



# Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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## Working Group on International Cooperation

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**Practical implementation of article 27 of the  
United Nations Convention against Transnational  
Organized Crime (law enforcement cooperation)**

## **Practical implementation of article 27 of the United Nations Convention against Transnational Organized Crime (law enforcement cooperation)**

**Background paper prepared by the Secretariat**

### **I. Introduction**

1. The expansion of transnational organized crime has created growing challenges for criminal justice and law enforcement systems around the world. Individual perpetrators and organized criminal groups frequently conduct criminal activities across international borders both physically and virtually, take advantage of discrepancies in national law enforcement structures and judicial systems, and seek to evade detection, arrest, apprehension and punishment by relocating to other jurisdictions or by laundering proceeds of crime through offshore companies. For these reasons, comprehensive, efficient and effective international cooperation, in particular law enforcement cooperation, is essential to ensuring adequate and appropriate investigation and prosecution of transnational organized crime.

2. The present background paper was prepared by the Secretariat to facilitate the discussions under agenda item 2 of the provisional agenda for the fourteenth meeting of the Working Group on International Cooperation. It presents an overview of the normative framework for law enforcement cooperation prescribed in the United Nations Convention against Transnational Organized Crime. It also contains an analysis of legal and practical aspects pertaining to law enforcement cooperation, with a view to enabling further dialogue on good practices and challenges encountered in this particular field of international cooperation in criminal matters.

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\* CTOC/COP/WG.3/2023/1.



## II. International normative framework: the Organized Crime Convention

### A. Article 27 of the Organized Crime Convention

3. Article 27 is a key provision in the wide array of articles of the Organized Crime Convention focusing on international cooperation in criminal matters. Built on the precedent of article 9 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and used as inspiration for the formulation of the almost identical article 48 of the United Nations Convention against Corruption, it requires that States parties cooperate closely with one another in their law enforcement activities, in pursuit of the common goal of effectively combating transnational organized crime. Relevant measures include the establishment or enhancement of adequate channels of communication, cooperation in conducting inquiries, exchange of information concerning the means and methods used by offenders, the facilitation of effective coordination, and the conclusion of agreements or arrangements on direct cooperation between law enforcement agencies.

4. The clause “consistent with their respective domestic legal and administrative systems”, which is used in article 27, paragraph 1, provides States parties with flexibility regarding the extent and manner of cooperation, within the object and purpose of the Convention. For example, it enables States parties to deny cooperation where it would be contrary to their domestic laws or policies to provide the assistance requested.<sup>1</sup> Such justified exceptions must, however, be consistent with the overall obligations of States parties under the Convention.

5. Law enforcement cooperation and the related review of implementation of article 27 of the Organized Crime Convention will be examined under the third thematic cluster (Law enforcement and the judicial system) of the newly established Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.<sup>2</sup> The reviews under the Mechanism will be conducive to mapping national approaches to law enforcement cooperation and developing cumulative knowledge of obstacles to cooperation and practical means of overcoming them.

#### Article 27, paragraph 1 (a): channels of communication

6. Article 27, paragraph 1 (a), requires States parties to enhance and, where necessary, establish channels of communication among their respective law enforcement authorities, other authorities and services in order to facilitate the secure and rapid exchange of information concerning all aspects of offences covered by the Organized Crime Convention, including, where appropriate, links with other criminal activities.

#### Regional initiatives and channels of communication

7. Arrangements for enhancing transnational law enforcement cooperation are proliferating and linking up. Europe has served as a laboratory in this regard. Twenty-nine countries (25 European Union member States and four associated countries) rely on the second generation Schengen Information System, which entered into operation on 9 April 2013 as the largest information system for public security in Europe. The System allows information exchanges between national border control, customs and police authorities, ensuring a safe environment for the free movement of people within the European Union. It also provides alerts on missing persons, as well

<sup>1</sup> See *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5), p. 244.

<sup>2</sup> See United Nations Office on Drugs and Crime (UNODC), Organized Crime, UNTOC Review Mechanism, Timeline, “General timeline”. Available at [www.unodc.org/](http://www.unodc.org/).

as lost firearms and stolen or fraudulent documents. The Convention on the Stepping-Up of Cross-Border Cooperation, Particularly in Combating Terrorism, Cross-Border Crime and Illegal Migration of 2005 provides for a system for the exchange of biometric information and driver and vehicle data.

8. There are numerous ways of establishing regional channels of communication, which are not further specified in the Organized Crime Convention. Regional channels of communication between law enforcement services include, inter alia, the Association of Caribbean Commissioners of Police; the Caribbean Community and its Standing Committee of Heads of Intelligence and Financial Intelligence Units, Joint Regional Communications Centre and Regional Intelligence Fusion Centre; the Association of Heads of Police of the Association of Southeast Asian Nations; the Eastern Africa Police Chiefs Cooperation Organization; the European Union Agency for Law Enforcement Cooperation (Europol); the European Union Agency for Criminal Justice Cooperation; the European Anti-Fraud Office; the Schengen Information System; the Pacific Transnational Crime Coordination Centre; the Southern African Regional Police Chiefs Cooperation Organization; the Southern African Police Service Cooperation; and the regional justice platform of the States members of the Indian Ocean Commission.

