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International cooperation, with particular emphasis on extradition, mutual legal assistance and international cooperation for the purpose of confiscation, and the establishment and strengthening of central authorities**Matrix outlining legal and practical issues that could arise in the implementation of article 19 of the United Nations Convention against Transnational Organized Crime on joint investigations¹****Conference Room Paper****Article 19 – Joint investigations**

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

I. Introduction

1. Joint investigations, in which law enforcement and judicial officials from two or more States work together, can be useful to investigate and prosecute complex transnational organized crime cases and can further complement other types of mutual legal assistance and law enforcement cooperation. Joint investigations maximize direct personal contacts and address practical problems that investigators and prosecutors are usually not able or not authorized to overcome across borders. In an era where almost every crime crosses border, so must law enforcement. If the rule of

* CTOC/COP/2024/1.

¹ This document has not been formally edited.



law is undermined not only in one country, but in many, then those who defend it cannot limit themselves to purely national means.²

2. Agreements and arrangements enabling joint investigations are one way to address this obstacle insofar as they permit foreign law enforcement and judicial officials to work alongside, or on behalf of, their local counterparts. The creation of joint investigative teams (often referred to by the acronym JIT) further permits the direct transmission of information without the need to use formal mutual legal assistance channels.³

3. Article 19 of the United Nations Convention against Transnational Organized Crime (UNTOC),⁴ encourages the use of joint investigations in order to investigate and prosecute transnational organized crime more effectively and exchange relevant information more swiftly across borders. To that end, article 19 of the UNTOC requests States parties to consider the development of bilateral or multilateral arrangements or agreements regarding the establishment of joint investigative bodies, mindful of the legal and sovereignty issues involved.⁵ If such agreements or arrangements do not (yet) exist, article 19 further encourages joint investigations on a case-by-case basis.

4. In its resolution 5/8 entitled *Implementation of the provisions on international cooperation of the United Nations Convention against Transnational Organized Crime*, the Conference of the Parties to the UNTOC (hereinafter, the Conference or COP) requested the Secretariat to continue to foster international and regional cooperation by, inter alia, “*building, based on existing cases and experiences, a matrix identifying legal and practical issues that could arise in the implementation of article 19 of the Organized Crime Convention and by establishing modalities for conducting joint investigations, including by creating joint investigative bodies, as well as possible solutions to those issues, including by collecting examples of arrangements or agreements concluded between States parties for that purpose*” (paragraph 2(d)).

5. Further, in resolution 11/1 entitled *Implementation of the provisions on international cooperation of the United Nations Convention against Transnational Organized Crime*, the Conference endorsed, among others, the recommendations adopted by the Working Group on International Cooperation at its twelfth meeting, held on 25 and 26 March 2021, which are set out in annex I to the resolution. In this context, paragraph (i) of annex I reads as follows:

(i) In accordance with the mandates contained in Conference resolution 5/8 and relevant guidance stemming from the deliberations of the Working Group, the Secretariat should develop, subject to the availability of resources, a matrix identifying legal and practical issues that could arise in the implementation of article 19 of the Convention, as well as possible solutions for those issues, including by collecting examples of arrangements or agreements concluded between States parties for that purpose, and, upon request, should assist States parties in developing a set of legal, practical and operational guidelines for the implementation of article 19.

6. The below matrix – brought to the attention of the COP in an unedited version – was elaborated in accordance with the aforementioned mandates of the Conference.

² Kofi Annan, Secretary-General of the United Nations, Foreword to published version of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, United Nations, New York 2004.

³ CTOC/COP/WG.3/2020/2, para. 49.

⁴ United Nations, *Treaty Series*, vol. 2225, No. 39574. Adopted by the General Assembly in its resolution 55/25, annex I. Opened for signature by Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12–15 December 2000 and thereafter at the United Nations Headquarters in New York until 12 December 2002. Entered into force on 29 September 2003. Also referred to as “Organized Crime Convention”.

⁵ UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime* (2nd edition, 2017), para. 582.

It is part of a comprehensive report on “legal and practical issues that could arise in the implementation of article 19 of the United Nations Convention against Transnational Organized Crime on joint investigations”, which will be released as an official publication in the coming months.

7. The matrix was prepared by Prof. Andreas Schloenhardt (PhD, Adelaide), Professor of Criminal Law at The University of Queensland in Brisbane, Australia and Honorary Professor of Foreign and International Criminal Law at the University of Vienna, Austria. Mr. Dimosthenis Chrysikos, Crime Prevention and Criminal Justice Officer in the Organized Crime and Illicit Trafficking Branch, Division of Treaty Affairs of UNODC, Vienna, reviewed and provided valuable inputs.

