with respect to surveillance. For example, although some States permit telephone interception for intelligence purposes, the laws might prevent information obtained through telephone interception from being used in a court as evidence. Similarly, many States have laws that regulate when and how physical surveillance can be conducted. As a result, some forms of surveillance may be legal in one country, but not in another. Accordingly, it is important for States cooperating in this way to be aware of their respective rules and practices and to apply this knowledge to requests for assistance, especially having in mind the need for the admissibility of evidence.

The issue of admissibility of evidence, however, does not seem to pose major problems in the Western Balkan region. Legal systems of the States in the region stem from the same legal tradition and, notwithstanding the differences in the respective national legislation, international cooperation in terms of exchange and admissibility of evidence seems to take place without significant difficulties. It is mainly so due to the fact that the states define in their respective bilateral agreements or national laws on international cooperation in criminal matters that requested legal assistance is to be rendered in accordance with the law of the requesting state unless it is contrary to the principles and legislation of the requested state. For an example of the former see Article 7 of the Agreement between the Government of Bosnia and Herzegovina and the Government of the Republic of Croatia and for the latter see Article 12 in conjunction with Article 90 of the Law on international criminal assistance in criminal matters of the Republic of Serbia.

## Coordination in Multi-Jurisdictional Cases

Where there are multiple requests for assistance in the same case, States are encouraged to closely consult in order to avoid needless confusion and duplication of effort. Again the networks of Contact Points are vital here.

### **Consulting before Refusing / Postponing / Conditioning cooperation to determine if necessary**

Where the Requested State considers that it is unable to execute the request, formal refusal should not be made before consulting with the Requesting State to see if the problems can be overcome, or the request modified to enable assistance to be given. Again the network of contact points is extremely useful in such cases.

### **3.5.7. Making use of Modern Technology to Expedite Transmission of Requests**

The traditional methods of transmission of requests (such as the transmission of written, sealed documents through diplomatic pouches or mail delivery systems) can result in cooperation not being provided in time. Expedited means such as phone, fax, or Internet should be utilized where possible. The Requesting and Requested States should determine among themselves how to ensure the authenticity and security of such communications, and whether such communications should be followed up by a written request transmitted through the normal channel.

### **3.5.8. Making use of the most Modern Mechanisms for providing MLA**

Modern technology presents many opportunities to expedite the provision of assistance in criminal matters and to maximize the effectiveness of MLA processes. Examples include taking evidence via video-link and the interception of electronic communications and the exchange of DNA material. Such exchange is covered under various international conventions, but if a State's domestic legislation does not permit such exchanges, consideration should be given to making appropriate legislative changes.

### **3.5.9. Maximizing Availability and Use of Resources**

#### **Providing Central Authorities with Adequate Resources**

States should ensure that, as far as possible, appropriate resources are allocated to MLA.

#### **Obtaining assistance from a requesting state**

A Requested State may wish to "seek assistance from the Requesting State in order to provide assistance", for example the provision of personnel or equipment to be used in execution of the request or to cover costs in whole or in part.

#### **Asset sharing**

The sharing of confiscated assets between the Requesting and Requested States is an important way that cooperation can be encouraged and additional resources provided, a procedure which is supported by the UNTOC.

## **Optimizing language capability**

One special resource issue is the need for capacity for languages within the central authority. The optimum is to have this capacity by virtue of bilingual or multilingual personnel working in the authority, or failing that to seek assistance from other government departments or missions abroad - or even from the Requesting or Requested State as the case may be.

As a practical matter, States are increasingly drafting and accepting requests in English. It is often easier for Requesting States to find qualified persons to translate their documents from their official language into English and for Requested States to find qualified persons to translate the Request from English to their official language. This will obviously need to be agreed in advance between the States involved and it is essential that translations are of a high quality and if they are not, there is a risk that the request might be delayed, misunderstood or rejected.

### **3.6. Preparing Effective MLA Requests**

There are various available documents on the preparation of MLA requests. Again the *UNODC ASEAN Handbook on International Cooperation in TIP Cases*, for example, contains a detailed list of the minimum form and content requirements.

Also, attached at **Annex A**, is a *General Checklist for Requesting MLA, plus Supplemental Checklists for Specific Types of MLA Request – namely Search and Seizure, Production of Documents, Taking of Witness Statements / Evidence, Temporary Transfer of Prisoners to give Evidence and Pre-Judgement Seizure / Freezing or Post-Judgement Confiscation*.

For the purposes of these Guidelines, however, the approach to this topic centres around the use of the **MLA Request Writer Tool**, developed by the Legal Advisory Programme of the UNODC. The tool is basically a software package created for criminal justice practitioners all around the world, to assist them in the process of drafting formal requests of MLA.

#### **3.6.1. Features / Advantages of the MLA Request Writer Tool**

- The TOOL is user friendly, it is extremely easy to manoeuvre and it doesn't require any prior experience in this field. The user is guided step-by-step through the screens, to enter the relevant data for the request to be efficient and complete.
- The TOOL allows the user to save previous requests in the database in order to be able to print them directly without going through the whole writing process, which can be extremely useful, particularly for urgent cases.
- The TOOL provides a list of assistance types, as well as multilateral treaties from which to choose the legal basis of the request, so it is not necessary to look for the legislation and assistance type that applies to every case, just to choose the relevant information from the given lists. Additionally, the TOOL comes with a function called "National Legislation Website" which links the user to relevant databases and internet legislation websites.
- All the above functions facilitate and speed up the process of drafting an MLA request considerably.



- The TOOL database can be edited in order to adjust it to the local legislation -regarding substantive and/or procedural law- as well as to each type of request, depending on the details of each case (it is possible to add or delete treaties, websites, etc.). It is important to emphasize that the TOOL database has no storage limit other than the storage limit of the computer, so the users can save as many requests and other information as they need in the database.

The final result of this process is a complete and effective MLA request in an internationally recognized and accepted format, which is simple and quick to produce.

### **3.6.2. Availability of the UNODC MLA Request Writer Tool and other UNODC legal tools**

- *The UNODC MLA request writer tool* can be downloaded from the UNODC'S web page (<http://www.unodc.org/mla>) where there can also be found background information and documentation about the tool including a video demonstration. It is also available in CD ROM format. It is free to download the TOOL, and it can be used off line, although in order to open the links to other States' legislation websites, it is necessary to be connected to the UNODC on line.
- The tool has been translated into Albanian, Bosnian, Croatian, Macedonian, Montenegrin and Serbian. It is also available in a number of other languages such as English, French, Spanish and Russian. A comprehensive User Manual is also available.
- *The Competent National Authorities (CNAs) on-line Directory* (<http://www.unodc.org/compauth/en/index.html>) provides information on the competent national authorities under the 1988 Convention and under the UNTOC Convention in order to facilitate cooperation between countries in accordance with the international drug control and crime treaties. It allows CNAs easy access to the updated contact information of their counterparts in most countries of the world, as well as means of communication, and provides information on the legal requirements for cooperation. The on-line Directory currently contains the contact information of over 606 CNAs, by five thematic categories:
  - Extradition
  - Transfer of sentenced persons
  - Mutual Legal Assistance
  - Illicit Traffic by Sea
  - Smuggling of migrants by sea
- Other UNODC legal tools, such as model legislation and legal library can be found at (<http://www.unodc.org/unodc/en/legal-tools/index.html?ref=menu>).

# CHAPTER 4: Joint Investigations and Joint Investigation Teams

## 4.1. Introduction

This chapter is based on the international legal framework, practical experiences of the EU Member states, Joint Investigation Teams Manual<sup>5</sup> developed by EUROJUST and EUROPOL, Meeting Reports of the Network of EU experts on JITs,<sup>6</sup> Report of the UNODC Expert Working Group on Joint Investigation Teams, practical experiences of the countries in the Western Balkan region in conducting parallel investigations, as well as material from workshops and missions conducted in the region in the course of October / December 2009. The aim of this chapter is to help practitioners to increase their knowledge and understanding of Joint (Parallel) Investigations (JPIs) and Joint Investigation Teams (JITs) and encourage them to make use of these tools to add value to their investigations and prosecutions, as well as help enhance international cooperation in criminal matters in the Western Balkan region.

Direct communications with criminal justice practitioners from the region during the workshop in Budva, as well as the discussions that took place during the aforementioned missions, indicated a need for the clarification of several issues. Firstly, there was some confusion over the differentiation between the concepts of a JIT and a JPI (also known as a 'Joint (Coordinated)' or 'Mirror' Investigation). Secondly, it was considered useful to present the existing binding international legal framework related to JITs and provide a short commentary thereof. Thirdly, a draft Agreement on setting up a JIT was deemed to be of practical use for practitioners to draw upon once they have a case suitable for a JIT investigation. Therefore, this part of the Guidelines will be structured in three parts addressing these three particular issues respectively.