9. The sheer number of policing initiatives aimed at facilitating international law enforcement cooperation is remarkable. The ways in which relevant networks cooperate and the channels of communication they have established differ widely. While Europol, for example, consists of a database for the whole European Union region to securely exchange information, as well as a liaison officer network (see below), other cooperation arrangements are limited to cooperation through international letters of request, secure emails, or information exchange between liaison officers.<sup>3</sup>

#### **Cooperation within international and regional structures: the examples of the International Criminal Police Organization (INTERPOL) and Europol**

10. The International Criminal Police Organization (INTERPOL) facilitates, as an intermediary, direct cooperation between law enforcement agencies worldwide. Established in 1923, INTERPOL enables its 195 member countries – each of them hosting an INTERPOL National Central Bureau that links national police with the global INTERPOL network – to share and access data on crimes, criminals and missing persons, as well as to offer technical and operational support to member country investigations. The services provided to member countries range from criminal analysis to assistance in locating fugitives, police data management and coordination.

11. The sharing and exchange of police information lies at the core of the INTERPOL mandate. For this purpose, INTERPOL maintains a secure communications network (the I-24/7 global police communications system) for members to contact their counterparts around the globe and to instantly access specialized databases containing information on crimes and criminals.<sup>4</sup>

12. The involvement of Europol in law enforcement cooperation is regulated in Regulation (EU) 2016/794 of the European Parliament and of the Council of

<sup>3</sup> See, in relation to article 48 of the Convention against Corruption, Saskia Hufnagel, “Law enforcement cooperation”, in *The United Nations Convention against Corruption: A Commentary*, Cecily Rose, Michael Kubiciel and Oliver Landwehr, eds., Oxford Commentaries on International Law Series (Oxford, Oxford University Press, 2019), p. 487.

<sup>4</sup> See Neil Boister, *An Introduction to Transnational Criminal Law*, 2nd ed. (Oxford, Oxford University Press, 2018), p. 308. In the context of the Mechanism for the Review of Implementation of the Convention against Corruption, it has been reported that the I-24/7 global police communications system is a useful tool in sharing information on criminals and criminal activities worldwide in a timely and secure manner. See UNODC, *State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation*, 2nd ed. (Vienna, 2017), p. 249.

11 May 2016.<sup>5</sup> Articles 4 and 5 of the Regulation refer to the tasks of Europol to facilitate cooperation among member States, including to coordinate, organize and implement investigative and operational activities to support and strengthen actions carried out jointly by the competent authorities of member States; and to support member States' cross-border information exchange activities, operations and investigations, as well as joint investigation teams, including by providing operational, technical and financial support.

13. Europol is now an integral part of the European Union architecture on law enforcement cooperation.<sup>6</sup> Its objectives are to support and strengthen action by the competent authorities of the member States and their mutual cooperation in preventing and combating serious crime affecting two or more member States, terrorism and forms of crime that affect a common interest (art. 3, para. 1, of the Europol Regulation). To further this aim, Europol is focused on the facilitation of information exchange between member States. The Europol information exchange strategy consists of two different mechanisms, the Europol database and the liaison officer network. Europol has also developed products such as the European Criminal Intelligence Model and the (Serious and) Organized Crime Threat Assessment.

#### **Law enforcement initiatives of the United Nations Office on Drugs and Crime (UNODC)**

14. Within the framework of the “networking the networks” initiative, the United Nations Office on Drugs and Crime (UNODC) continues to support operational cooperation links between existing international and regional law enforcement cooperation centres and organizations. UNODC also supports countries in a number of regions to establish and strengthen regional cooperation centres to promote crime-related intelligence-sharing and the coordination of complex multilateral operations targeting all forms of organized crime and illicit financial flows.<sup>7</sup> Within the framework of the Law Enforcement Training Network initiative, UNODC, in cooperation with a number of international and regional partners, has been facilitating networking between law enforcement training and educational institutions for the exchange of curricula, training materials, training methodologies, best practices and trainers.

15. The UNODC Global Programme on Criminal Network Disruption – CRIMJUST aims to support countries located along supply chains of trafficked commodities, through a comprehensive integrated approach, to go beyond the seizure of illicit commodities in order to undertake prosecution designed to disrupt the activities of the criminal network. CRIMJUST interventions are tailored to the needs of participating countries, ranging from a focus on promoting cooperation and information exchange between law enforcement and criminal justice authorities to spurring pre- and post-seizure interregional investigations and supporting case preparation and case progression. Such end-to-end interventions concentrate on supporting authorities through all stages of a case. That is, from intelligence collection to analysis, the production of actionable intelligence, the mapping of organized criminal groups, the prosecution of high-level targets and proceeds of crime-related actions in line with human rights standards.

16. The Global Operational Network of Anti-Corruption Law Enforcement Authorities (Globe Network), established in 2021, offers a platform for information exchange between frontline anti-corruption law enforcement practitioners in all countries around the globe. It hosts a one-stop virtual hub providing the knowledge,

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<sup>5</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (*Official Journal of the European Union*, L 135, 24 May 2016), pp. 53–114.

<sup>6</sup> Saskia Hufnagel, *Policing Global Regions: The Legal Context of Transnational Law Enforcement Cooperation* (Abingdon Oxon, United Kingdom of Great Britain and Northern Ireland; New York, Routledge, 2021), p. 89.

<sup>7</sup> E/CN.15/2018/4, para. 42.

resources and tools needed to track, investigate and prosecute cases of cross-border corruption.