8. UNODC wishes to acknowledge the contributions of experts participating in an informal expert group meeting on international cooperation, held from 23 to 25 October 2023,⁶ which were also taken into account for the elaboration of the matrix.

9. The matrix has also benefited from expert input provided by officials of the following agencies and organizations:

- Eurojust, JITs Network Secretariat, The Hague, The Netherlands;
- Australia, Attorney-General’s Department, International Crime Treaties and Policy Section with input by the Australian Federal Police;
- Romania, Ministry of Justice, Directorate International Law and Judicial Cooperation;
- Thailand, Office of the Attorney-General, Director General International Affairs Department; and
- United States, Department of Justice, Office of International Affairs.

10. The matrix was prepared as an activity to implement the Joint Plan of Action on Crime Prevention and Criminal Justice under the strategic cooperation between the Ministry of Justice of China and UNODC, and supported through the generous contribution of China.

Matrix identifying legal and practical considerations that could arise in the implementation of article 19 of the United Nations Convention against Transnational Organized Crime on joint investigations

Stage 1 Planning	Legal and practical considerations
<i>1.1 Need and background</i>	
Suitability of the case for creation of a JIT because of	<ul style="list-style-type: none"> • Cross-border element • Complexity of the case • Connected investigations requiring coordination • Complexity of the investigative measure needed
Suitable stage of investigation	<ul style="list-style-type: none"> • Already ongoing (parallel or linked) investigation • Early (rather than advanced) stage of investigation
Suitability of the crime type or offences	<ul style="list-style-type: none"> • Severity • Penalties and punishment • Dual criminality • Special considerations for specific crime types
Identification of suitable cases	<ul style="list-style-type: none"> • “Bottom-up initiative” • “Top-down projects”

⁶ www.unodc.org/unodc/en/international-cooperation/news-and-events/IEGM_2023.html.

1.2. Purpose and goals	
Establishing common objectives and goals of the JIT	<ul style="list-style-type: none"> • Same understanding of JIT concept and common expectations • Identify common investigative interest • Set up for a specific purpose
1.3. Parties	
States	<ul style="list-style-type: none"> • Level of relevance of the case to the States
Agencies	<ul style="list-style-type: none"> • Identify relevant agencies (law enforcement, prosecution, judiciary, etc) to be involved
Officials	<ul style="list-style-type: none"> • Required qualifications, training, knowledge, skills, level of seniority,
1.4. First contact, request	
First contact to other State	<ul style="list-style-type: none"> • May take the form of a mutual assistance request • Assessment by requested party • Nominate contact point for initial enquiry
1.5. Legal basis	
National enabling legislation	<ul style="list-style-type: none"> • Complete, accurate and clear implementation of international framework • Compliance with national framework regarding establishment of JITs
1.6. Resources	
Financial costs	<ul style="list-style-type: none"> • Total costs • Contribution by each party • Funding applications • Reimbursement • Contingency for further financial resources
Human resources	<ul style="list-style-type: none"> • Recruitment, qualifications, seniority,
Equipment	<ul style="list-style-type: none"> • Technical equipment, office space and facilities, material supplies
1.7. Agreement	
Key content	<ul style="list-style-type: none"> • Parties • Background, facts, offences • Purpose • Period, location of operation • JIT leaders, members, other participants • Operational measures and procedures • Liability • Language • Organizational arrangements
Amendments, additional parties, extensions	<ul style="list-style-type: none"> • Amendments to the agreement • Ability of other parties to join at a later stage
Model agreements	<ul style="list-style-type: none"> • EU Model JIT Agreement • Asociación Ibero Americana de Ministerios Públicos Model Agreement

Stage 2: Setting up	Legal and practical considerations
2.1 Location (host)	
Investigation	<ul style="list-style-type: none"> • Jurisdiction where (most) investigative activities are to take place • National laws of the jurisdiction apply
Prosecution	<ul style="list-style-type: none"> • Consider place of prosecution and trial at an early stage (if possible)
2.2 Duration	
Set period	<ul style="list-style-type: none"> • JITs are create for a set, limited period of time • Extension by mutual consent possible
2.3 Structure	
JIT leaders	<ul style="list-style-type: none"> • Designated representative of the main participating agency of the host jurisdiction • Supervises JIT members and their operations • JIT leadership may need to be transferred or multiple JIT leaders appointed if investigation moves to another jurisdiction
JIT members	<ul style="list-style-type: none"> • Domestic JIT members of participating agencies of host jurisdiction • Seconded JIT members of participating agencies of foreign jurisdictions
2.4 Other participants	
Participants that are not JIT members	<ul style="list-style-type: none"> • Officials from jurisdictions that are not party to the JIT agreement • Officials from international (law enforcement, prosecution, border control etc.) agencies (e.g.: Europol, Eurojust, OLAF, Frontex)
2.5 Preparation and training	
Preparatory training	<ul style="list-style-type: none"> • Understanding of the legal system of the host jurisdiction, the organizational structures, authority, and powers of the agencies involved, and of the legislation relating to investigative measures • Language training
Team-building	<ul style="list-style-type: none"> • Measures to establish personal contacts, facilitate swift communication, build mutual trust, bridge cultural differences
2.4 Liability	
Criminal liability of officials	<ul style="list-style-type: none"> • Usually determined by criminal laws of the host jurisdiction
Civil liability of officials	<ul style="list-style-type: none"> • Usually determined by domestic laws of the host jurisdictions • JIT agreement may specify that laws of the home jurisdiction applies to seconded members
Compensation for damages	<ul style="list-style-type: none"> • For domestic JIT members usually determined by domestic laws of the host jurisdictions • For seconded members usually laws of the home jurisdiction • JIT agreement may contain special arrangements