## 4.2. Concepts of Joint Investigations

In principle, experiences around the world so far have shown that the range of collaborative efforts conducted within the framework of so-called joint investigations can be classified in one of two categories: JPIs or JITs. However, the United Nations Convention Against Transnational Organised Crime (UNTOC, Article 19) as well as the United Nations Convention Against Corruption (UNCAC, Article 49) have introduced a third concept – a Joint Investigative Body (JIB).

### 4.2.1. Joint (Parallel) Investigations

JPIs are basically two separate investigations undertaken in two different States with a common goal. These are usually assisted by a liaison officer network or through personal contacts. The officials involved are non co-located and are able to work jointly on the basis of long standing co-operative practices and/or existing MLA legislation depending on the nature of the legal system(s) involved. The evidence collected in the course of these two investigations is for the purpose of two separate criminal proceedings exchanged by the use of formal MLA proceedings. This is the procedure most commonly followed in the Western Balkan region.

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5 The version dated June 2009.

6 See EUROJUST, JIT meetings on [http://www.eurojust.europa.eu/jit\\_meetings.htm](http://www.eurojust.europa.eu/jit_meetings.htm).

## **4.2.2. Joint Investigation Teams**

The concept of JITs arose from the belief that existing methods of international police and judicial co-operation were sometimes, by themselves, insufficient to deal with serious cross-border organised crime. It was felt that a team of investigators and judicial authorities from two or more States, working together with clear legal authority and certainty about the rights, duties and obligations of the participants, would improve the fight against organised crime. Usually, a JIT is defined as an investigation team set up on the basis of an agreement between two or more competent authorities and/or other parties, for a specific purpose (e.g. investigation of a particular criminal operation) and limited duration. Depending on the operational powers of the members of JITs, they can be divided and characterised either as passive or active. An example of a passive team could include the situation where an investigator from Bosnia and Herzegovina works with investigators from Croatia in an advisory or consultancy role or, in a supportive role based on the provision of technical assistance to the host state. An active team would include officers from at another jurisdiction with the ability to exercise (equivalent or at least some) operational powers under host state control in the territory or jurisdiction where the team is operating (e.g. a Serbian police officer working in Montenegro with a Montenegrin investigation team). The assignment of a foreign law enforcement officer or prosecutor to an operational team in another jurisdiction is usually based on either national legislation enabling a foreign officer to be appointed/designated or a technical assistance agreement.

During the missions in the Western Balkan it was unanimously agreed that the currently existing practice of conducting JPIs could, in appropriate circumstances, be developed to incorporate the concept of JITs. Following discussion of the concepts of the passive/active JITs it was generally accepted that efforts should be geared towards the establishment of passive JITs.

## **4.2.3. Joint Investigative Bodies**

Pursuant to Articles 19 of the UNTOC and Article 49 of the UNCAC signatories of these treaties are encouraged to initiate (by signing bilateral or multilateral agreements) the establishing of JIBs. Neither the interpretative notes to nor the Legislative guide for the implementation of the UNTOC and UNCAC define what is to be understood as a JIB. However, the UNODC Expert Working Group on JITs is of the opinion that a JIB is distinct from both a JIT and JPI in that it is intended to be a more permanent structure formed on the basis of a bilateral agreement. Here it can be added that whereas JITs are more likely to be formed for the investigation of particular criminal cases within a limited (although extendable) period of time (usually 6-18 months), JIBs would be more suitable for investigating certain types of crime (e.g. trafficking in persons) and not just isolated cases, in a longer period of time (e.g. 5 or more years).

## **4.3. What are the Benefits of JITs?**

As mentioned earlier, the practitioners in the Western Balkan region have had generally positive experiences with JPIs. Nevertheless, they are of the opinion that their currently positive and successful cooperation could and should be enhanced and improved and that in certain cases a JIT would be the preferred option. Having in mind the differences between JITs and JPIs there is a need for brief summary of the benefits of a JIT.

The main benefits of a JIT are:

- Facilitation of information exchange (information can be exchanged much more quickly within a JIT, both formally and informally) and the ability to act on it immediately;
- Reduced amount of letters of request;
- Enhanced judicial cooperation;
- Decreased problems with the admissibility of evidence;
- Strengthening law enforcement capacity by consolidation of resources including linguistic abilities;
- One team, with one goal across the borders - success of the JIT will be success of all the members;
- The building of trust and relationships;
- Practical possibility to develop transnational investigation capacity in the Western Balkan region;
- Strategic benefits to countries involved;
- Possibilities of EU funding for JITs.

Having said all this, it should be borne in mind that JITs are not necessarily the best tool in all circumstances, i.e. in every cross-border investigation, but States should nevertheless be aware of the possibility to use them and what their benefits are.

#### **4.4. International Legal Framework relating to JITs**

The most relevant international instruments defining joint investigations or joint investigation teams are the following:

- Article 19 of the United Nations Convention against Transnational Organised Crime;
- Article 49 of the United Nations Convention against Corruption
- Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
- Article 1 - Joint investigation teams<sup>7</sup> - Council Framework Decision of 13 June 2002 on joint investigation teams
- Article 27 of the Police Cooperation Convention for Southeast Europe

##### **4.4.1. United Nations**

###### **Article 19. Joint investigations - UNTOC**

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

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<sup>7</sup> Article 1 of the Framework Decision on joint investigation teams almost repeats the wording of the Article 13 of the EU Convention on Mutual Assistance in Criminal Matters (adopted on 29 May 2000 by the Council of Ministers). However, due to the rather slow ratification progress the Council adopted the Framework Decision on Joint investigation teams which was to be implemented by the Member States by January 1st 2003. The Framework Decision will cease to have effect once all Member States ratify the EU Convention on Mutual Assistance in Criminal Matters. Until then, the Framework Decision, as the legislation in force, defines the legal framework for JITs in the EU.

arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

#### **Article 49 Joint investigations – UNCAC**

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.

#### **4.4.2. Council of Europe**

##### **Article 20 – Joint investigation teams - Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters**

1 By mutual agreement, the competent authorities of two or more Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Parties setting up the team. The composition of the team shall be set out in the agreement.

A joint investigation team may, in particular, be set up where:

- a) a Party's investigations into criminal offences require difficult and demanding investigations having links with other Parties;
- b) a number of Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the Parties involved.

A request for the setting up of a joint investigation team may be made by any of the Parties concerned. The team shall be set up in one of the Parties in which the investigations are expected to be carried out.

2. In addition to the information referred to in the relevant provisions of Article 14 of the Convention, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

3. A joint investigation team shall operate in the territory of the Parties setting up the team under the following general conditions:

- a the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Party in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;
- b the team shall carry out its operations in accordance with the law of the Party in which it operates. The members and seconded members of the team shall carry out their tasks under the leadership of the person referred to in sub-paragraph a, taking into account the conditions set by their own authorities in the agreement on setting up the team;
- c the Party in which the team operates shall make the necessary organisational arrangements for it to do so.

4 In this article, members of the joint investigation team from the Party in which the team operates are referred to as "members", while members from Parties other than the Party in which the team operates are referred to as "seconded members".

5 Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Party where the team operates, decide otherwise.

6 Seconded members of the joint investigation team may, in accordance with the law of the Party where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Party of operation and the seconding Party.

7 Where the joint investigation team needs investigative measures to be taken in one of the Parties setting up the team, members seconded to the team by that Party may request their own competent authorities to take those measures. Those measures shall be considered in that Party under the conditions which would apply if they were requested in a national investigation.

8 Where the joint investigation team needs assistance from a Party other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operation to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.

9 A seconded member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Party which has seconded him or her for the purpose of the criminal investigations conducted by the team.

10 Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Parties concerned may be used for the following purposes:

- a for the purposes for which the team has been set up;
- b subject to the prior consent of the Party where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Party concerned or in respect of which that Party could refuse mutual assistance;
- c for preventing an immediate and serious threat to public security, and without prejudice to sub-paragraph b. if subsequently a criminal investigation is opened;
- d for other purposes to the extent that this is agreed between Parties setting up the team.

11 This article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.

12 To the extent that the laws of the Parties concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Parties setting up the joint investigation team to take part in the activities of the team. The rights conferred upon the members or seconded members of the team by virtue of this article shall not apply to these persons unless the agreement expressly states otherwise.

### 4.4.3. European Union

Albania, Bosnia and Herzegovina, Croatia, FYR of Macedonia, Montenegro and Serbia, although having different statuses with regard to EU membership, are, at the time of publication, still not part of the EU. Nevertheless, their aspirations to join the EU are beyond any doubt. Therefore, the States should be aware of the EU legal framework relevant for the establishment and running of the JITs.

#### **Article 1 - Joint investigation teams<sup>8</sup> - Council Framework Decision of 13 June 2002 on joint investigation teams**

1. By mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Member States setting up the team. The composition of the team shall be set out in the agreement.

A joint investigation team may, in particular, be set up where:

- (a) a Member State's investigations into criminal offences require difficult and demanding investigations having links with other Member States;
- (b) a number of Member States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Member States involved.