### **Secure exchange of information**

17. In terms of the day-to-day functioning of relevant networks, the consistent use of emails as a means of rapid communication has proved very useful, and tools such as secure databases for the sharing of information among law enforcement authorities have been developed. According to the *Travaux Préparatoires of the Negotiations for the Elaboration of the Organized Crime Convention*, States parties will make their own determination as to how best to ensure the secure and rapid exchange of information. Many delegations have endorsed the use of direct communication between their various domestic law enforcement agencies and foreign counterparts. However, States parties that feel it more advisable to establish a central point of contact to ensure efficiency would not be precluded from doing so.<sup>8</sup>

### **Article 27, paragraph 1 (b)–(f): cooperation in conducting inquiries, exchange of information and coordination for the purpose of early identification of offences**

18. Apart from strengthening the channels of communication among their respective law enforcement authorities (art. 27, para. 1 (a)), States parties are obliged to take effective measures to cooperate in conducting inquiries with respect to offences covered by the Convention in order to obtain information about persons, the movements of proceeds or property, equipment or other instrumentalities of crime (art. 27, para. 1 (b)); provide to each other items or quantities of substances for analysis or other investigative purposes (art. 27, para. 1 (c)); promote exchanges of personnel, including the posting of liaison officers (art. 27, para. 1 (d)); exchange information on a variety of means and methods used by organized criminal groups (art. 27, para. 1 (e)); and exchange information and coordinate administrative and other measures for the purpose of early identification of offences (art. 27, para. 1 (f)).

19. In investigations where evidence or intelligence lies overseas, information or intelligence could initially be sought through informal law enforcement channels, which can be faster, cheaper and more flexible than the more formal route of mutual legal assistance. The necessary arrangements for such informal contacts should, however, be subject to appropriate protocols and safeguards. These could range from the use of local crime liaison officers, where memorandums of understanding or similar protocols have been established, to the conclusion of regional arrangements.

### **Article 27, paragraph 1 (b)**

20. With regard to cooperation in conducting inquiries, law enforcement authorities must respond to requests from foreign counterparts regarding the identity, whereabouts and activities of suspects or the location of other persons concerned. Furthermore, responses must also be provided to requests relating to proceeds of crime or property derived from the commission of offences covered by the Convention. Article 27, paragraph 1 (b), applies where information is needed as to the movement of proceeds as part of a general investigation and without any immediate intention of using the information in evidence or of undertaking confiscation proceedings. The provision deals only with information as to the “movement” of proceeds, but that term can be interpreted to include not merely the geographical location of proceeds of crime but also any change in their nature, such as their conversion into some other form of property.<sup>9</sup>

<sup>8</sup> See *Travaux Préparatoires*, p. 244.

<sup>9</sup> See David McClean, *Transnational Organized Crime: A Commentary on the UN Convention and its Protocols*, Oxford Commentaries on International Law Series (Oxford, Oxford University Press, 2007), p. 279.

**Article 27, paragraph 1 (c)**

21. Article 27, paragraph 1 (c), determines that States parties should provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes. This provision goes beyond the mere exchange of information and requires the physical transfer of evidence to support the investigation of another law enforcement agency. However, the limitation to cases where this option is “appropriate” refers not only to cases where this is practically possible, but also to national restrictions or concerns, such as endangering an ongoing investigation, national security or sovereignty concerns or concerns in relation to endangering the life of the suspect.

**Article 27, paragraph 1 (d)**

22. The role of liaison officers in law enforcement (art. 27, para. 1 (d)) is to provide a direct contact with the law enforcement and government authorities of the host State, develop professional relationships, and foster mutual trust and confidence between the law enforcement agencies of the two States. Their role is to officially represent their agency on foreign territory, but they are also used as informal facilitators of requests from and to their home countries. In the European Union, they represent the “human interface” between the various national police forces and manage the flow of information between their respective agencies.<sup>10</sup>

23. Although liaison officers do not have any law enforcement powers in the host State, they can nonetheless use their contacts to gather information that may be of benefit in preventing and detecting cross-border offences and in identifying the offenders responsible and bringing them to justice. They can also use those contacts to advise the law enforcement and prosecutorial authorities of the host State, as well as their own corresponding authorities, on how to formulate a formal request for assistance. Once such requests are submitted, the liaison officer can then follow up on the requests in an attempt to ensure that the request is complied with successfully and in a timely manner. This is of particular value when the legal systems of the two States differ widely.<sup>11</sup>

24. Because of the costs involved in posting a liaison officer to another State, liaison officers tend to be sent only to those States with which the sending State has already cooperated to a considerable degree. In order to reduce costs, a liaison officer can be made responsible for contacts not only with the host State but also with one or more other States in the region. Another possibility is for one liaison officer to represent several States.<sup>12</sup>

**Article 27, paragraph 1 (e)**

25. Article 27, paragraph 1 (e), of the Convention prescribes that States parties should exchange, where appropriate, information with other States parties concerning specific means and methods used to commit offences covered by the Convention, including routes and conveyances, the use of false identities, the use of forged, altered or false documents and other means of concealing activities. This provision is aimed at fostering information exchange concerning the modus operandi of Convention offences and it is limited, like the other subparagraphs, by the wording “where appropriate”.

<sup>10</sup> Ludo Block, *From Politics to Policing: The Rationality Gap in EU Council Policy-making* (The Hague, Intersentia), 2011, p. 60. See also Monica den Boer and Ludo Block, eds., *Liaison Officers: Essential Actors in Transnational Policing*, (The Hague, 2013).

<sup>11</sup> A/CONF.203/9, para. 22.

