



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

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## Working Group on the Smuggling of Migrants

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**Challenges and good practices concerning cooperation  
and coordination, including the sharing of intelligence and  
other information, in response to the smuggling of  
migrants**

## **Challenges and good practices concerning cooperation and coordination, including the sharing of intelligence and other information, in response to the smuggling of migrants**

**Note by the Secretariat**

### **I. Introduction**

1. Pursuant to resolution 5/3 of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, an open-ended intergovernmental interim working group on the smuggling of migrants was established to advise and assist the Conference in the implementation of its mandate with regard to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.
2. In that resolution, the Conference urged States parties to develop or strengthen, as appropriate, laws to maximize opportunities for international cooperation, including in extradition and mutual legal assistance. Moreover, the Conference recommended that States parties establish or strengthen, as appropriate, inter-agency coordination and called upon States parties to consider establishing and maintaining, as appropriate, direct channels of communication between border control agencies and enhancing law enforcement cooperation.
3. The first session of the Working Group is to take place in Vienna, Austria, from 30 May to 1 June 2012.

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\* CTOC/COP/WG.7/2012/1.



4. The present background paper was prepared by the Secretariat to aid in the discussions of the working group.

## **II. Issues for discussion**

5. The Working Group on the Smuggling of Migrants may wish to consider the following issues as a basis for deliberations:

- How can formal cooperation be made more efficient?
- What types of cooperation agreements and arrangements can States parties enter into to enhance efforts to prevent and combat smuggling of migrants and protect the rights of smuggled migrants?
- How can information be efficiently and securely shared?
- What forums can be used to share information and exchange experiences?
- How can States parties share resources and expertise in the development and application of training?
- How can training to strengthen response to smuggling of migrants be harmonized?
- How can investigative agencies and actors be supported to overcome language, cultural, bureaucratic and trust barriers in their efforts to cooperate with counterparts in other countries?
- How can international cooperation be strengthened to protect witnesses in smuggling of migrants prosecutions?
- How can States parties best support prosecutions occurring outside their jurisdiction?
- How can cooperative use of special investigative techniques be strengthened without compromising the lives and safety of migrants?
- What are best practice models for information and intelligence sharing to address smuggling of migrants?
- Should legislation be reviewed and amended to facilitate cooperation in return of smuggled migrants?
- Should agreements and arrangements be put in place or amended to facilitate cooperation in return of smuggled migrants?
- How can cooperation with regional and international organizations, as well as relevant non-governmental organizations be strengthened in facilitating return?

### III. Overview of issues and guidance for response

#### A. Informal and formal cooperation

6. International cooperation is essential to prevent and combat the transnational organized crime of smuggling of migrants. One incident of smuggling of migrants may give rise to investigations and prosecutions in multiple jurisdictions, necessitating effective cooperation between criminal justice actors. Formal and informal methods of international cooperation are both important in order to ensure that migrant smugglers do not commit their crimes with impunity. Depending on the situation, one method may be more appropriate or more achievable than the other. In many responses to the smuggling of migrants, both formal and informal methods of international cooperation may be pursued in parallel.

7. Formal international cooperation can be based on bilateral, multilateral or regional treaties or agreements, including agreements on extradition and mutual legal assistance in criminal matters. In the absence of such agreements, the United Nations Transnational Organized Crime Convention provides the basis for cooperation among States parties. Where there is no treaty framework for international cooperation, good practice is for States to cooperate on the basis of courtesy and reciprocity.

8. The key advantage of formal cooperation is the admissibility of evidence in court. Where coercive measures are required, formal cooperation is often the only option. However, requirements for formal cooperation are often costly and time-consuming, making formal cooperation ineffective where response is urgently required, for instance, to intercept smuggling of migrants incidents that endanger lives and safety. A good practice in overcoming this obstacle is to ensure that personnel who are likely to need to seek or provide formal cooperation are equipped with the information and resources necessary to make or respond to requests as efficiently as possible, and are aware of when to seek informal cooperation prior to or even in lieu of formal cooperation.

9. Informal cooperation involves operational police-to-police contact in seeking and providing assistance for investigations in order to facilitate the secure and rapid exchange of information. Necessary arrangements for such informal cooperation can be made between relevant police officers or agencies. Where there are prosecutorial objectives, communications may need to be formalized so as to ensure the admissibility of evidence in court.

10. The key advantage to informal cooperation is that it is more efficient, more flexible and less expensive than formal cooperation, and therefore more appropriate where time is of the essence in protecting lives and safety. However, there are some key challenges and risks involved in the use of informal cooperation. Mishandled information can compromise operations or expose law enforcers and migrants to risk. Good practice to minimize such risks includes ensuring that law enforcers are informed of whose advice to obtain before seeking informal cooperation, and ensuring that officers have the capacity to assess risks before seeking cooperation. The appointment of liaison units and officers can also facilitate informal cooperation and the protection of informal communications.