A request for the setting up of a joint investigation team may be made by any of the Member States concerned. The team shall be set up in one of the Member States in which the investigations are expected to be carried out.

2. In addition to the information referred to in the relevant provisions of Article 14 of the European Convention on Mutual Assistance in Criminal Matters and Article 37 of the Benelux Treaty of 27 June 1962, as amended by the Protocol of 11 May 1974, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

3. A joint investigation team shall operate in the territory of the Member States setting up the team under the following general conditions:

- (a) The leader of the team shall be a representative of the competent authority participating in criminal investigations from the Member State in which the team operates. The leader of the team shall act within the limits of his or her competence under national law.
- (b) The team shall carry out its operations in accordance with the law of the Member State in which it operates. The members of the team shall carry out their tasks under the leadership of the person referred to in subparagraph (a), taking into account the conditions set by their own authorities in the agreement on setting up the team.
- (c) The Member State in which the team operates shall make the necessary organisational arrangements for it to do so.

<sup>8</sup> Article 1 of the Framework Decision on joint investigation teams almost repeats the wording of the Article 13 of the EU Convention on Mutual Assistance in Criminal Matters (adopted on 29 May 2000 by the Council of Ministers). However, due to the rather slow ratification progress the Council adopted the Framework Decision on Joint investigation teams which was to be implemented by the Member States by January 1st 2003. The Framework Decision will cease to have effect once all Member States ratify the EU Convention on Mutual Assistance in Criminal Matters. Until then, the Framework Decision, as the legislation in force, defines the legal framework for JITs in the EU.

4. In this Framework Decision, members of the joint investigation team from Member States other than the Member State in which the team operates are referred to as being "seconded" to the team.
5. Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Member State of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Member State where the team operates, decide otherwise.
6. Seconded members of the joint investigation team may, in accordance with the law of the Member State where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Member State of operation and the seconding Member State.
7. Where the joint investigation team needs investigative measures to be taken in one of the Member States setting up the team, members seconded to the team by that Member State may request their own competent authorities to take those measures. Those measures shall be considered in that Member State under the conditions which would apply if they were requested in a national investigation.
8. Where the joint investigation team needs assistance from a Member State other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operations to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.
9. A member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Member State which has seconded him or her for the purpose of the criminal investigations conducted by the team.
10. Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Member States concerned may be used for the following purposes:
  - (a) for the purposes for which the team has been set up;
  - (b) subject to the prior consent of the Member State where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Member State concerned or in respect of which that Member State could refuse mutual assistance;
  - (c) for preventing an immediate and serious threat to public security, and without prejudice to subparagraph (b) if subsequently a criminal investigation is opened;
  - (d) for other purposes to the extent that this is agreed between Member States setting up the team.
11. This Framework Decision shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.
12. To the extent that the laws of the Member States concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Member States setting up the joint investigation team to take part in the activities of the team. Such



persons may, for example, include officials of bodies set up pursuant to the Treaty. The rights conferred upon the members or seconded members of the team by virtue of this Framework Decision shall not apply to these persons unless the agreement expressly states otherwise.

#### **4.4.4. Southeast Europe**

##### **The Police Cooperation Convention Secretariat**

On 5 May 2006 in Vienna, during the Austrian presidency of the EU, the Ministers of Interior from Albania, Bosnia and Herzegovina, FYR of Macedonia, Moldova, Montenegro, Romania and Serbia, signed the Police Cooperation Convention for Southeast Europe.<sup>9</sup> After ratification by all seven signatory states, the Convention entered into force on 10 October 2007. In addition, Bulgaria acceded to the Convention on 25 September 2008. The provisions of the Convention provide a legal framework for comprehensive police cooperation among the Contracting Parties, including legal framework for the establishment of JITs.

##### **Article 27 - Joint Investigation Teams – Police Cooperation Convention for Southeast Europe**

(1) By mutual agreement, the law enforcement authorities of two or more Contracting Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Contracting Parties setting up the team. The composition of the team shall be set out in the agreement setting up the team.

(2) A joint investigation team may, in particular, be set up where:

- a) a Contracting Party 's investigations into criminal offences require difficult and demanding investigations having links with other Contracting Parties;
- b) a number of Contracting Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Contracting Parties involved.

(3) A request for the setting up of a joint investigation team may be made by any of the Contracting Party concerned. The team shall be set up in one of the Contracting Party in which the investigations are expected to be carried out.

(4) Requests for the setting up of a joint investigation team shall include the authority making the request, the purpose of the joint investigation team, the Contracting Parties in which the joint investigation team will operate and proposals for the composition of the joint investigation team.

(5) A joint investigation team shall operate in the territory of the Contracting Parties setting up the team under the following general conditions:

- a) the leader of the team shall be a representative of the law enforcement authority participating in criminal investigations from the Contracting Party in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;

<sup>9</sup> See <http://www.pccseesecretariat.si>.

b) the team shall carry out its operations in accordance with the law of the Contracting Party in which it operates. The members of the team shall carry out their tasks under the leadership of the person referred to in subparagraph (a), taking into account the conditions set by their own authorities in the agreement on setting up the team.

(6) In this Article, members of the joint investigation team from Contracting Parties other than the Contracting Party in which the team operates are referred to as being "seconded" to the team.

(7) Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Contracting Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Contracting Party where the team operates, decide otherwise.

(8) Seconded members of the joint investigation team may, in accordance with the law of the Contracting Party where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the law enforcement authorities of the Contracting Party of operation and the seconding Contracting Party.

(9) Where the joint investigation team needs investigative measures to be taken in one of the Contracting Parties setting up the team, members seconded to the team by that Contracting Party may request their own law enforcement authorities to take those measures. Those measures shall be considered in that Contracting Party under the conditions which would apply if they were requested in a national investigation.

(10) Where the joint investigation team needs assistance from a Contracting Party other than those which have set up the team, or from a third State, the request for assistance may be made by the law enforcement authorities of the Contracting Party of operations to the law enforcement authorities of the other Contracting Party concerned in accordance with the relevant instruments or arrangements.

(11) A member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Contracting Party which has seconded him or her for the purpose of the criminal investigations conducted by the team.

(12) Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the law enforcement authorities of the Contracting Parties concerned may be used for the following purposes: a) for the purposes for which the team has been set up;

b) subject to the prior consent of the Contracting Party where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Contracting Party concerned or in respect of which that Contracting Party could refuse mutual assistance;

c) for preventing an immediate and serious threat to public security, and without prejudice to subparagraph (b) if subsequently a criminal investigation is opened; d) for other purposes to the extent that this is agreed between Contracting Parties setting up the team.

(13) This Article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.

(14) To the extent that the laws of the Contracting Party concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the law enforcement authorities of the Contracting Parties setting up the joint investigation team to take part in the activities of the team. Such persons may, for example, include officials of international organisations recognized by Contracting Parties. The rights conferred upon the members or seconded members of the team by virtue of this Article shall not apply to these persons unless the agreement expressly states otherwise.

## **The SECI Centre**

### **The Role of the SECI Centre in Joint Investigations in the Western Balkan region**

The SECI Center is the regional operational organization in Southeast Europe set up in 1999 to strengthen and facilitate the cooperation of Police and Customs authorities of the member countries in combating trans-border crime. The SECI Center was launched after the member countries signed in May 1999 the SECI Agreement that was further ratified by each member country and became the legal framework facilitating the cooperation in the region.

At the time of publication, , the member countries of the SECI Center are Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Hungary, Former Yugoslav Republic of Macedonia, Moldova, Montenegro, Romania, Serbia, Slovenia and Turkey. Each of them have liaison officers posted at the SECI Center Headquarter in Bucharest that work together in direct cooperation to coordinate joint investigations and facilitate information exchange.

Besides the member countries, there are 22 observer countries and organizations: Austria, Azerbaijan, Belgium, Canada, Czech Republic, EUBAM, France, Georgia, Germany, Israel, Italy, Japan, The Netherlands, Poland, Portugal, Spain, Slovakia, Ukraine, UNDP Romania, the United Kingdom, UNMIK, and the United States of America. Interpol and World Customs Organization have status of permanent advisors in police and respectively customs matters.

The cooperation within the SECI Center is done on two dimensions. One of them is the information exchange process, which occurs on daily basis between the liaison officers, who are trying to solve rapidly the requests received from their national investigation teams. The other important dimension is represented by the activities which take place in the framework of SECI Center Task Forces. Currently, there are eight ongoing Task Forces at SECI Center, each of them targeting different types of crimes.

