



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

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**International cooperation in combating trafficking in
persons with respect to: addressing supply and demand;
and capacity-building and awareness-raising**

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Background paper prepared by the Secretariat

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* CTOC/COP/WG.4/2011/1.



I. Introduction

1. In its decision 4/4, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime (Organized Crime Convention) acknowledged that the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking in Persons Protocol), supplementing the Organized Crime Convention, was the principal legally binding global instrument to combat trafficking in persons. The Conference further decided to establish an open-ended interim working group, in accordance with article 32, paragraph 3, of the Organized Crime Convention, and rule 2, paragraph 2, of the rules of procedure for the Conference, to be chaired by a member of the Bureau, to advise and assist the Conference in the implementation of its mandate with regard to the Trafficking in Persons Protocol.
2. In resolution 5/2, the Conference decided that the working group should hold at least one intersessional meeting prior to the sixth session of the Conference and present its recommendations to the Conference on whether the working group should be extended and, if so, proposed areas for future work.
3. The first, second and third sessions of this working group were held in Vienna from 14 to 15 April 2009, from 27 to 29 January 2010 and on 19 October 2010, respectively.
4. The present background paper was prepared by the Secretariat to aid in the discussion of the fourth session of the working group.

II. Development of appropriate measures

5. Member States may wish to take into consideration the following points in fostering international cooperation to combat trafficking in persons:
 - Further research into factors that alleviate the need and desire to migrate in search of better conditions and factors that discourage demand that fosters all forms of exploitation of persons that leads to trafficking;
 - Examination of all forms of international cooperation inter alia: formal and informal; between national authorities; between national authorities and victim service providers; between national authorities and the private sector; between national authorities and the media;
 - Examination of all purposes of international cooperation: in the framework of international judicial cooperation in transnational trafficking in persons cases (extradition; mutual legal assistance; confiscation, joint investigations, risk assessment); when considering the safe return and repatriation of a victim (risk assessment; collaboration among victims service providers); to design efficient awareness-raising campaigns between countries of origin, transit and/or destination; to conduct international capacity-building trainings involving authorities of a region as well as of the main countries of origin and destination;
 - Active participation in the data collection exercise in view of the publication of the future Global Reports on Trafficking in persons as

mandated by the United Nations Global Plan of Action (A/RES/64/293) to ensure that patterns and trends are known and can form the basis of informed cooperation strategies between countries of origin, transit and/or destination.

III. Overview of issues

6. The Trafficking in Persons Protocol and the Organized Crime Convention are the main international instruments in the fight against trafficking in persons and transnational organized crime. The Convention provides a multilateral framework for international cooperation in combating transnational organized crime. It gives Member States the tools to bring criminals operating transnationally to justice, and creates a basis for international cooperation among the 163 States Parties. Justice systems, relayed through cooperation, no longer need to stop at borders while criminals cross them.

7. The following international cooperation issues are covered by the Convention: international cooperation for the purposes of confiscation; extradition; transfer of sentenced persons; mutual legal assistance; joint investigations; special investigative techniques; transfer of criminal proceedings; law enforcement cooperation; and collection, exchange and analysis of information on the nature of organized crime. The Convention establishes obligations for States Parties to cooperate in matters of mutual legal assistance and extradition in relation to offences covered by the Convention and its Protocols. In the absence of bilateral agreements, the Convention can be used as a basis for international cooperation.

8. The Trafficking in Persons Protocol contains measures with regards to judicial cooperation and information exchange among States Parties. These measures 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; facilitation of repatriation of victims, cooperation to help establish information and insights into the means and methods used by organized criminal groups for the purposes of trafficking; cooperation among border control agencies including through establishment and maintenance of direct channels of communication; and cooperation in the verification of travel and identity documents.

A. International cooperation in addressing supply and demand

9. International cooperation is further required in the alleviation of factors that make persons vulnerable to trafficking and discouraging demand.¹ Trafficking in persons can be responded to from both the supply (push) and demand (pull) sides. Article 9 (4) of the Trafficking in Persons Protocol calls upon States to take or strengthen measures to alleviate the factors that make persons vulnerable to trafficking. Article 9 (5) of the Trafficking in Persons Protocol calls upon State Parties to discourage the demand that fosters all forms of exploitation of persons and leads to human trafficking.

¹ CTOC/COP/WG.4/2010/3; CTOC/COP/WG.4/2010/6.