11. There are a number of challenges that hamper both formal and informal law enforcement cooperation. Such challenges include diversity of legal systems and law enforcement structures, absence of channels of communication for the exchange of information and intelligence, diversity in approaches and priorities, cultural and linguistic challenges, and a lack of trust between actors. The role played by individuals is the most important component in strengthening international cooperation. Good practice is for States parties to make procedures and requirements for cooperation known to practitioners and their counterparts in other jurisdictions, and to equip practitioners with the requisite resources to seek and provide cooperation, including human resources (for language translation, for instance) and technical resources. Good practice is also for States parties to utilize cooperation tools including UNODC's online directory of Competent National Authorities Online and Mutual Legal Assistance Request Writer Tool, both flagged in the Annex.

12. Article 17 of the Smuggling of Migrants Protocol requires States parties to consider concluding agreements and understandings among themselves to establish more appropriate and effective measures to prevent and combat smuggling of migrants, and to enhance the provisions of the Protocol. Good practice in this regard is to reflect the key purpose of the Protocol in such agreements or arrangements, including preventing and combating smuggling of migrants while protecting the rights of smuggled migrants.

## **B. Information and intelligence sharing**

13. Article 10, paragraph 1 of the Smuggling of Migrants Protocol requires States parties to exchange relevant information, particularly those with common borders or located on routes along which migrants are smuggled. Such information is to include embarkation and destination points as well as routes, carriers and means of transportation used to smuggle migrants; the identity and methods of organizations or organized criminal groups involved; the authenticity and proper form of travel documents issued by a State party and the theft or related misuse of blank travel or identity documents; means and methods of concealment and transportation of persons and the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents and ways of detecting them; legislative experiences and practices and measures to prevent and combat the smuggling of migrants; and scientific and technological information useful to law enforcement so as to enhance each other's ability to prevent, detect and investigate the smuggling of migrants and related conduct.

14. Although article 10 suggests that information should be exchanged particularly between States parties with common borders or located along smuggling routes, good practice is to seek information exchange as widely as possible at the regional and transregional level, so that migrant smugglers are not simply able to relocate smuggling routes to areas where cooperation has not been achieved.

15. Information exchange is only useful where it is received by relevant stakeholders who can act upon the information received. Good practice is for States to establish a system or mechanism of integrated cooperation to exchange

information between law enforcement, border, immigration and other relevant authorities for the exchange of information and coordination of activities.

16. Article 10, paragraph 2 of the Smuggling of Migrants Protocol requires States parties that receive such information to comply with any restrictions placed on its use by the State who has provided it. To overcome reluctance to share information because of concerns about security of information, good practice is to put in place methods to protect the security of information so that only those who need to know information have access to it. Sanctions should also be imposed on those who inappropriately divulge or misuse information.

17. States are reluctant to share information if there is no resultant benefit from doing so. If States are not informed of the criminal justice gains that have been achieved as a direct or indirect result of the information they have shared, they are less likely to share further information in the future. To promote proactive sharing of information, good practice is for States who have received information to inform States who provided information of the outcome achieved as a result.

### **C. Training and technical assistance**

18. Article 14, paragraph 1 of the Smuggling of Migrants Protocol obliges States parties to provide or strengthen specialized training programmes for immigration and other relevant officials involved in the prevention of smuggling of migrants and in the humane treatment of smuggled migrants. Additionally, article 14, paragraph 2 of the Smuggling of Migrants Protocol requires States parties to cooperate with each other and with international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure there is adequate training to prevent, combat and eradicate smuggling of migrants and protect the rights of smuggled migrants.

19. In order to harmonize understanding of the smuggling of migrants and criminal justice response thereto, good practice is for States parties to cooperate in the development and delivery of training programmes. Joint training of personnel who are required to cooperate with each other can result in effective sharing of resources to support mutual goals, increased understanding of challenges in different jurisdictions, and the fostering of cooperative relationships between counterparts in different States.

20. States may also consider making use of training material provided by international organizations such as the United Nations Office on Drugs and Crime Basic and In-depth Training Manuals on Investigating and Prosecuting Smuggling of Migrants. Such materials reflect international best practice, are compatible with all legal systems of origin, transit and destination countries, and have been designed for adaptation into local country contexts.

21. Article 14, paragraph 3, of the Smuggling of Migrants Protocol calls States parties to consider providing relevant technical assistance to countries of origin and transit. Good practice takes this recommendation further by ensuring that technical assistance is also provided to destination countries that lack relevant knowledge, information, capacity and resources to address the smuggling of migrants.