One of these eight task-forces is the Trafficking in Human Beings and Migrant Smuggling Task-Force ("Mirage" T.F.). The "Mirage" T.F. was established in 2001. It is coordinated by Romania and provides a forum for discussions among the national experts, who meet regularly in order to share experience and develop strategies for fighting TIP and migrant smuggling in the region. Among the notable activities of the "Mirage" T.F., it is worth mentioning:

- Involvement in the initiation and coordination in 2002, 2003 and 2004 of the Mirage-type Regional Operations, following the model of "one-time action" aiming to identify

the criminal networks involved in TIP in the region and involving all SECI Center member countries;

- Supporting, in common with UNDP Romania and ICMPD, the process of data collection and the preparation of the “Manual of Good Practices in fighting TIP in South East Europe;
- Supporting the exchange of information and the transfer and assistance of victims of TIP from their home countries to the exploitation countries, in order to give testimonies in criminal proceedings against their traffickers;
- Coordination of information exchange process and facilitation of operational meetings, in Joint (Parallel) Investigations developed by countries in the region along the time;
- Organized a training on “Interview and Interrogation Techniques” provided to experts from all SECI countries, by two instructors from FBI Academy;
- Preparation of annual Analytical Reports on TIP and SOM in Southeast European countries;

“Mirage” Task-force meetings bring together the national experts not only of member countries, but also of observer countries and international organizations. Thus, the framework offers the possibility not only to SECI Center countries to cooperate among themselves, but relationships are also established and strengthen with countries and organizations beyond SECI Center area.

At the Task-Force meeting which took place in May 2008, the participants decided that countries should improve the data-sharing related to trafficking in minors and also trafficking in organs and tissues. As first step, it was agreed that all should provide strategic information on the topic to be analyzed and presented in the SECI Center annual Analytical Report on TIP and Migrant Smuggling. The task-force participants also noted the necessity of strengthening the cooperation with governmental and non-governmental agencies dealing with assistance provided to victims of TIP.

In respect of TIP and SOM, the SECI Center is focusing its support activity to the member countries on developing JPIs targeting criminal groups involved in these types of crime. Operational meetings of the specialized law enforcement agencies involved, are being arranged under the umbrella of the SECI Center.

Over the years, a number of joint parallel investigations have been developed with the support of the SECI Center. In 2008 the SECI Center started offering operational analytical support in particular joint investigations developed by the countries in the region, at the request of the countries involved and based on the information circulated using SECI Center channels. The SECI Center criminal analysts were able to provide a regional picture of the criminal group, the connections between the members and details of their activities.

### **The SELEC Convention and JITs**

The SELEC Convention is to be the new legal framework of the current SECI Center that after the ratification process and implementation of the new Convention will have the name of SELEC" (Southeast European Law Enforcement Center).

The Convention was negotiated by expert representatives of all member states of the SECI Center with the assistance of experts from the EU Commission, and is aligned with

EU regulations on law enforcement cooperation. SELEC will have international legal personality and conditions to closely work with EU law enforcement bodies.

The convention was signed on 9th of December 2009 by all SECI Center member states, which paves the way for ratification at each national level. The SELEC Convention shall enter into force on the sixtieth day after the date when the nine State Parties to the Agreement on Cooperation to Prevent and Combat Trans-border Crime, signed at Bucharest, Romania on May 26, 1999, have deposited their instruments of ratification, acceptance or approval.

The objective of SELEC, within the framework of cooperation among Competent Authorities, is to provide support for Member States and enhance coordination in preventing and combating crime, including serious and organized crime, where such crime involves or appears to involve an element of trans-border activity (Article 2 of the SELEC Convention). From the perspective of JITs and the role of the SELEC in future, the States should be aware of the following:

### **Article 3 – Tasks – SELEC Convention**

In accordance with Article 2, SELEC shall have the following tasks:

- (a) to support investigations and crime prevention activity in Member States and in accordance with this Convention;
- (b) to facilitate the exchange of information and criminal intelligence and requests for operational assistance;
- (c) to notify and inform the National Focal Points of Member States of connections between suspects, criminals or crimes related to the SELEC mandate;
- (d) to collect, collate, analyze, process and disseminate information and criminal intelligence;
- (e) to provide strategic analysis and to produce threat assessments related to the SELEC objective;
- (f) to establish, operate and maintain a computerized information system;
- (g) to act as a depository of good practice in law enforcement methods and techniques and to promote the same through multi-national training and conferences for the benefit of Member States;
- (h) to undertake other tasks consistent with the objective of this Convention, following a decision by the Council.

## ***4.5. Commentary on the Legal Framework***

Article 20 of the Second Protocol calls for a more detailed elaboration of several important issues. These are:

- When can/should a JIT be established? (see 4.5.1. below);
- How can/should a JIT be structured? (see 4.5.2. below);
- Operational powers of a JIT (see 4.5.3. below);
- A JITs' investigations in other countries without MLA requests (see 4.5.4. below);
- Direct exchange of information between JITs' members (see 4.5.5. below);
- JIT Agreement (see 4.5.6. below).

#### 4.5.1. When can a JIT be Established?

Experience has shown that where a State is investigating an offence with a cross-border dimension, particularly in relation to organised crime, the investigation can benefit from the participation of authorities from other States in which there are links to the offences in question, or where co-ordination is otherwise useful. Contrary to the general assumption that JITs are to be used only in serious organised crime cases, Article 20(1) of the 2<sup>nd</sup> Protocol approaches the JIT concept not so much from the seriousness of a crime but rather from the crime's international and cross-border dimension. The article states that JITs may, in particular, be set up where:

1. A Party's investigations into criminal offences require difficult and demanding investigations having links with other Parties.
2. A number of Parties are conducting investigations into criminal offences in which the nature of the case necessitates co-ordinated and concerted action in the Parties involved.

Although the experience so far has shown JITs usually to be limited to the more serious forms of criminality, JITs may be useful even in smaller cases. This is because a JIT can facilitate co-operation in a specific case and also prepare the groundwork for future JITs by building mutual trust and providing experience in cross-border co-operation.

There are many practical instances where a JIT might be the right tool, but at least several crime areas can be mentioned by way of example:

- Trafficking in persons with cross-border elements;
- Smuggling of migrants;
- Drug trafficking with cross-border elements;
- Terrorism cases in which the venues of a planned attack differ from the locations where the first intelligence will be gathered; etc.

When deciding if a particular case is suitable for a JIT-lead investigation, the parties involved could be lead by some of the following questions:

- Is it a complex case?
- Are more Parties involved?
- Could the investigation and prosecution be done just as efficiently without a JIT?
- Will the investigation require complicated information and intelligence management?
- Will it avoid numerous MLA requests?
- Are human and financial resources available for the establishment of a JIT?
- Are there any bureaucratic constraints that hamper the establishment of a JIT?
- Would the time saved during the operation of the JIT outweigh the additional time required to set it up?

When considering a JIT it is recommended that investigators, prosecutors and/or judges from the Parties meet to discuss the matter *at the earliest opportunity* before a formal proposal and agreement is made. As some countries have implemented domestic administrative rules which, for example, stipulate notification of the competent ministries in the preparatory stage, the early involvement of all competent persons is of the utmost importance so as not to jeopardise or delay the whole process.

## 4.5.2. How can/should a JIT be Structured?

### The Team

The team is set up in the Party in which investigations are expected to be predominantly carried out. Although one fixed “headquarters” should be agreed upon, it is not necessary for all members of the JIT to be located in the same place.

It was obviously envisaged that there would be a group of investigators and other personnel, from two or more Parties, assembled together in close proximity to investigate the case, with a number of people temporarily working outside of their own Parties. The wording of Article 20 of the 2nd Protocol certainly suggests this and it might, in many cases, be the ideal arrangement. However, there is no requirement that a member of the JIT has to work outside of his home country, even if the JIT is permanently based in another country. Indeed, a JIT can quite properly be formed with members from two or more Parties when nobody works outside their own Party. For example, Albania and FYR of Macedonia could agree to operate a JIT based in Skopje, with a single Albanian member undertaking enquiries in Tirana and never going to Skopje. Similarly, a few members could compose the group assembled in one “headquarters” whilst the other team members act in their home countries. In view of the cost and commitment required to second personnel abroad, this type of arrangement might prove appealing to Parties.

### A JIT Leader

Every JIT needs to have a team leader or leaders. Article 20 (3) of the 2nd Protocol offers several possibilities and again leaves room for national interpretation. It is not specified whether the team leader should be a public prosecutor, a judge or a senior police or customs officer. However, since the JIT is considered in some Parties as a “particular form of mutual legal assistance”, and since investigations in the region are lead either by public prosecutors or investigative judges, it is recommended that a representative from the judiciary should be the leader in those cases where investigating judges or prosecutors direct operations. In other jurisdictions (UK for example) and dependant on the national framework, it may be appropriate that a law enforcement officer leads the JIT.