Stage 3: Operation	Legal and practical considerations
3.1 Coordination and planning	
	<ul style="list-style-type: none"> • Investigative planning/operational plan • Operational briefings • Periodic meetings • Review of investigative measures taken
3.2 Investigative powers	
Legal basis	<ul style="list-style-type: none"> • Domestic law of host jurisdiction • Supervised by participating national authority of host jurisdiction
Presence during investigation in host jurisdiction	<ul style="list-style-type: none"> • Domestic members as authorized by domestic law • Seconded members usually permitted to be present during investigation activities by domestic members • Seconded members may be excluded from individual activities
Taking investigative measures in host jurisdiction	<ul style="list-style-type: none"> • Domestic members as authorised under domestic law • Seconded members may be authorised by the JIT agreement or by the JIT leader on a needs basis to take carry out investigative activities
Requesting investigative measures from other participating States	<ul style="list-style-type: none"> • Seconded members can request investigative measures in/from their home jurisdiction (no need for formal mutual assistance request)
3.3 Special investigative techniques	
Additional requirements	<ul style="list-style-type: none"> • Only as permitted under domestic law of jurisdiction where technique is to be employed • Further conditions may be specified in JIT agreement • Consider additional safeguard and human rights implications • Consider admissibility of evidence gained through special investigative techniques
3.4 Victims and witnesses	
Seconded JIT members	<ul style="list-style-type: none"> • May be better positioned to communicate and engage with victims and witnesses from the same country/cultural background • May cause fear and refusal to cooperate if victim or witness has fled from home jurisdiction or fear repatriation
3.5 Information-sharing	
Legal basis	<ul style="list-style-type: none"> • Only as permitted under domestic law of participating States • Note difference between laws in different States
Purposes	<ul style="list-style-type: none"> • Limited to purposes for which the JIT was established (as recorded in JIT agreement) • Also: prevention of immediate and serious danger to public security • Unclear: whether information may be shared for other purposes (in relation to other crimes) with the consent of participating parties
Data protection and privacy	<ul style="list-style-type: none"> • Comply with relevant domestic laws • Use secure communication and information-sharing channels

3.6 Evidence	
Gathering	<ul style="list-style-type: none"> Comply with domestic law of jurisdiction where evidence is obtained
Admissibility in court	<ul style="list-style-type: none"> Comply with domestic law of jurisdiction where judicial proceedings take place Preferably hold judicial proceedings in same jurisdiction where investigation was carried out JIT agreement may specify special rules/resolve legal differences
Disclosure rules	<ul style="list-style-type: none"> Comply with domestic law of jurisdiction where judicial proceedings take place
3.6 Cooperation with other States	
Mutual legal assistance request	<ul style="list-style-type: none"> Consider which participating State is best position to make request to third party Disclose that cooperation is sought for JIT purposes Notify third party if other States join the JIT later
Stage 4 Closure and evaluation	Legal and practical considerations
4.1 Closing	
Lapse of time	<ul style="list-style-type: none"> JIT terminates with period of time specified in JIT agreement JIT agreement needs to be extended if further investigations are necessary JIT may terminate before expiry date if investigations are completed Settle questions about jurisdiction and place of prosecution before JIT is closed
Unilateral departure	<ul style="list-style-type: none"> Make transitional or preliminary arrangements before one party exits the JIT/ruminates the JIT agreement unilaterally
4.2 Evaluation	
Evaluate	<ul style="list-style-type: none"> Outcomes and achievements vis-à-vis stated objectives of the JIT Use of operational, including coercive powers Procedural rules and use of information and evidence
Collate and disseminate	<ul style="list-style-type: none"> Consider releasing general annual reports of all JITs conducted in a year