## **D. Investigations and prosecutions**

22. A key challenge in investigating transnational organized crimes is ensuring that investigative approaches are similarly transnational. Without adequate cooperation to investigate smuggling of migrants, smugglers are able to evade justice by simply relocating themselves, their activities and their assets beyond the reach of the investigative team. Good practice is to ensure that there is strong cooperation along smuggling routes so that areas of impunity are removed. The challenge of international cooperation in smuggling of migrants investigations is to overcome barriers of language, culture, bureaucracy and lack of trust between agencies.

23. Article 20 of the United Nations Transnational Organize Crime Convention encourages States parties to cooperate in the use of special investigative techniques. Such cooperation poses particular challenges in respect of smuggling of migrants investigations. Unlike other forms of smuggling, human beings are the object of smuggling of migrants. Their lives and safety must take precedence over investigatorial objectives. Cooperation between States in the use of specialist investigative techniques will be hampered where States involved give different priority to the rights of migrants. Good practice is for States parties to cooperate through the provision of appropriate human, technical and other resources as well as in building investigative capacity required to use specialist investigative techniques while protecting the rights of migrants in accordance with the Smuggling of Migrants Protocol.

24. The transnational nature of smuggling of migrants also poses several challenges to the prosecution of migrant smugglers. Witnesses and evidence may be in jurisdictions other than that where the trial is taking place, requiring strong international cooperation to protect witnesses from retaliation by smugglers, support their testimonies in trials in another jurisdiction, and ensure that admissible evidence is obtained from one jurisdiction for trial purposes in another. Good practices to overcome these challenges include allowing smuggled migrants to remain in the country to assist the criminal justice process, or the use of video link testimonies and video/audio recordings so that evidence may be given by migrants from the country to which they have been returned.

## **E. Return of smuggled migrants**

25. States parties are required by Article 18 of the Smuggling of Migrants Protocol to cooperate in the return of smuggled migrants. States parties are required on request, to accept the repatriation of their nationals and to consider accepting those who have or have had rights of residence. Such cooperation includes verifying the status of migrants as nationals or residents without unreasonable delay, re-admitting persons, and where necessary, providing any documents or authorizations needed to allow persons to travel back to the requested State party.

26. While not required by the Smuggling of Migrants Protocol, good practice is for one agency to be designated to oversee and coordinate the return process. States parties may additionally benefit from reviewing and enacting or amending legislation to ensure that officials are required to act or consider acting in response

to requests for cooperation in return of smuggled migrants, and have the necessary legal authority to issue travel documents when a national or permanent resident is to be returned.

27. The return of smuggled migrants raises significant issues under international law, in particular human rights, refugee and humanitarian law. For this reason, article 18, paragraph 6, of the Smuggling of Migrants Protocol notes that States may cooperate with relevant international organizations in carrying out return. The United Nations High Commissioner for Refugees, the International Organization for Migration, and other actors such as non-governmental organizations and other civil society actors may be relevant to carrying out return in accordance with the Smuggling of Migrants Protocol. Though not a mandatory requirement of the Protocol, good practice is for States to conclude cooperation agreements and strengthen communication channels with relevant organizations to facilitate cooperation in return.

## **F. National cooperation and coordination**

28. Cooperation and coordination on smuggling of migrants is complex. Comprehensive national responses to the smuggling of migrants necessarily involve multiple agencies with different mandates and distinct roles to play. As far as possible, national approaches to the smuggling of migrants should be consistent with relevant policies as well as regional and international efforts to prevent and combat the smuggling of migrants. Good practice is to develop national approaches in cooperation with other national, regional and international stakeholders so as to ensure that roles are clear, and responses are coordinated and mutually supportive.

29. In designing national approaches to preventing and combating the smuggling of migrants, review and amendment of policies on smuggling of migrants and related issues may be required to coordinate the role of all stakeholders. Good practice is to establish an inter-agency coordination body to address the smuggling of migrants issues across all relevant sections of government. Such an entity can create a forum for regular coordination meetings to ensure that responses are harmonized and that duplication of efforts is avoided. Centralized bodies significantly assist policy and operational coordination and can make international cooperation more efficient and effective. Good practice is for such bodies to ultimately monitor implementation of anti-smuggling of migrants policies, and assess training and capacity-building needs accordingly.

30. States may consider appointing a national rapporteur or comparable actor to monitor the effects of implementation of national policies or action plans on smuggling of migrants, systematically gather and analyse information from different actors, and promote cooperation between States, international organizations, non-governmental organizations and civil society actors.