<sup>12</sup> See UNODC and United Nations Interregional Crime and Justice Research Institute, *Technical Guide to the United Nations Convention against Corruption* (Vienna, 2009), p. 178.

**Article 27, paragraph 1 (f)**

26. Article 27, paragraph 1 (f), calls upon States parties to exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by the Convention. Beyond the exchange of information, this provision enables the coordination of administrative measures, which can include, for example, confiscation and freezing of assets. In cross-border investigations, it is particularly important that such measures are coordinated and are not taken at different points in time in order to avoid situations where suspects can destroy or hide evidence in other jurisdictions.<sup>13</sup> Different legal systems draw different boundaries between police, prosecutorial, judicial and other authorities and the specific reference to administrative action is useful in ensuring broad application of the provision.<sup>14</sup>

**Article 27, paragraph 2: legal basis for law enforcement cooperation**

27. With a view to giving effect to the Organized Crime Convention, article 27, paragraph 2, calls upon States parties to consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies or, where such agreements or arrangements already exist, to consider amending them. These agreements determine, inter alia, the authorities responsible for cooperation; oblige the parties to exchange the contact points of these competent authorities in order to ensure rapid and effective communication; foresee the forms, ways and means of cooperation, such as the exchange of data relating to crimes that are being planned or have been committed; and provide for cooperation in personnel management and training.

28. Article 27, paragraph 2, also grants legal authority for law enforcement cooperation in the absence of a specific agreement or arrangement. The domestic laws of most countries already permit such cooperation. For any States parties whose laws do not permit it, however, this provision can be a source of legal authority for this type of cooperation on a case-by-case basis.<sup>15</sup>

29. In the absence of relevant agreements or arrangements, States parties may further consider, in accordance with the same provision, the Organized Crime Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by the Convention. Whenever appropriate, States parties should make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

30. Agreements or treaties are just one way of creating workable cooperation between law enforcement authorities. Memorandums of understanding, letters of request, statements of intent and agreements on the establishment of joint permanent consultative commissions are some of the many other ways in which cooperation can be established. Regulation may differ depending on whether the cooperating States are part of a region or share a border.

31. The growing number of bilateral and multilateral agreements and arrangements on law enforcement deal primarily with cooperation in law enforcement training and with the exchange of information. Such arrangements, understandably enough, have emerged primarily between and among the law enforcement agencies of States with close political ties and with mutual trust and confidence.<sup>16</sup>

32. In addition to more general agreements and arrangements, the law enforcement agencies of a number of countries have assisted with technical assistance projects designed to improve the law enforcement capacity of the target State. These technical

<sup>13</sup> In the anti-corruption context, see Hufnagel, “Law enforcement cooperation”, in *The United Nations Convention against Corruption: A Commentary*, p. 491.

<sup>14</sup> See McClean, *Transnational Organized Crime*, 2007, p. 281.

<sup>15</sup> UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime* (Vienna, 2017), para. 590.

<sup>16</sup> A/CONF.203/9, para. 24.

assistance projects have been planned and carried out within the framework of international organizations, non-governmental organizations or Governments, or they have been planned and carried out directly between the law enforcement agencies of the two States concerned.<sup>17</sup>

### **Article 27, paragraph 3: the use of modern technology**

33. Article 27, paragraph 3, calls upon States to endeavour to conduct law enforcement cooperation in order to respond to transnational organized crime committed through the use of modern technology. According to the *Travaux Préparatoires of the Negotiations for the Elaboration of the Organized Crime Convention*, the forms of modern technology referred to in article 27, paragraph 3, include computers and telecommunications networks.<sup>18</sup>

34. The utility of the Organized Crime Convention to foster international cooperation on judicial assistance and law enforcement in cybercrime cases, while respecting the principles of sovereignty, equality and reciprocity, has been stressed in intergovernmental forums such as the fifth meeting of the Expert Group to Conduct a Comprehensive Study on Cybercrime,<sup>19</sup> held from 27 to 29 March 2019 ([UNODC/CCPCJ/EG.4/2019/2](#), para. 44).

35. Provisions on law enforcement cooperation are currently under negotiation in the context of the work of the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes, established pursuant to General Assembly resolutions 74/247 and 75/282.

## **B. Interrelationship of article 27 with other provisions of the Organized Crime Convention and its Protocols**

36. The Organized Crime Convention seeks to develop a comprehensive and efficient international cooperation framework and assist States parties in bolstering effective and flexible cooperation mechanisms through which various forms of cooperation could be used jointly to reinforce one another and further ensure and promote the proper administration of justice. With particular regard to article 27, on law enforcement cooperation, such objectives are facilitated by the interrelationship between article 27 and other relevant provisions of the Convention, as detailed below.

### **Article 18, paragraphs 4 and 5**

37. Paragraphs 4 and 5 of article 18 of the Organized Crime Convention are complemented by article 27 of the Convention. These provisions provide a legal basis for the spontaneous transmission of information, whereby a State party forwards to another State party information relating to criminal matters it believes is important to combat offences covered by the Convention at an early stage, where the other State party has not made a request for assistance and may be completely unaware of the existence of such information.<sup>20</sup> The aim of these provisions is to encourage States parties to exchange information on criminal matters voluntarily and proactively. The receiving State party may subsequently use the information provided in order to submit a formal request for assistance. The only general obligation imposed for the receiving State party, which is similar to the restriction applied in cases where a request for assistance has been transmitted, is to keep the information transmitted confidential and to comply with any restrictions on its use, unless the information received is exculpatory to the accused person. In this case, the receiving State party

<sup>17</sup> Ibid., para. 25.