10. Trafficked people are on the supply side of trafficking. Some of the common push factors of trafficking in persons are local conditions that make populations want to migrate in search of better conditions: poverty, oppression, lack of human rights, lack of social or economic opportunity, dangers from conflict or instability and similar conditions. Political instability, militarism, civil unrest, internal armed conflict and natural disasters may result in an increase in trafficking. The destabilization and displacement of populations increase their vulnerability to exploitation and abuse through trafficking and forced labour. These factors tend to exert pressures on vulnerable populations that “push” them into migration and hence potentially into the control of trafficker.

11. There is no agreed definition of the term “demand” in the context of trafficking in persons. Demand usually refers to the desire for a particular commodity, labour or service, but in the context of trafficking in persons, the demand is for labour that is exploitative or services that breach the human rights of the person delivering them.

12. Consumers of the results of the work or services of trafficked people are on the demand side. It is important to distinguish between consumer or primary demand² and derived demand by exploiters, and recognize that they occur at different points of the trafficking chain. Consumer demand is generated directly by people who actively or passively buy the products or services of trafficked persons. Research suggests that most of this kind of demand is non-determinant because generally those consumers do not specially ask for labour or services from trafficked persons.

13. Derived demand is a very different matter because it is generated by the people who stand to make a profit from the transaction. These might include pimps and brothel owners, the various intermediaries involved in trafficking, corrupt factory owners or farmers who exploit trafficked labour to keep their costs down, prices low and profits flowing.³

14. In transnational trafficking cases it is important to cooperate and coordinate internationally between countries of origin, transit and destination in order to tackle both the supply and the demand sides of trafficking.

B. International cooperation in awareness-raising and capacity-building

15. Trafficking in persons is often carried out by criminals of different nationalities, across borders. The limitations of national criminal justice systems to cooperate at the regional and international levels represent a major challenge in providing an effective response to trafficking in persons. Despite the existence of a common definition of trafficking in persons, national authorities face challenges in cooperating with countries that have a slightly different definition of the crime, and/or have different criminal justice systems. They may also face challenges due to difficulty in communicating.

² ILO, Combating trafficking in children for labour exploitation, pp. 30-31.

³ ILO, Combating trafficking in children for labour exploitation, pp. 30-31.

16. Some of the main challenges linked to international cooperation in trafficking in persons cases are inter alia: different approaches to the criminalization of trafficking in persons in national law, which may render it difficult to distinguish between trafficking in persons and related offences; lack of knowledge or difficulties in understanding the material and procedural laws of other countries; and the lack of understanding of national anti-trafficking law, which is shown by the low number of convictions around the world.

17. Additional challenges are linked to the absence of channels of communication between relevant national authorities for the exchange of basic information and criminal intelligence; lack of information and formal mechanisms of cooperation between law enforcement agencies and victim service providers which prevent victims from being properly assisted and protected and thus leading to less chances of the victim cooperating in the criminal proceedings; slow processes in international judicial cooperation through mutual legal assistance, extradition or international cooperation for purposes of confiscation; and differences in national legislation of countries with regards to procedures and protection measures.

18. Examples of measures to strengthen international cooperation in combating trafficking in persons include measures to increase the number of countries that accede to or ratify the Trafficking in Persons Protocol; to enhance harmonization of legislation; to nominate a central national authority responsible for trafficking in persons in order to channel the information flow appropriately; to build the capacity of law enforcement officials to deal with trafficking in persons cases through fostering informal and formal methods of cooperation, including with victim service providers to ensure appropriate assistance, return and reintegration, all based on prior risk assessment; to develop joint awareness-raising campaigns; to foster cooperation between consular authorities; to increase cooperation between State authorities and victim service providers to provide appropriate assistance and protection to victims across borders.

IV. Guidance for response

19. Member States have recognized the need to strengthen international cooperation and coordination of efforts in preventing and combating trafficking in persons and protecting victims of such trafficking in numerous decisions and resolutions.⁴ In addition to the Convention against Transnational Organized Crime, the Trafficking in Persons Protocol, other relevant international instruments have placed an emphasis on fostering international cooperation.

20. Principle 14 and related guidelines on Extradition and other forms of cooperation in criminal proceedings of the Recommended Principles and Related Guidelines on Human Rights and Human Trafficking acknowledge that the crime of trafficking is often transnational in both commission and effect. It is, therefore, essential to ensure that the international mobility of offenders does not enable them to evade prosecution by taking refuge in other countries, and that States are able to

⁴ ECOSOC 2003/20; ECOSOC 2006/27; A/RES/58/137; A/RES/61/180; A/RES/63/194; A/RES/64/178; in the United Nations Global Plan of Action to combat trafficking in persons A/RES/64/293 and in COP Resolution 5/2.

cooperate to ensure that the evidence and information necessary for successful prosecution can be moved from one country to another. The Commentary⁵ of the Recommended Principles and Related Guidelines considers the law, policy and practice of extradition, mutual legal assistance and informal operational cooperation as tools of international cooperation to end impunity for traffickers and secure justice for victims.

21. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing the Council Framework Decision 2002/629/JHA.⁶ In particular Preamble 5, 9 and 15.

22. The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution⁷ The purpose of this Convention is to promote cooperation among Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children; the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination.

23. Convention on Police Cooperation in South East Europe. The Convention⁸ envisages modern forms of cooperation among the Contracting Parties, such as joint threat analysis, liaison officers, hot pursuit, witness protection, cross-border surveillance, controlled delivery, undercover investigations to investigate crimes and to prevent criminal offences, transmission and comparison of DNA profiles and other identification material, technical measures for facilitating transborder cooperation, border search operations, mixed analysis working groups, joint investigation teams, mixed patrols along the state border and cooperation in common centres. The full implementation of the Convention will thus help those signatory countries not members of the EU to accelerate their eventual accession.

24. OSCE Plan of Action to combat trafficking in human beings.⁹ The Plan was adopted in order both to incorporate best practices and an advanced approach into its anti-trafficking policies, and to facilitate cooperation among participating States, and tasks all OSCE bodies with enhancing participation in anti-trafficking efforts of the international community. It also required all countries, whether countries of origin or destination to adopt and strengthen legislative, educational, social, cultural or other measures, and, where applicable, penal legislation, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, and that leads to trafficking. See also recommended action at the national level n. 4 on awareness-raising.

⁵ www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf.

⁶ Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>.

⁷ www.saarc-sec.org/userfiles/conv-traffiking.pdf.

⁸ www.pccseesecretariat.si.

⁹ The Action Plan is annexed to OSCE Permanent Council decision No. 557/Rev.1 and can be consulted at: www.osce.org/documents/pc/2005/07/15594_en.pdf.

Annex

Key tools and recommended resources

UNODC Model Law against Trafficking in Persons

The Model Law against Trafficking in Persons has been developed to assist States in implementing the provisions contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing that Convention. It aims to facilitate the review and amendment of existing legislation as well as the adoption of new legislation. The Model Law covers not only the criminalization of trafficking in persons and related offences, but also the different aspects of assistance to victims as well as establishing cooperation between different state authorities and NGOs. Each provision is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples.

UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners

The Anti-Human Trafficking Manual for Criminal Justice Practitioners is the result of a global cooperative process in which expert representatives from academia, NGOs, international organizations, law enforcement officers, prosecutors and judges from all over the world contributed their expertise and experiences. In line with the Trafficking in Persons Protocol, the purpose of the Anti-Human Trafficking Manual for Criminal Justice Practitioners is to support criminal justice practitioners in the prevention of human trafficking, the protection of its victims, the prosecution of its culprits and in the international cooperation needed to achieve these goals.

The entire Module 6 of the Manual deals with international cooperation in trafficking in persons cases.¹⁰

UNODC, Mutual Legal Assistance Request Writer Tool

The Mutual Legal Assistance Request Writer Tool (MLA Tool) has been developed by UNODC to assist States to draft requests with a view to facilitate and strengthen international cooperation. Step by step, the MLA Tool guides the casework practitioner through the request process for each type of mutual assistance, using a series of templates. Before progressing from one screen to the next, the drafter is prompted if essential information has been omitted. Finally the tool consolidates all data entered and automatically generates a correct, complete and effective request for final editing and signature.¹¹

UNODC, Model Law on Mutual Assistance in Criminal Matters, 2007

UNODC model laws¹² enable governments to translate the obligations under the drugs and crime conventions into the detailed powers and operational frameworks necessary to apply them in practice. To the extent permitted by the international drugs and crime conventions, individual states may need to make adjustments to the

¹⁰ See www.unodc.org/documents/human-trafficking/TIP_module6_Ebook.pdf.

¹¹ See www.unodc.org/mla/index.html.

¹² www.unodc.org/pdf/model_treaty_mutual_assistance_criminal_matters.pdf.

text to more accurately reflect the fundamental principles of their legal systems and constitutions. Model laws are developed to meet the needs of each world's major legal traditions — the common law, civil law and Islamic law legal tradition. They were drafted to minimize legal conflicts in international casework between cooperating countries from different legal traditions. The model legislation is accompanied by commentaries, which serve as interpretation and implementation guidelines.

UNODC, The Competent National Authorities (CNAs) Online Directory

The online directory of Competent National Authorities allows easy access to the contact information of competent national authorities designated under the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the United Nations Convention against Transnational Organized Crime and the Protocols thereto, for the purposes described below.

