

OSCE Annual Police Experts Meeting

2014

Vienna – 17-18 June 2014

**Enhancing Cross-border Co-operation of the
Criminal Justice System in
Combating Transnational Crime in
the OSCE Area**

Key Findings and Outcomes

During the 2014 Annual Police Experts Meeting, criminal justice experts from the OSCE participating States, executive structures and international partner organizations discussed legal provisions, mechanisms and tools for enhancing cross-border co-operation between law enforcement and judicial authorities in the OSCE area, with the aim of enhancing the participating States' joint responses to transnational threats.

The two-day exchange of views, experiences and examples of good practices showed that while a solid legal foundation for international co-operation of criminal justice institutions has been established, and a number of regional and bilateral co-ordination and co-operation mechanisms have been created, the effective implementation of the legal provisions and the effective and efficient utilization of co-operation mechanisms and tools often prove to be challenging at the bilateral, regional and international levels. Participants shared their experience and exchanged their views on various approaches to address these challenges and improve inter-agency responses against transnational criminal activities.

Based on the presentations and discussions at the meeting, the following findings and outcomes were compiled:¹

Legal framework for Cross-border Co-operation of the Criminal Justice System in Combating Transnational Crime at the Bilateral, Multilateral and Regional Levels

- The United Nations Convention against Transnational Organized Crime (UNTOC) and its three protocols is the main instrument in the fight against transnational organized crime.
- Complementing the UNTOC a number of relevant conventions, treaties and mechanisms have been adopted and created at the regional level in the OSCE area, providing guidance and facilitating effective and efficient co-operation between law enforcement and judicial institutions.
- Participating States may also consider negotiating further bilateral or multilateral co-operation agreements that complement the UNTOC and regional treaties.
- Bilateral or multilateral agreements can be more specific on operational provisions of co-operation, providing, for instance, specific police powers for operating in a foreign country. Practitioners should be actively involved in the elaboration of these agreements in order to take into consideration their operational needs.

¹ This is a non-exhaustive list which does not imply consensus among the APEM participants or endorsement by OSCE participating States, or by the OSCE Secretariat.

- These additional agreements should adhere to and complement existing agreements and should not duplicate and overlap with other agreements in order to avoid a multitude of similar instruments, confusion of and contradictory provisions.
- Similarly, co-operation mechanisms that are based on these agreements should not compete with each other and duplicate each other's work.
- Differences in legal requirements and procedures may constitute an obstacle to effective and efficient international co-operation. Cross-border co-operation requires practitioners to take into account these legal requirements.
- Practitioners should make use of the relevant practical tools for co-operation such as model requests for mutual legal assistance forms, guidelines and information on State's requirements available on relevant internet platforms.

Cross-border Co-operation of Law Enforcement Agencies

- Co-ordination and co-operation mechanisms facilitated by regional organizations such as CARICC, EUROJUST, EUROPOL, PCC SEE, and SELEC, as well as international organizations such as INTERPOL and UNODC have proven very valuable in facilitating and fostering co-operation between criminal justice agencies from different countries.
- Similarly, regional co-ordination mechanisms can be valuable in co-ordinating cross-border police operations, such as controlled deliveries.
- Since operations often go beyond the geographical borders of regional organizations, the latter should establish co-operation agreements with international and other regional organizations as well as with third States affected by the same threats.
- There is a need for defining, at the national level, the most relevant communication channel for the exchange of cross-border information to avoid duplication of efforts in addressing several co-operation channels for one and the same request.
- There is a need for the police to quickly and securely exchange operational information and have on-time access to databases in the case of cross-border operations.
- Biometric information such as DNA and fingerprints is essential for tackling perpetrators of transnational crimes. This information should be shared as extensively as possible among law enforcement authorities.
- Complementing regional centralized databases, the development of decentralized networks of national databases may be considered, as they can provide access to a higher amount of data. As an

example, the Prüm Treaty regulates the creation and maintenance of such a decentralized network of databases for biometric information, such as DNA and fingerprints.