<sup>18</sup> See *Travaux Préparatoires*, p. 244.

<sup>19</sup> Established in accordance with General Assembly resolution 65/230 and with its mandate renewed by General Assembly resolution 70/174.

<sup>20</sup> UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, para. 569.



can freely disclose this information in its domestic proceedings (see also article 18, paragraph 19, of the Organized Crime Convention).

#### **Article 19**

38. During the negotiations for the elaboration of the Organized Crime Convention, and before the final decision on the necessity of a separate provision on joint investigations, discussions were devoted to whether the issue of joint investigations should be dealt with in the context of article 19, paragraph 2 (c), of the draft convention (later approved as article 27, on “law enforcement cooperation”, in the final text of the Convention).<sup>21</sup>

39. This was – already from the outset of negotiating the text of the Convention – an indication of the interrelationship between articles 27 and 19 of the Organized Crime Convention. Indeed, the establishment of joint investigative teams (or joint investigative bodies for investigations over a longer period of time)<sup>22</sup> may involve an agreement between competent authorities – either judicial (judges, prosecutors and investigative judges) or law enforcement authorities – of two or more States, to carry out criminal investigations in one or more of the States involved. In practice, the members of joint investigative teams or joint investigative bodies are in many cases law enforcement authorities performing the investigative measures and operational activities required. When present and taking part in investigations outside their State of origin, appointed members operate with the status of seconded members of joint investigative teams or joint investigative bodies.<sup>23</sup>

#### **Article 20**

40. Article 20 of the Organized Crime Convention enables the use of special investigative techniques such as controlled delivery, electronic surveillance and undercover operations. Special investigative techniques are applied by law enforcement officials for gathering information in such a way as not to alert the target persons and for the purpose of detecting, investigating and effectively combating organized crime. From this perspective, the provisions of article 27 can be considered in conjunction with the conditions and requirements set forth in article 20 with regard to the use of special investigative techniques by competent law enforcement authorities.

#### **Article 7, paragraph 1 (b)**

41. Article 7, paragraph 1 (b), of the Organized Crime Convention requires States parties to take additional measures to, inter alia, ensure that administrative, regulatory, law enforcement and other authorities have the capacity to cooperate and exchange information at both the national and international levels. This must be done without prejudice to the requirements set forth in article 18, on mutual legal assistance, and article 27, on law enforcement cooperation.

42. In view of this objective, the Convention requires States to consider the establishment of a financial intelligence unit, which would collect, analyse and disseminate, as appropriate, information about the movement of illicit funds and their connection with suspects. Financial intelligence units are crucial to enable international law enforcement cooperation and information exchange. The exchange of information among financial intelligence units appears to be widespread in practice, mainly through the conclusion of memorandums of understanding concerning cooperation in transnational investigations and prosecutions of persons involved in money-laundering activities or through membership of the Egmont Group of Financial Intelligence Units, an international forum focused on fostering

<sup>21</sup> See *Travaux Préparatoires*, pp. 201, footnote 2, 202 and 235ff.

<sup>22</sup> CTOC/COP/WG.3/2020/2, para. 9.

<sup>23</sup> *Ibid.*, para. 24.

cooperation, in particular in the areas of information exchange, training and the sharing of expertise in the fight against money-laundering.

### **Article 24, paragraph 3**

43. Another area of law enforcement in which enhanced operational cooperation could be envisaged relates to the protection of witnesses. Article 24, paragraph 3, of the Organized Crime Convention requires, inter alia, that States parties consider entering into agreements or arrangements with other States for the relocation of witnesses who give testimony concerning offences covered by the Convention, and, as appropriate, their relatives and other persons close to them. The protection of witnesses is a particular difficulty in many small countries, where even anonymous witnesses can be identified with relative ease and can then be subject to retaliation or intimidation.

### **Protocol provisions on information exchange**

44. Article 27 of the Organized Crime Convention, which applies mutatis mutandis to the supplementary Protocols of the Convention unless otherwise provided therein (article 1, paragraph 2, of each of the Protocols), is supplemented by the following, more specific provisions of the three Protocols on information exchange: article 10 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on information exchange and training; article 10 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, on information; and article 12 of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, on Information.

## **III. Soft law**

45. The second edition of the *Model Legislative Provisions against Organized Crime*, which were developed by UNODC to promote and assist the efforts of member States to become parties to and implement the provisions of the Organized Crime Convention and the Protocols thereto, provide further guidance on international law enforcement cooperation (article 15). This provision is included in chapter III of the *Model Legislative Provisions against Organized Crime*, which provides a legal basis for measures intended to enhance operational and technical cooperation between law enforcement agencies.

## **IV. Practical considerations**

### **Challenges in implementing regulatory frameworks on law enforcement cooperation**

46. Law enforcement cooperation is used in practice to prepare the ground for formal cooperation. Mutual legal assistance may be inappropriate or unnecessary in the early stages of an investigation when law enforcement authorities are trying to identify the criminal activities and the criminals involved. Law enforcement cooperation departs from the classical scheme for legal assistance in that it often involves direct communication fostered by informal connections. Such direct communication does not meet conditions such as that of dual criminality.<sup>24</sup>

47. Law enforcement cooperation still faces formidable practical problems, including differences in languages, methods and powers. Moreover, different

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<sup>24</sup> Boister, *An Introduction to Transnational Criminal Law*, p. 283.

organizational arrangements and cultures between police forces present obstacles to effective information exchange. In one State, for example, information may fall under judicial control, while in another it may be under police control. There will inevitably be different protocols as to who may have access to what data.<sup>25</sup>

48. Because of the diversity of legal systems, investigative techniques that have proved useful in one State may not be allowed in another. This applies, for example, to such techniques as electronic surveillance, controlled delivery, undercover operations, the promise of immunity from prosecution or a reduced sentence in return for cooperation in the investigation and the use of anonymous witnesses. This may also have an impact on the admissibility in court of the evidence obtained through such techniques, even if the evidence has been obtained legally in another jurisdiction.