Article 20 of the 2nd Protocol provides that: “... the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Party in which the team operates...”. One interpretation of this is that the JIT is under one permanent leadership, based on the JIT’s main seat of operations. On another interpretation, the team leader should come from the Party in which the team happens to be at any time when carrying out its operations. Some support for this interpretation can be obtained from the model agreement (see *Annex 2*), which states that a leader “shall be a representative of the competent authorities in the Party(s) where the team is operating (...) and under whose leadership the members of the JIT must carry out their tasks in the Party to which he belongs”. Experiences in the EU so far suggest that Parties prefer the option of having more than one team leader rather than opting for one team leader with overall responsibility. In any case, the leader of the team shall act within the limits of his or her competence under national law and the team itself shall carry out its operations in accordance with the law of the Party in which it operates.

## **‘Members’ and ‘Seconded Members’ and ‘Participants’ of a JIT**

Article 20 (4), distinguishes between “members” and “seconded members” acting in a JIT. Seconded members of the JIT are from Parties other than the Party in which the team operates. It should be noted that seconded members do not have to be seconded permanently i.e. they can be seconded for a short period of time.

Team members carry out their tasks under the leadership of the team leader, taking into account the conditions set by their own authorities in the agreement on setting up the JIT. This is an issue that needs to be fully considered when drafting the JIT agreement, so that team members, particularly those seconded from another Party, are aware what line-management structure or structures are in place.

### **Other JIT Participants**

Article 20 (12) paves the way for the States that have established a JIT to agree that persons who are not representatives of their competent authorities can take part (*participate*) in the activities of the JIT. The idea is that additional assistance and expertise could be provided to a JIT by appropriate persons from other States or international organisations (e.g. Interpol or Europol). For example, in a JIT between Montenegro and Serbia, an officer from EUROPOL could be a participant but never a member or seconded member. The rights conferred upon members of the team by virtue of Article 20 (for example, the right to be present when investigative measures are taken) do not apply to these persons (*the participants*) unless the agreement expressly states otherwise. Persons who are authorised to participate in a JIT under Article 20 (12) of the 2<sup>nd</sup> Protocol will act primarily in a supportive or advisory role and are not permitted to exercise the functions conferred on members or seconded members of the JIT or to use the information referred to in Article 20 (10) unless this is permitted under the relevant agreement between the States concerned.

Special attention is to be given to SELEC, EUROJUST and EUROPOL. As these institutions have been created to support Parties in their fight against organised serious cross-border crime, their respective competences and tasks imply that these institutions will / do play a central role in Joint Investigation Teams in the Western Balkan region and EU respectively. In accordance with Article 20 (12) of the 2nd Protocol, SELEC, Eurojust, Europol and Interpol can participate in JITs, separately as well as jointly.

Thus, in close co-operation, these organisations will be at the disposal of requesting Parties when these are considering a JIT. Particularly in the preparatory assessment and negotiation phase both may support the Parties by providing legal advice as well as expertise from prior JIT participation. In addition, facilities for meetings and interpretation are available to Parties. Furthermore, from their role in exchanging information and co-ordinating MLA, SELEC, Europol and Eurojust may be in a position to identify suitable cases for a JIT and consequently request Parties to act upon such a request.

Whilst it is not mandatory to involve either SELEC, Eurojust or Europol when establishing and operating a JIT, these organisations could play a crucial role in ensuring the efficiency and operational capacity of the JIT and the overall success of the investigation. They can also assist in the administrative management of the JIT and act as intermediaries in obtaining, as well as providing advice on the current availability, of any funding.



### **4.5.3. Operational powers of a JIT**

Seconded members of a JIT may (see Article 20 (5) of the 2<sup>nd</sup> Protocol), in accordance with the law of the Party where the team operates, be allowed by the team leader/leaders to be present when operational activities such as searches of premises are carried out (passive JIT). The team leader has the right, for particular reasons, to make exceptions to that general rule. In this context, the expression "particular reasons" has not been defined but it can be taken to include, for example, situations where evidence is being taken in cases involving sexual crimes, especially where the victims are children. Any decision to exclude a seconded member from being present may not be based on the sole fact that the member is from another jurisdiction. In certain cases operational reasons may form the basis for such decisions.

Additionally, Article 20 (6) of the 2<sup>nd</sup> Protocol permits seconded members to carry out investigative measures in the State of operation, in accordance with the national law of that State (active JIT). This will be done on the instructions of the JIT leader. They may not do so unless they have the approval of the competent authorities of the State of operation and the seconding State. Such approval may be included in the agreement establishing the JIT, or it may be granted at a later stage. It may also apply in general terms or it may be restricted to specific cases or circumstances. The approval to be present and/or to undertake investigative actions should also be considered in the formal agreement.

### **4.5.4. A JIT's Investigations in Other Countries without MLA Requests**

The most innovative and possibly most helpful elements of the 2<sup>nd</sup> Protocol are contained within Article 20 (7) and (9). Where the JIT needs investigative measures to be taken in one of the Parties, members seconded to the team may request their own competent authorities to take those measures. The request should be considered under the conditions which would apply in a national investigation. The purpose of this provision is to avoid the need for Rogatory Letters, even when the investigative measure requires the exercise of a coercive power, such as the execution of a search warrant. This is one of the main benefits of a JIT. For example, a Serbian police officer seconded to a JIT operating in Albania could ask his police colleagues in Serbia to execute a search warrant, issued in accordance with Serbian law, in Serbia on behalf of the JIT. However, it must be remembered that Article 20 of the 2<sup>nd</sup> Protocol does not override national legislation. For example, a Serbian officer may ask his Croatian counterpart to request undercover investigation in Croatia. The subsequent possibility of using this information, i.e. hearing these undercover investigators in court proceedings in Serbia however will always depend on the two relevant domestic legislations, and as such this needs close examination.

### **4.5.5. Direct exchange of information between JITs' members**

This need to consider national legislation also applies to paragraphs 9 and 10, although these provisions give another valuable advantage to investigators: members of a JIT may, again in accordance with their national law, provide the team with information available in their country. For example, a team member may provide information concerning subscriber details, car registrations and criminal records from his home country directly to the JIT, without channelling the information via the competent national central bodies. However, consideration should be given to admissibility requirements if the provided information is also to be used as evidence in the criminal file.

#### **4.5.6. The JIT Agreement**

The 2nd Protocol stipulates that JITs are established on the basis of a written agreement. As previously explained, the legal framework to set up and operate a JIT allows for a wide range of discretionary powers and therefore the agreement is of crucial importance to all parties.

On the one hand, experience so far suggests that it is preferable to agree from the outset on detailed arrangements in order to avoid the need for time-consuming discussions during the operation of the JIT. On the other hand, it should be remembered that investigative action and evidence gathering must often commence quickly so that lengthy discussions about the agreement can be avoided. As Article 20 of the 2nd Protocol allows the agreement to be amended at any time, a speedy processing of the agreement should be given preference rather than holding lengthy discussions about every detail. Against this background, one purpose of these Guidelines is to enable the competent authorities and practitioners to consider all elements of the legislation in the written agreement while at the same time enabling them to start the investigation in a short period of time.

On 8 May 2003 the Council of the European Union adopted a Recommendation on a Model Agreement<sup>10</sup>. In *Annex 2*, reference is made to the Model Agreement, including proposals that should be considered within the relevant sections of the agreement. Furthermore, proposals for the wording of the agreement are provided. Given the complexity of criminal investigations and the variety and differences in national legislations, it is almost impossible to give conclusive advice and recommendations with regard to the content of the agreement. Nonetheless, the attached agreement reflects the Model Agreement of the Council of the European Union as well as practical experiences and written agreements collected by Europol and Eurojust to date. It should be emphasized that both organisations are available at any time to assist Parties in drafting their agreement.

### **4.6. Specific Guidelines related to JITs**

#### **4.6.1. Guidelines in relation to the Agreement on JITs (see Annex B)**

When preparing an Agreement on JITs, parties should make sure that Agreement:

- Clearly defines which Parties are participating in the agreement on the JIT;
- Clearly defines the purpose of the JIT;
- Clearly defines during which period the JIT is going to be functional and under which conditions its existence can be prolonged (When defining the period during which the JIT is going to be functional, the Parties should be mindful of the duration limits defined by domestic legislation of the Parties for particular special investigative techniques);
- Clearly defines on which territory the JIT is intended to operate;
- Clearly defines the internal structure of the JIT (who the leader is; how is the role of the leader changed if the JIT moves its investigation into another Party, who the

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<sup>10</sup> Council Recommendation of 8 May 2003 on a model agreement for setting up a joint investigation team (OJ C 121 of 23.05.2003, p.1).

members are and who the seconded members are, if some other participants are involved in the JITs operation and what their role is etc.);

- Clearly defines operational powers of members, seconded members and participants of/to the JIT;
- Parties should make sure that the Agreement clearly defines the possibility for exchange of evidence (including the records of witnesses' statements);
- Parties should make sure that the Agreement clearly defines that it applies to both investigative and pre-investigative stages.