The directory contains the contact information of over 400 CNA's authorized to receive, respond to and process requests for: Extradition; Mutual Legal Assistance in Criminal Matters; Transfer of Sentenced Persons; Illegal Traffic of Drugs by Sea; Smuggling of Migrants by Sea; Trafficking of Firearms.

www.unodc.org/compauth

UNODC Toolkit to Combat Trafficking in Persons, 2008

In pursuit of the goals of preventing and combating trafficking in persons, protecting and assisting its victims and promoting international cooperation to these ends, the UNODC Toolkit to Combat Trafficking in Persons¹³ seeks to facilitate the sharing of knowledge and information among policymakers, law enforcers, judges, prosecutors, victim service providers and members of civil society who are working at different levels towards these same objectives. Specifically, the Toolkit is intended to provide guidance, showcase promising practice and recommend resources in thematic areas. Chapter 4 on International Criminal Justice Cooperation, Tools 4.1, 4.4, 4.5, and Chapter 5 on Law enforcement and Prosecution Tool 5.10 are of particular interest. Chapter 9 on Prevention, in particular Tool 9.12 on Definition of the Concept of Demand; 9.14 Efforts to discourage demand.

OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking — Commentary

The Commentary¹⁴ seeks to provide clear direction on the issue of legal status by identifying those aspects of the Trafficking Principles and Guidelines that can be tied to established international legal rights and obligations. It uses the Principles and Guidelines to structure a detailed overview of the legal aspects of trafficking, focusing particularly but not exclusively on international human rights law. It provides court and tribunal decisions to illustrate the translation into practice of the Principles and Guidelines.

¹³ www.unodc.org/unodc/en/human-trafficking/2008/electronic-toolkit/electronic-toolkit-to-combat-trafficking-in-persons---index.html.

¹⁴ www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf.

ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases

The purpose of this Handbook¹⁵ is to provide criminal justice officials within the ASEAN region with an introduction to the key tools of international cooperation, specifically mutual legal assistance and extradition and to provide guidance on how these tools might be relevant to the investigation and prosecution of trafficking in persons cases. The Handbook is aimed at criminal justice practitioners, primarily law enforcement officers, prosecutors, central authority lawyers, and others who may be involved in investigating and prosecuting trafficking in persons cases, or in processing or considering requests for assistance across borders.

INTERPOL, Model [bilateral] police cooperation agreement

The suggested model¹⁶ is for bilateral agreements because the General Secretariat is of view that it is at this level of cooperation that States are most likely to agree on all provisions in the model. However, subject to a few amendments, the model could be used to conclude a regional agreement binding on a small number of States. This is why the word “bilateral” appears in square brackets. The model agreement is general in the sense that it provides for a number of different police cooperation methods. Although the widest cooperation should be encouraged, this general framework can be adapted by States wishing to limit the ways in which cooperation can be carried out (by not including provisions for special investigative techniques for example), to limit the grounds for cooperation (by drawing up an exhaustive list of offences covered by the agreement) or to limit both the ways in which cooperation is carried out and the grounds for that cooperation. The model agreement includes notes explaining the meaning and scope of each article. The notes are intended to make it easier to understand, adopt and possibly amend the provisions suggested. These notes are extremely important in this respect because they should encourage a flexible and coherent use of the model agreement.

Criminal Justice Responses to Trafficking in Persons: ASEAN Practitioner Guidelines, June 2007

The Association of South East Asian Nations (ASEAN), through the Senior Officials Meeting on Transnational Crime (SOMTC), has created a set of Practitioner Guidelines¹⁷ which reflect regional priorities and policies in providing just such a roadmap. These Guidelines were developed with reference to generally accepted international law and practice¹ and through discussions with practitioners and policymakers from all of the ASEAN Member States. Following extensive discussion and consideration by Member States, the guidelines were finalized by the ASEAN Ad-Hoc Working Group on Trafficking in Persons. The overall objective of the ASEAN Practitioner Guidelines is to assist criminal justice agencies in ASEAN Member States to secure justice for victims and end impunity for traffickers. The Practitioner Guidelines focus on the prosecution and adjudication of TIP cases and

¹⁵ www.artipproject.org/ic-handbook/ASEAN%20Handbook%20on%20International%20Legal%20Cooperation%20in%20TIP%20Cases_Aug2010.pdf.

¹⁶ www.interpol.int/public/ICPO/LegalMaterials/cooperation/Model.asp.

¹⁷ www.artipproject.org/artip-tip-cjs/tip-cjr/recent_developments/ASEAN-PG_Web_English_Final.pdf.

are organized around two broad themes: Evidential Matters and International Cooperation.

Part Two — International operational and legal/judicial cooperation