49. The diversity of law enforcement structures has resulted in confusion over which foreign law enforcement agency to contact, the duplication of efforts and, in some cases, competition between agencies, thus causing inefficiencies in the use of limited resources. The need for operational secrecy in, for example, electronic surveillance and undercover operations, especially when combined with a lack of confidence and trust, may lead to a lack of willingness to share criminal intelligence, both domestically and internationally.

50. The exchange of financial information at the international level is affected by the different status of financial intelligence units and the variation in their competencies. Law-enforcement-type financial intelligence units may have broader or more significant investigative powers and administrative-type financial intelligence units run the risk of turning into an intelligence collection depot, although they appear to be more trusted by financial institutions.<sup>26</sup> Administrative-type financial intelligence units may not have direct access to information to assist them in responding to foreign requests. In general, national differences in information collection, analysis and dissemination reflect a diversity in the use and purposes of financial intelligence as well as the roles, powers, and responsibilities associated with financial intelligence units. This diversity presents challenges for effectively countering cross-border crime.<sup>27</sup>

51. In view of the above challenges and difficulties, States parties must focus on considering ways and means of increasing the efficiency and effectiveness of law enforcement cooperation mechanisms for combating transnational organized crime. International law enforcement cooperation could be enhanced through the development of more effective systems for sharing information, at the regional and international levels, on significant trends in the development of organized criminal groups and their activities.

52. The plethora of bilateral and multilateral instruments and thus the availability of multiple provisions on international law enforcement cooperation is not a panacea for overcoming problems and difficulties encountered in daily practice. The provisions of such international instruments should apply in a way that avoids piecemeal solutions and takes into account the need to ensure the proper administration of justice. It is therefore important to adopt and follow a holistic and flexible approach that renders different provisions and modalities of law enforcement cooperation complementary to each other for the purpose of promoting cooperation among States and avoiding loopholes of impunity. States parties should therefore envisage the adoption and implementation of appropriate legal frameworks to facilitate and promote the use of the full array of available forms of law enforcement cooperation, as envisaged in particular in the Organized Crime Convention (including

<sup>25</sup> Ibid., p. 288.

<sup>26</sup> See Liliya Gelemerova, "On the Frontline against Money-Laundering: The Regulatory Minefield", *Crime, Law and Social Change*, vol. 52, No. 1 (2009), pp. 38 and 39.

<sup>27</sup> See Amandine Scherrer and others, *Fighting Tax Crimes: Cooperation between Financial Intelligence Units*, Ex-Post Impact Assessment (March 2017), pp. 79 and 80.

general law enforcement cooperation under article 27, joint investigations under article 19 and the use of special investigative techniques under article 20).

53. Despite the fact that several countries can rely on a wide spectrum of normative tools and are members of multiple law enforcement cooperation networks and platforms, considerable challenges remain in terms of the substantive implementation of article 27. This is particularly true in countries with weak institutional frameworks, whose ability to effectively cooperate with foreign countries in the law enforcement field is restricted by issues of inter-agency coordination, limited human resources and inadequate technological and institutional capacities.

54. It is necessary to have in place a sufficient number of well-trained and motivated personnel who are able to use the legal tools in an appropriate manner, have the necessary support staff, have access to information and contacts and also have the necessary trust and confidence in the operation of the law enforcement and criminal justice system of the foreign State in question.

55. Article 29 of the Organized Crime Convention calls on States parties to initiate, develop or improve specific training programmes for their law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by the Convention. To the extent permitted by domestic law, such programmes can cover methods used in the prevention, detection and control of the offences covered by the Convention; routes and techniques used by persons suspected of involvement in offences covered by the Convention, including in transit States, and appropriate countermeasures; the monitoring of the movement of contraband; the detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes; the collection of evidence; control techniques in free trade zones and free ports; modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations; methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and methods used in the protection of victims and witnesses.

#### **Electronic evidence and communications service providers**

56. The securing of electronic evidence located in another jurisdiction or on cloud-based servers poses challenges owing to the volatile nature of such evidence. International cooperation requires a timely response, including the preservation and production of data by communications service providers, and the ability to request specialized investigative action. One challenge commonly encountered when requesting such data from another jurisdiction is delays in the response that often exceed the data retention period and may enable perpetrators to permanently destroy key electronic evidence. For that reason, it is extremely important to forge partnerships between communications service providers and law enforcement agencies.

57. The role of communications service providers in criminal justice and international cooperation in criminal matters remains a critical yet not entirely explored topic. Communications service providers are the private entities in possession of users' electronic data and, as such, the recipients of an increased volume of requests from law enforcement authorities seeking to preserve or access electronic data of probative value for a criminal investigation.<sup>28</sup>

58. Although an increased number of communications service providers have issued guidelines for law enforcement and judicial authorities aimed at clarifying the requirements and processes for the submission of requests for disclosure of electronic

<sup>28</sup> E/CN.15/2022/6, paras. 7 and 8.

evidence, authorities should bear in mind that service providers have different procedures and some have no procedure at all.