Additionally, the Parties should consider regulating the following issues in the Agreement on JITs:

- Terms under which seconded members of the JIT may be excluded when investigative measures are taken;
- Specific conditions under which seconded members may carry out investigations within the Member State of operation;
- Specific conditions under which a seconded member of a JIT may request his/her own national authorities to take measures which are requested by the team without submitting a letter of request;
- Conditions under which assistance to be sought under the Convention and other arrangements may be given;
- Conditions under which seconded members may share information derived from seconding authorities and related specific data protection rules;
- Conditions under which seconded members may carry/use weapons
- Reference to any other already existing provisions or arrangements on the setting up or operation of JIT's.

Experiences so far in the EU proved it useful to also define some of the organisational issues related to JITs operation such as:

- Cost for the JIT during its operation;
- Office accommodation;
- Vehicles;
- Other technical equipment;
- Allowances for seconded members of the JIT;
- Insurance for seconded members of JIT;
- Use of liaison officers;
- Use of the European judicial network;
- Language to be used for communications.

#### **4.6.2. Guidelines in relation to the National JIT Experts / Focal Points**

##### **Background**

The legal framework elaborated above clearly provides sufficient grounds for states to consider establishing when investigations into criminal offences require difficult and demanding investigations having links with other States and when a number of States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the States involved. However, throughout the consultation process in the Western Balkan it became apparent that investigative bodies of

one state often have difficulties in finding out with whom they could cooperate in another state with regard to a particular operation and at the same time have little knowledge of not only that other State's experiences with JITs but also of the respective experiences and best practices in their own State. Therefore, drawing on the experiences and practice within the EU, the States should establish an informal network of national experts for JITs for the purpose of exchanging experiences and best practices in conducting joint investigations and establishing and running JITs.

### **What would/should the Network do?**

Provide contact points for national and international authorities (police, prosecutors, but also SECI, INTERPOL, PCC Secretariat and Eurojust, Europol, OLAF etc.) dealing with JITs to supply them with information and advice about possibilities, including the legal framework, for the establishment of JITs. Additionally, the national experts would facilitate the spreading of knowledge among practitioners and encourage the setting up of JITs and they should be able to gather and disseminate information both on best practices and obstacles related to the establishment of the teams. They should also be able to participate at conferences and seminars, to convene or attend formal and informal meetings at national level or with other experts involved in the establishment of a JIT. After the establishment of a JIT, national experts could act as an ongoing advisors and conduits for communication with experts from other national and international authorities.

### **Guidelines on the Appointment of the National JIT Experts**

In line with the implementation of the international legal framework on JITs and for the purpose of improving cooperation in establishing JITs in the Western Balkan region, the states should:

- Designate national JIT experts/contact points and send the details of those national experts/contact points to the Regional Project Office for South East Europe ([carla.ciavarella@unodc.org](mailto:carla.ciavarella@unodc.org)) by June 1<sup>st</sup> 2010.
- The national JIT expert/contact point may either be a person or a representative of an organisation (a contact point representing an investigation agency or a prosecutor's office) depending on the national law;
- The national JIT expert/contact point does not necessarily have to have operational experience in establishing/running a JIT;
- The national JIT expert/contact point should be in a position to liaise with other persons and organisations within his/her State for the purpose of providing information from that State on the establishment of JITs (legal framework in particular) as well as for the purpose of sharing experiences (best practices and obstacles) on establishing and running JITs.

When appointing a national JIT expert/contact point, the States should be mindful of the objective of the appointment, which is to facilitate the JIT related work of practitioners in their own State but also in the Western Balkan region as a whole, as well as to provide the gateway to their own system for wider European cooperation. It is therefore of great importance that the national JIT experts/contact points are appointed with due care so that they can provide added value to international cooperation in establishing and running JITs.

## MODEL CHECKLISTS AND FORMS FOR GOOD PRACTICE IN REQUESTING MUTUAL LEGAL ASSISTANCE

### EXPLANATORY NOTE

The following General and supplemental Checklists are intended to provide general guidance in the preparation of requests for international mutual legal assistance in criminal matters.

The General Checklist deals with the basic content of all mutual legal assistance requests. The Supplemental Checklists deal with additional content needed for the effective execution of requests for search and seizure, production of documents, taking witness statements/evidence, temporary transfer of prisoners to give evidence, pre-judgment seizure/freezing, or post-judgment confiscation

Requirements as to the form and content of requests can vary significantly depending on the law of the Requested State and applicable mutual legal assistance treaties (MLATs); in particular cases, they may be greater or less than indicated here. When in doubt, officials preparing mutual legal assistance requests are advised to contact the central authority of the Requested State for more detailed information.

## General Checklist for Requesting Mutual Legal Assistance

The request should include the following:

- **Identification**  
Identification of the office/authority presenting or transmitting the request and the authority conducting the investigation, prosecution or proceedings in the requesting State, including contact particulars for the office/authority presenting or transmitting the request and, unless inappropriate, the contact particulars of the relevant investigating officer/prosecutor and/or judicial officer (form I)
- **Prior contact**  
Details of any prior contact between officers in the Requesting and Requested States pertaining to the subject matter of the request
- **Use of other channels**  
Where a copy of the request has been or is being sent through other channels, this should be made clear in the request
- **Acknowledgement of the request**  
A cover sheet incorporating the acknowledgement for completion and return to the Requesting State (see Form I)
- **Indication of urgency and/or time limit**  
A prominent indication of any particular urgency or applicable time limit within which compliance with the request is required and the reason for the urgency or time limit
- **Confidentiality**  
A prominent indication of any need for confidentiality and the reason therefore and the requirement to consult with the Requesting State, prior to the execution if confidentiality cannot be maintained
- **Legal basis for the request**  
A description of the basis upon which the request is made, eg, bilateral treaty, multilateral convention or Scheme or, in the absence thereof, on the basis of reciprocity
- **Summary of the relevant facts**  
A summary of the relevant facts of the case including, to the extent possible, full identification details of the alleged offender(s)
- **Description of the offence and applicable penalty**  
A description of the offence and applicable penalty, with an excerpt or copy of the relevant parts of the law of the requesting State
- **Description of the evidence/assistance requested**  
A description in specific terms of the evidence or other assistance requested
- **Clear link between proceeding(s) and evidence/assistance sought**  
A clear and precise explanation of the connection between the investigation, prosecution or proceedings and the assistance sought (i.e., a description of how the evidence or other assistance sought is relevant to the case)
- **Description of the procedures**  
A description of the procedures to be followed by the Requested State's authorities in executing the request to ensure that the request achieves its purpose, including any special procedures to enable any evidence obtained to be admissible in the Requesting State, and reasons why the procedures are required
- **Presence of officials from the Requesting State in execution of request**  
An indication as to whether the Requesting State wishes its officials or other specified persons to be present at or participate in the execution of the request and the reason why this is requested
- **Language**  
All requests for assistance should be made in or accompanied by a certified translation into a language as specified by the Requested State

Note: Where it becomes evident that a request or the aggregate of requests from a particular State involve a substantial or extraordinary cost, the Requesting and Requested States should consult to determine the terms and conditions under which the request is to be executed, and the manner in which the costs are to be borne.

## Supplemental Checklist for Specific Types of Mutual Legal Assistance Requests

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### SEARCH AND SEIZURE

In the case of a request for search and seizure, the request should include the following:

- As specific a description as possible of the location to be searched and the documents or items to be seized including, in the case of records, the relevant time periods
  - Reasonable grounds to believe that the documentation or thing sought is located at the place specified within the Requested State
  - Reasonable grounds to believe that the documentation or thing will afford evidence of the commission of the offence, which is the subject of investigation or proceeding(s) in the Requesting State
  - An explanation of why less intrusive means of obtaining the document or thing would not be appropriate
  - An indication of any special requirements in relation to the execution of the search or seizure;
  - Any known information about third parties who may have rights in the property
- 

### PRODUCTION OF DOCUMENTS

In the case of a request for the production of documents, the request should include the following:

- Since a court order is generally required, it is particularly important to provide as specific a description as possible of the documents to be produced, and their relevance to the investigation
- An identification of the location and/or custodian of the required documents
- Check with Requested State as some may have additional requirements for the production of documents
- In cases involving requests for the production of computer records, the risks of deletion or destruction should be considered in consultation with the Requested State. In such a case an expedited, secure means of preservation may be required, e.g. special preservation order, or search and seizure
- An indication as to whether a copy or certified copy of the documents will suffice and if not, the reason why the original documents are required
- If certification or authentication is required, specify the form of certification/authentication, using an attached pro-forma certificate (see Form II) if possible
- An indication as to whether it is likely that any of the documents might be subject to any claim of privilege, e.g. legal professional privilege

## PRE-JUDGMENT SEIZURE/FREEZING OR POST-JUDGMENT CONFISCATION

In the case of a request for pre-judgment seizure/freezing, or for post-judgment confiscation:

- Determine the specific procedural and substantive requirements of the Requested State's law to enable execution of the Requesting State's request for pre-judgment freezing/seizure or post-judgment confiscation, such as whether the Requested State can directly enforce orders of the Requesting State, whether it must institute domestic proceedings for an order on behalf of the Requesting State, or whether a criminal conviction will be required prior to conviction
- If the Requested State must institute domestic proceedings, determine what evidence is needed to permit the Requested State to obtain its own freezing/seizure order to preserve the assets on behalf of the Requesting State, or to permit the Requested State to obtain its own post-judgment order of confiscation of the assets. In particular, the Requesting State should determine the extent to which the Requested State requires a connection between the property to be frozen/seized or confiscated and an offence, or between the property and the accused or convicted property owner (as the case may be), and the evidence it must provide under the Requested State's law to establish such connection
- A point of contact in the Requesting State who may be consulted with as to legal requirements, strategic or logistical issues

**Where the Requested State can directly enforce an order of the Requesting State, the request should include the following:**

- A copy of the order in a form acceptable to the Requested State, or such other information as it may seek
- In the case of a confiscation order, a description of the proceedings in the Requesting State that resulted in the issue of the order, the parties involved, and an assurance that the order is final
- Any information as to third parties who may have an interest in the property sought to be frozen/seized or confiscated
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**Where the Requested State cannot directly enforce an order of the Requesting State and is requested to obtain seizure/freezing and confiscation through domestic proceedings, the request should include the following:**

- As specific a description as possible of the property to be seized, frozen or confiscated;
- Specific information providing the reasonable grounds to believe that either (depending on the law of the Requested State) the property:
  - belongs to a person accused or convicted of a crime; or
  - was used in, or derived directly or indirectly, from the commission of an offence
- Any information as to third parties who may have an interest in the property sought to be frozen/seized or
- Confiscated



## MODEL JIT AGREEMENT

**In accordance with Article 20 of the Second protocol to the European Convention on Mutual Assistance in Criminal Matters**

### **1. Parties to the Agreement**

The following parties have concluded an agreement on the setting up of a joint investigation team, hereinafter referred to as "JIT":

1. [Name of first agency/administration of a Party as a party to the agreement]

and

[Name of the second agency/administration of a Party as a party to the agreement]

(...)

[Name of the last agency/administration of a Party as a party to the agreement]

The Parties to the agreement may decide by common agreement to invite other Parties' agencies/administrations to become parties to this agreement. For possible arrangements with third countries, bodies competent by virtue of provisions adopted within the framework of the Treaties and international bodies involved in the activities of the JIT, see the Appendix.

### **2. Purpose of the JIT**

The agreement shall cover the setting up of a JIT for the following purpose:

[Description of the specific purpose of the JIT]

The parties may by common agreement redefine the specific purpose of the JIT.

*Poss. Phrasing Suggestions: The JIT is set up to investigate the offence(s) of / the activities of the criminal organisation x with the aim of providing information and evidence for judicial proceedings.*

*The JIT will be established to dismantle the criminal organisation x.*

### **3. Period covered by the Agreement**

In accordance with Article 20 (1) of the 2nd Protocol JITs shall be set up for a limited period of time. With respect to this agreement, this JIT may operate during the following period:

from

[insert date]

to

[insert date]

The expiry date stated in this agreement may be extended by mutual consent of the parties. In such case, the Agreement shall be updated.

*Poss. Phrasing Suggestions: The JIT will operate for a period of six (6) months from the date of signature of this agreement. The JIT may be terminated at any time with the mutual consent of the parties involved, and may be extended for a specified period of time by mutual consent.*

#### 4. Party(s) in which the JIT will operate

The JIT will operate in the Party(s) designated hereafter.

[Designate Party or Parties in which the JIT is intended to operate]

In accordance with Article 20 (3)(b) of the 2nd Protocol the team shall carry out its operations in accordance with the law of the Party in which it operates. Should the JIT move its operational basis to another Party, the law of this party shall then apply.

#### 5. JIT Leader(s)<sup>11</sup>

The parties have designated the following person who shall be a representative of the competent authorities in the Member State(s) where the team is operating as the leader of the JIT and under whose leadership the members of the JIT must carry out their tasks in the Member State to which he belongs:

Member State	Name	Rank	On secondment from [name of agency]

Should any of the abovementioned persons be prevented from carrying out his duties, his superior will inform the other parties by letter of the name of his replacement.

#### 6. Members of the JIT

The following persons will be members of the JIT:

*NB: For the liability of JIT Members, seconded or not (but not for participants), see Articles 21 and 22 of the 2nd Protocol*

##### 6.1. Judicial Authorities

PARTY	Name	Rank	Function	On secondment from [name of agency]

Should any of the abovementioned persons be prevented from carrying out his duties, his superior will inform the other parties by letter of the name of his replacement.

<sup>11</sup> Article 20(3)(a) of the 2<sup>nd</sup> Protocol defines: the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Party in which the team operates.

## 6.2. Police Authorities

PARTY	Name	Rank	Function	On secondment from [name of agency]

Should any of the abovementioned persons be prevented from carrying out his duties, his superior will inform the other parties by letter of the name of his replacement.

## 7. Participation by officials from Europol/Eurojust/the Commission (OLAF) or other bodies set up under the Treaty on European Union as well as officials of third countries

The Parties to this agreement, agree to request/accept the proposal for<sup>12 13</sup> participation by Europol/Eurojust/the Commission (OLAF) according to the arrangements set out in the Appendix to this agreement.

[Should officials from Europol/Eurojust/the Commission (OLAF) participate in the JIT, this could be mentioned in this chapter. As far as Eurojust is concerned this relates to the participation by Eurojust acting as a college, not acting through the national members. The Parties agree that the exact arrangements under which Europol/Eurojust/Commission (OLAF)

officials will participate in the JIT, will be the subject of a separate arrangement with Europol/Eurojust/the Commission (OLAF) annexed to this agreement.]

## 8. General Conditions of the Agreement

In general the conditions laid down in Article 20 of the 2nd Protocol shall apply as implemented by each Party in which the JIT operates.

## 9. Specific Arrangements of the Agreement

The following special arrangements may apply in this Agreement (note that a number of these aspects are also regulated in the 2nd Protocol):

(To be inserted, if applicable. The following sub-headings are intended to highlight possible areas that need to be specifically described).

9.1. Terms under which seconded members of the JIT may be excluded when investigative measures are taken

9.2. Specific conditions under which seconded members may carry out investigations within the Member State of operation

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<sup>12</sup> Eurojust, in accordance with Article 7(a) of the Eurojust Decision, may *proprio motu* propose the setting up of a JIT. Also, the future Article 3b of the Europol Convention, which will be inserted upon the entry into force of the Protocol amending the Europol Convention, drawn up by the Council Act of 28 November 2002 (OJ C 312, 16.12.2002, p. 3), will allow Europol to make a request to Member States to initiate or coordinate criminal investigations.

<sup>13</sup> Note that such participation is not mandatory but depends of the circumstances of the investigation and the competence of each body to participate in the activities of a JIT.

- 9.3. Specific conditions under which a seconded member of a JIT may request his/her own national authorities to take measures which are requested by the team without submitting a letter of request
- 9.4. Conditions under which assistance to be sought under the Convention and other arrangements may be given
- 9.5. Conditions under which seconded members may share information derived from seconding authorities
- 9.6. Specific data protection rules
- 9.7. Conditions under which seconded members may carry/use weapons
- 9.8. Reference to any other already existing provisions or arrangements on the setting up or operation of JIT's

## **10. Organisational Arrangements**

The competent authorities of [insert Party] shall make the necessary organisational arrangements for enabling the JIT to carry out its work.

Those areas that are subject to an exclusive competence either on behalf of [insert Party] or the other parties or to a burden sharing between the competent authorities of [insert Party] and the other parties are described below.

(The following list should just serve as an example for fields that may have to be described)

- 10.1. Cost for the JIT during its operation
- 10.2. Office accommodation
- 10.3. Vehicles
- 10.4. Other technical equipment
- 10.5. Allowances for seconded members of the JIT
- 10.6. Insurance for seconded members of JIT
- 10.7. Use of liaison officers
- 10.8. Use of the European judicial network
- 10.9. Language to be used for communications

Done at [place of signature], [date]

[Signatures of all parties]

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# APPENDIX TO THE MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM

Arrangement with SELEC/Europol/Eurojust/the Commission (OLAF), Interpol, other international bodies or third countries

## 1. Parties to the arrangement

SELEC/Eurojust/Europol/ the Commission (OLAF)... and the [name of the first agency/administration of a Party as a party to the agreement], the [name of the second agency/administration of a Party as a party to the agreement] and the [name of the ... agency/administration of a Party as a party to the agreement] have agreed that the officials of [SELEC]/[Eurojust]/[Europol]/[ the Commission (OLAF)]/ [Interpol] will participate in the joint investigative team, that they have agreed to set up by agreement of... [date and place of the agreement, to which this arrangement is annexed]. This participation will take place under the following conditions.