- Regional organizations could provide capacity building workshops, organize simulation and operational exercises of cross-border co-operation and develop specific training curricula.
- Furthermore, in consultation with Member States, regional organizations may develop manuals on operationalizing co-operation agreements.
- Thematic working groups within regional co-operation mechanisms may focus on specific issues in the implementation of co-operation agreements.
- Joint workshops, exercises and co-ordination and information sharing meetings will also increase mutual trust among the members of bilateral or regional co-operation mechanisms.
- It is recommended to establish and maintain close contacts between regional co-operation mechanisms and the OSCE Field Operations of respective regions.
- Joint crime threats assessments undertaken in the framework of multilateral settings can serve as a good base for priority setting in the fight against transnational organized crime. Such a prioritization should be defined by joint strategic action plans and supported at national level by the same prioritization and related political and operational support.
- Law enforcement authorities should seek closer co-operation with the private sector (for instance, airline companies, credit card companies, internet providers etc.), as these institutions have specific knowledge that can be of great value in the fight against specific forms of organized crime.

Cross-border Co-operation of Judicial Authorities

- In order to request Mutual Legal Assistance (MLA), judicial authorities need to know to whom to send their requests. In line with Article 18 of the UNTOC, States should designate Central Authorities to transmit, execute and ensure speedy execution of MLA requests.
- Liaison magistrates are also very useful for forwarding requests, identifying the relevant counterparts, and facilitating the drafting and follow-up of MLA requests.
- Annotated templates for making requests which are disseminated among States can be of great value in facilitating co-operation.
- States should ensure that the quality of their requests, including the translation of the request into the language of the requested States, is appropriate in order to avoid delays in the response.

- Prior contacts between law enforcement officers, prosecutors and central authorities before making a request as well as in the drafting process of requests are deemed crucial to ensure mutual understanding of the respective legal systems and requirements of the requesting and requested States.
- Joint meetings between law enforcement authorities and judicial authorities could be held to anticipate and solve issues of common concern, and where applicable, develop a common strategy in joint investigations.
- The INTERPOL e-Extradition Initiative, currently being developed, will provide a tool for the quick transmission of MLA and extradition requests among pre-identified contact points. It will allow for the rapid communication of requests in line with the highest global standards in terms of IT-security and data protection corresponding to those of the I-24/7 communication network.

Cross-border Co-operation of law Enforcement Agencies and Judicial Authorities

- There is a need to establish networks in order to facilitate mutual legal assistance and law enforcement co-operation where they do not yet exist. Liaison officers and magistrates can serve as contact points.
- Where networks already exist, they might be linked with each other. In order to further enhance communication between the networks, contact persons could be assigned to each other's networks.
- Multi-agency cross-border co-operation mechanisms, such as the International Law Enforcement Coordination Units (ILECUs) of the Police Cooperation Convention for Southeast Europe and SEEPAG, together with SELEC, might be used as examples for introducing similar mechanisms in other OSCE regions.
- In line with the UNTOC, Joint Investigation Teams (JITs) comprised of investigators and judicial authorities from two or more States, working together with clear legal authority and certainty about the rights, duties and obligations of team members, can significantly improve the effectiveness of investigations and prosecutions of transnational crimes.
- Advantages of JITs are for instance, that no MLA requests are required after the signing of JIT agreements. Operative measures are taken in accordance with National legislation. The judicial authorities (JIT Leaders) should make sure that legal requirements are met.
- In accordance with UNTOC Article 24 on the protection of witnesses, each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by the UNTOC.

- International and regional co-operation is extremely important for the successful implementation of witness protection programmes. Co-operation may also include the exchange of experience; the delivery of training; and operational co-operation.
- Video conferences for the purpose of interviewing witnesses are an essential element of witness protection.
- Regional multi-agency workshops should be organized in the format of simulation exercises, convening criminal justice practitioners from various countries to improve their cross-border co-operation at the operational level.
- Another option might be to organize a comprehensive multi-agency simulation exercise in the frame of a future OSCE Annual Police Experts Meeting.