59. Furthermore, some national laws regulate whether and how service providers in that specific territory are allowed to communicate with or transfer data directly to overseas authorities. Consequently, even if a service provider is open to disclosing data in response to a direct request from abroad, this must still be authorized under domestic law.

60. As a result, the capacity of law enforcement to cooperate with communications service providers located overseas in accordance with applicable laws and their own requirements remains a challenge, in particular in cross-border investigations where different legal frameworks may overlap or offer different approaches. Indeed, depending on their location, service providers may also be subject to telecommunications, data retention and industry-specific regulations themselves, adding a further layer of complexity in responding. Authorities sending direct requests to service providers must therefore consider the interplay between all these fields of law.

61. In its resolution 9/3, annex I, subparagraph (j), the Conference of the Parties to the Organized Crime Convention stated the importance of training activities for both criminal justice and law enforcement authorities and private service providers on the gathering and sharing of electronic evidence and on international cooperation relating to such evidence.

62. Accordingly, the Global Initiative on Handling Electronic Evidence across Borders, which was launched in 2017 by UNODC together with the Counter-Terrorism Committee Executive Directorate and the International Association of Prosecutors, focused on developing practical tools and delivering tailor-made training sessions aimed at enhancing the capacity of: (a) law enforcement authorities to identify, collect, acquire and preserve the electronic data needed to investigate terrorism and other serious offences; (b) prosecutorial and judicial authorities to use those data as evidence in court; and (c) central and competent authorities to handle and exchange those data across borders and jurisdictions, without jeopardizing their admissibility and probative value in court.

63. In May 2021, the Global Initiative launched the Electronic Evidence Hub, a one-stop shop for various practical tools specifically tailored to the needs of law enforcement, judicial and central authorities. The Hub includes a range of resources, such as the *Practical Guide for Requesting Electronic Evidence across Borders*, the Service Providers Mapping, the Train-the-Trainer Module, the *Catalogue of Cross-Border Exercises*, and a set of model request forms for soliciting cooperation from service providers.

### **The impact of technology on law enforcement**

64. As mentioned above, the Organized Crime Convention, in its article 27, paragraph 3, calls upon States to endeavour to conduct law enforcement cooperation in order to respond to transnational organized crime committed through the use of modern technology. In this context, it is crucial to gain a better understanding of the fundamental dualism that is inherent in the impact and role of technology as both a driving force for, and a shield against, crime. In other words, the role of technology in finding solutions to policing, prosecutions and successful criminal justice outcomes, on the one hand; and, on the other hand, technology's darker role of enhancing the *modi operandi* of criminals and organized criminal groups.<sup>29</sup>

65. Technological advances have changed how law enforcement authorities in many jurisdictions conduct their activities, in both proactive and reactive responses to crime. From the reactive perspective, advances in the area of crime scene investigation have made significant contributions not only to solving crimes but also

<sup>29</sup> A/CONF.234/PM.1, para. 164.

to linking crimes that were not considered as connected before. Analysing online social networks, mapping routes travelled by offenders or linking telephone network data have been facilitated by improvements in software and high-powered processing ability. This has enabled crime mapping and geographical information systems analysis, which has also helped in gaining a better understanding of patterns and trends and in assessing the impact of response strategies. From the proactive perspective, technological improvements have substantially contributed to greater intelligence on transnational organized crime activities.<sup>30</sup>

66. Recent years have witnessed the necessity and significance of exploring ways and means to enable criminal justice and law enforcement practitioners to utilize and take full advantage of evolving technologies such as artificial intelligence and information and communication technologies, including big data, in the fight against crime.<sup>31</sup> However, artificial intelligence is very much a double-edged sword, as it can lead to great changes in the way that law enforcement authorities approach the task of policing, but it can also enhance the *modi operandi* of criminal and terrorist groups and can even facilitate the emergence of new forms of crime.<sup>32</sup>

67. Access to, and proper use of, technology by law enforcement authorities require financial resources, training and expertise. Law enforcement must evolve with changes within their environment with a view to reducing the opportunities presented to offenders by technological advances. Being left behind makes it impossible for law enforcement to effectively address transnational organized crime. As a new technology comes to the market, there is always someone ready to exploit it for illegal and opportunistic purposes. It is therefore crucial for law enforcement to be proactive in identifying and addressing vulnerabilities before transnational organized crime takes advantage of them. A failure by Governments and law enforcement authorities to invest in technologies will have a detrimental impact by offering an enabling environment for transnational organized crime to flourish.<sup>33</sup> It is exactly what has been eloquently described as a fight for the “survival of the fittest” in the area of artificial intelligence,<sup>34</sup> where the priority could be summarized as follows: foster artificial intelligence-led policing to combat artificial intelligence-led crimes.