## 2. Participating Officials

The following SELEC/Europol/Eurojust/Commission (OLAF) /Interpol/officials will participate in the JIT

Name	Rank	Function	On secondment from [name of body]

Should any of the abovementioned persons be prevented from carrying out his duties, his superior will inform the other parties by letter of the name of his replacement.

## 3. Specific Arrangements

3.1. Type of assistance

3.2. Technical equipment provided

4. Rights conferred upon the officials from SELEC/Eurojust/Europol/the Commission (OLAF)/Interpol, other international bodies or third countries that participate in the JIT.

5. Arrangements for the participation of third countries in the JIT.

Date/signatures

### XCES50 project national / local partner institutions

#### Republic of Albania

- ◆ National Anti Human Trafficking Coordinator (Deputy of Ministry of Interior) / Ministry of Interior  
Web address: [www.moi.gov.al](http://www.moi.gov.al)  
Email: [onac@moi.gov.al](mailto:onac@moi.gov.al)  
Phone: + 355 (0) 42 23 35 40  
Fax: + 355 (0) 42 23 35 39
  
- ◆ Coordinator in Anti Human Trafficking Unit / Anti Human Trafficking Unit / Police / Ministry of Interior  
Web address: [mb@moi.gov.al](mailto:mb@moi.gov.al)  
Email: [sektoriantitrafik@mrp.gov.al](mailto:sektoriantitrafik@mrp.gov.al)  
Phone/Fax: + 355 (0) 42 27 34 47
  
- ◆ Specialist in the Directorate Against Organized Crime / Department Against Organized Crime / Crime Investigation Directorate / State Police  
Web address: [http://asp.gov.al/fage\\_pare.htm](http://asp.gov.al/fage_pare.htm)  
Phone: + 355 (0) 4 2254921  
Fax: + 355 (0) 4 2253022
  
- ◆ Head of Serious Crime Prosecution Office / Serious Crime Prosecution Office  
Web address: [www.pp.gov.al](http://www.pp.gov.al)  
Email: [ocela@pp.gov.al](mailto:ocela@pp.gov.al)  
Phone: +355 (0) 42 22 90 51

#### Bosnia and Herzegovina

- ◆ State Coordinator for Combating Against Trafficking in Human Beings and Illegal Migration / State office for trafficking in human beings  
Web address: [www.anti-trafficking.gov.ba](http://www.anti-trafficking.gov.ba)  
Email: [ureddk@bih.net.ba](mailto:ureddk@bih.net.ba)  
Phone/fax: +387 (0) 33 710 530
  
- ◆ Head of Counter Trafficking Unit / State Investigation and Protection Agency (SIPA) / Ministry of Security of B&H  
Web address: [www.sipa.gov.ba](http://www.sipa.gov.ba)  
Email: [portparol@sipa.gov.ba](mailto:portparol@sipa.gov.ba)  
Phone: +387(0) 33 702 400  
Fax: +387(0) 33 702 480

- ◆ Judge / Court of Bosnia and Herzegovina

Web address: [www.sudbih.gov.ba](http://www.sudbih.gov.ba)

Phone: +387(0) 33 707 100

- ◆ Prosecutor / Prosecutor Office

Web address: [www.tuzilastvobih.gov.ba](http://www.tuzilastvobih.gov.ba)

Email: [info@tuzilastvobih.gov.ba](mailto:info@tuzilastvobih.gov.ba)

Phone: + 387 (0) 33 707 100

Fax: + 387 (0) 33 707 463

## Republic of Croatia

- ◆ National Anti-Human Trafficking Coordinator / Office for Human Rights

Web address: [www.ljudskaprava-vladarh.hr/Default.aspx](http://www.ljudskaprava-vladarh.hr/Default.aspx)

Phone: + 385 (0) 1 48 77 660

Fax: + 385 (0) 1 48 13 430

- ◆ Deputy Head of USKOK (Prosecutor) / The Bureau for Combating of Corruption and Organized Crime (USKOK)

Web address: [www.dorh.hr/Default.aspx](http://www.dorh.hr/Default.aspx)

Email: [tajnistvo.dorh@dorh.hr](mailto:tajnistvo.dorh@dorh.hr)

Phone: + 385 (0) 1 45 91 888

- ◆ Police Officer in the Organized Crime Department

Web address: [www.policija.hr/mup.hr](http://www.policija.hr/mup.hr)

Email: [policija@mup.hr](mailto:policija@mup.hr)

Phone: + 385 (0) 1 6122 111

## FYR of Macedonia

- ◆ National Anti-Human Trafficking Coordinator (State Secretary in Ministry of Justice) / Ministry of Justice

Web address: [www.moi.gov.mk](http://www.moi.gov.mk)

Phone: +389 (0) 2 31 17 222,

Fax: +389 (0) 2 31 12 468

- ◆ Chief Inspector in the Sector for Human Trafficking and Smuggling of Migrants / Sector for Human Trafficking and Smuggling of Migrants / Police directorate

Web address: [www.moi.gov.mk](http://www.moi.gov.mk)

Phone: +389 (0) 2 31 17 222,

Fax: +389 (0) 2 31 12 468

- ♦ Judge / Main Court  
Web address: [www.jorm.org.mk](http://www.jorm.org.mk)  
Email: [jorm@jorm.org.mk](mailto:jorm@jorm.org.mk)  
Phone: +389 (0) 2 32 92-611,

- ♦ Prosecutor / Main Court,  
Web address: [www.jorm.org.mk](http://www.jorm.org.mk)  
Email: [jorm@jorm.org.mk](mailto:jorm@jorm.org.mk)  
Phone: +389 (0) 2 32 92-611,

## Montenegro

- ♦ National Anti-Human Trafficking Coordinator / Office of the National Coordinator for Fight against Trafficking in Human beings  
Web address: [www.gov.me/antitraf](http://www.gov.me/antitraf)  
Email: [antitrafiking@t-com.me](mailto:antitrafiking@t-com.me)  
Phone: +382 (0) 20 228 385  
Fax: +382 (0) 20 228 387
- ♦ Senior Police Commissioner for suppressing Illegal Migration / Police Directorate / Ministry of Interior  
Web address: [www.upravapolicije.com](http://www.upravapolicije.com)  
Email: [org.krim@t-com.me](mailto:org.krim@t-com.me)  
Phone/Fax: +382 (0) 20 247 104
- ♦ Judge / Department for the suppression of organized crime, corruption, terrorism and war crimes / High court  
Web address: [www.visisudpg.gov.me](http://www.visisudpg.gov.me)  
Phone: +382 (0) 20 66 53 81  
Fax: +382 (0) 20 66 53 94
- ♦ Deputy of the Chief State Prosecutor / Office of the Chief State Prosecutor  
Web address: [www.tuzilastvocg.co.me](http://www.tuzilastvocg.co.me)  
Phone/fax: +382 (0) 20 23 06 24

## Republic of Serbia

- ♦ National Anti-Human Trafficking Coordinator (Head of section for suppression of cross border crime and human trafficking) / Border police directorate / Ministry of Interior  
Web address: [www.mup.sr.gov.yu/cms\\_lat/direkcija.nsf/granicna-policija](http://www.mup.sr.gov.yu/cms_lat/direkcija.nsf/granicna-policija)  
Phone: +381 (0)11 31 39 700  
Fax: +381 (0) 11 30 08 156



- ◆ Head of Department for Suppression of Organized Crime / Ministry of Serbia

Email: [ubpok@mup.gov.rs](mailto:ubpok@mup.gov.rs)  
Phone: +381 (0) 11 306 200 (ext.2932)  
Fax: +381 (0) 11 31 48 467

- ◆ Judge / District Court Belgrade / Special Department for Organized Crime

Web address: [www.okruznisudbg.rs](http://www.okruznisudbg.rs)  
Email: [pookrsud@beograd.ok.sud.rs](mailto:pookrsud@beograd.ok.sud.rs)  
Fax: +381 (0) 11 30 82 780

- ◆ Deputy Prosecutor / Special Prosecutor's Office for Organized Crime

Web address: [www.rjt.gov.rs/lt](http://www.rjt.gov.rs/lt)  
Phone: +381 (0) 11 36 16 558

### **Kosovo under UNSCR 1244**

- ◆ Anti Human Trafficking Coordinator / Office of Anti Human Trafficking Coordinator

Email: [fatmir.xhelili@ks-gov.net](mailto:fatmir.xhelili@ks-gov.net)  
Phone: +381 (0) 38 20 01 90 24

- ◆ Chief of Trafficking in Human Beings Section / Kosovo Police Force

Web address: [www.kosovopolice.com](http://www.kosovopolice.com)  
Email: [info@kosovopolice.com](mailto:info@kosovopolice.com)  
Phone: +377 (0) 44 506 097

- ◆ Vice president / Court

Phone: +377 38 243-345

- ◆ Special Prosecutor / Public Prosecutor's office

Phone: + 377 44 666 897