## Annex

### **Key Tools and Recommended Resources**

#### **UNODC Toolkit to Combat Smuggling of Migrants**

The UNODC Toolkit to Combat Smuggling of Migrants has been designed to assist countries to implement the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. The Toolkit provides guidance, offers promising practices and recommends resources in thematic areas. Tool 6 specifically addresses international criminal justice cooperation.

[www.unodc.org/unodc/en/human-trafficking/migrant-smuggling/toolkit-to-combat-smuggling-of-migrants.html](http://www.unodc.org/unodc/en/human-trafficking/migrant-smuggling/toolkit-to-combat-smuggling-of-migrants.html)

#### **UNODC Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants**

The UNODC Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants is a practical guide and training tool for criminal justice practitioners around the world. Individual modules are designed to be adapted to the needs of different regions and countries, and can serve as a basis for upgrading or supplementing additional training programs of national training institutes.

[www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Basic\\_Training\\_Manual/Basic\\_Training\\_Manual\\_e-book\\_English\\_web\\_version.zip](http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Basic_Training_Manual/Basic_Training_Manual_e-book_English_web_version.zip)

#### **UNODC In-depth Training Manual on Investigating and Prosecuting the Smuggling of Migrants**

The UNODC In-depth Training Manual on Investigating and Prosecuting the Smuggling of Migrants builds on the Basic Training Manual to promote common understanding of relevant concepts and encourage States parties to take a mutually reinforcing approach in their responses to the transnational organized crime of smuggling of migrants. The manual offers a practical approach to the investigation and prosecution of smuggling of migrants, offering promising practices relevant to all countries of origin, transit and destination, regardless of their legal system.

[www.unodc.org/unodc/en/human-trafficking/migrant-smuggling/in-depth-training-manual-on-smuggling-of-migrants.html](http://www.unodc.org/unodc/en/human-trafficking/migrant-smuggling/in-depth-training-manual-on-smuggling-of-migrants.html)

#### **UNODC International Framework for Action to Implement the Smuggling of Migrants Protocol**

The Framework for Action to Implement the Smuggling of Migrants Protocol is a technical assistance tool that aims to support effective implementation of the Smuggling of Migrants Protocol. The purpose of the International Framework for Action is to assist States parties and non-State actors to identify and address gaps in their response to smuggling of migrants, in accordance with international standards. International instruments, political commitments, guidelines and best practices are drawn upon towards a comprehensive approach to preventing and combating smuggling of migrants. The International Framework is comprised of four tables



addressing prosecution (and investigation), protection (and assistance), prevention, and cooperation (and coordination).

[www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Framework\\_for\\_Action\\_Smuggling\\_of\\_Migrants.pdf](http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Framework_for_Action_Smuggling_of_Migrants.pdf)

### **UNODC Model Law against the Smuggling of Migrants**

The UNODC Model Law against the Smuggling of Migrants has been developed to assist States in implementing the provisions contained in the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. The Model Law aims to facilitate the review and amendment of existing legislation as well as the adoption of new legislation, by model provisions on criminalization of the offence of smuggling of migrants; protection and assistance of smuggled migrants; cooperation and coordination among and between agencies; cooperation in respect of smuggling of migrants and sea; and the processes related to return of smuggled migrants.

[www.unodc.org/documents/human-trafficking/Model\\_Law\\_Smuggling\\_of\\_Migrants\\_10-52715\\_Ebook.pdf](http://www.unodc.org/documents/human-trafficking/Model_Law_Smuggling_of_Migrants_10-52715_Ebook.pdf)

### **UNODC Competent National Authorities Online Database**

The database provides contact information for more than 400 competent national authorities to receive, response 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 and trafficking of firearms. With a view to facilitating communication and problem solving among competent authorities at the inter-regional level, the directory also contains information on State membership in existing regional networks, legal and procedural requirements to be observed in requests, and the use of the United Nations Transnational Organized Crime Convention as the legal basis for requests. The online directory is available to competent authorities and government agencies with a user account.

[www.unodc.org/compauth/en/index.html](http://www.unodc.org/compauth/en/index.html)

### **UNODC Mutual Legal Assistance Request Writer Tool**

The Mutual Legal Assistance Request Writer Tool (MLA Tool) assists States to draft requests for international cooperation and assistance. The Tool requires virtually no knowledge or experience with drafting assistance requests. The Tool guides users step-by-step through the request process for each type of mutual assistance using a series of templates, consolidates all data entered and automatically generates a correct, complete and effective request for final editing and signature. The Tool is adjustable to any country's substantive and procedural law, enables the user to retrieve information on treaties and national legislation, and features a case-management tracking system for incoming and outgoing requests. The Tool is currently available in English, French, Spanish, Russian, Portuguese, Bosnian, Croatian Montenegrin and Serbian.

[www.unodc.org/mla/](http://www.unodc.org/mla/)