### Human rights considerations

68. Technology-based tools that can be used in investigations as innovative elements of sophisticated special investigative techniques may prove to be useful entry points for addressing crime-related threats. However, caution is needed in the specific application of those tools to ensure responsible and ethical use and avoid unintended consequences. This is particularly important given that many of the present and future technologies could carry serious implications for personal privacy and other civil liberties such as the rights to freedom of opinion and expression, to freedom of peaceful assembly and association, to family life or to fair trial.<sup>35</sup>

69. The effectiveness of any information system, such as the INTERPOL system of notices and the Schengen databases, depends on the accuracy and timeliness of the information provided. At the same time, the acquisition, storage, use and international transfer of operational data give rise to questions regarding the legitimacy, transparency and accountability of law enforcement actions. The lack of legal controls and judicial supervision may lead to potential abuses. Mechanisms for the effective gathering, analysis and use of operational data must take into consideration the need for full respect of fundamental rights. Where databases are created to assist law

<sup>30</sup> Sheelagh Brady, “Policing TOC: the national perspective: challenges, strategies, tactics” in *International Law and Transnational Organized Crime*, Pierre Hauck and Sven Peterke, eds. (Oxford, Oxford University Press, 2016), p. 488.

<sup>31</sup> A/CONF.234/16, paras. 112, 185 and 192 (g).

<sup>32</sup> A/CONF.234/11, para. 63.

<sup>33</sup> Brady, “Policing TOC: the national perspective”, pp. 488 and 489.

<sup>34</sup> A/CONF.234/11, para. 63; and INTERPOL Innovation Paper, “Artificial intelligence”, INTERPOL Global Complex for Innovation (2018), p. 2.

<sup>35</sup> A/CONF.234/11, para. 70; and A/HRC/27/37, para. 14.

enforcement, attention needs to be paid to ensuring that national data protection legislation is adequate and extends to the operation of such databases not only nationally, but also internationally.

70. Moreover, the conditions and safeguards for the collection and use of electronic evidence predominantly require judicial or other independent oversight to delineate limits on the procedures, processes, methods and tools used to collect, acquire, preserve and analyse electronic evidence.<sup>36</sup> Consequently, priority should be accorded to the need for procedural legislation granting powers to competent law enforcement authorities to gather electronic evidence effectively while observing confidentiality, privacy, human rights, due process and other legal safeguards.

71. Private actors have become increasingly involved in the law enforcement process in recent years, in particular in the case of the cross-border gathering of electronic evidence, taking up more proactive roles and being increasingly engaged in choices between conflicting rights and freedoms. While executing these roles, they may be compelled – de jure or de facto – to make value judgments as law enforcers and adjudicators, a function that traditionally belongs to public authorities. At the same time, legal frameworks are either lacking or do not fully cover the consequences of this fundamental paradigm shift, to the detriment of the authorities, private actors and persons concerned. The new roles for private actors need to be subject to more extensive scrutiny and to a more comprehensive reflection in general. This reflection is necessary as this paradigm shift will continue to generate problems of two kinds. Firstly, new areas will be increasingly subject to this phenomenon. An example is the growing use of artificial intelligence technology in public enforcement offered by private companies, where the mechanism cannot be fully explained or subject to the scrutiny deemed necessary for public decision-making. Secondly, a complex set of tools limiting the possibilities for abuses of power have been designed for the public sector but do not apply to private actors, or may be unsuitable for the role that private actors play.<sup>37</sup>

72. In general, a balanced approach is needed to find solutions where technology and privacy or other human rights seem to be on a collision course. To avoid the use of technologies as a “Trojan horse” for potential infringements of fundamental rights, technology development must be continuously monitored and its impact evaluated.<sup>38</sup>

73. In this context, the importance of compliance with procedural safeguards for the admissibility in court of the evidence obtained through special investigative techniques used by law enforcement authorities, including those involving the use of modern technology, needs to be acknowledged. In most jurisdictions, the process of gathering evidence requires strict adherence to a number of safeguards against potential abuses of authority, including judicial or independent oversight of the use of those techniques and observance of the principles of legality, subsidiarity and proportionality. This is tightly linked to the positive obligation of a State to have in place laws, regulations and procedures to enable, for the sake of legal certainty, the proper administration of justice and protection of human rights and fair trial standards.<sup>39</sup>

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<sup>36</sup> See UNODC, *Digest of Cyber Organized Crime Cases* (Vienna, 2021), p. 1091; and [E/CN.15/2022/6](#), para. 22.

<sup>37</sup> Stanisław Tosza, “Internet service providers as law enforcers and adjudicators: a public role of private actors”, *Computer Law and Security Review*, vol. 43, art. No. 105614 (November 2021).

<sup>38</sup> [A/CONF.234/11](#), para. 78.

<sup>39</sup> [CTOC/COP/WG.3/2020/3](#), paras. 69 and 70.

## V. Conclusions and recommendations

74. The Working Group may wish to recommend that the Conference of the Parties to the Organized Crime Convention:

(a) Encourage States parties to make use, where appropriate, of the Organized Crime Convention as a legal basis for law enforcement cooperation in relation to offences covered by the Convention and its Protocols;

(b) Encourage States parties to facilitate training activities for law enforcement officers or other practitioners engaged in law enforcement cooperation to make effective and human rights-compliant use of the modern technologies at their disposal; and invite the secretariat, subject to the availability of resources, to develop and implement technical assistance activities in this area;

(c) Encourage States parties to exchange best practices and lessons learned in the field of law enforcement cooperation, in particular those relating to the implementation of article 27 of the Convention;

(d) Encourage States parties to make best efforts to ensure that legal frameworks keep pace with technological developments, as well as streamline law enforcement cooperation mechanisms through the use of technology and innovative tools by practitioners and competent authorities that are equipped and empowered to fully benefit from such technology and tools;

(e) Encourage States parties to monitor and understand the risks posed by the malicious use of technologies and promote ethical standards in the use of these technologies for law enforcement purposes.

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