

Investigation and prosecution in light of cross-border cooperation.

The **Protocols to the UN Convention on Transnational Organized Crime**¹ lay a comprehensive framework for criminalizing migrant smuggling and human trafficking, providing protection and assistance to victims and fostering international cooperation among States parties. State signatories are required to harmonize their national legislation with the standards outlined in the Protocols.

Harmonized criminal legislation, in conformance with the Protocols, fosters international cooperation for the purpose of both prosecution and victim returns, and sets minimum standards to avoid perpetrators relocating to countries with lenient laws. Given that migrant smuggling is an inherently cross-border crime, and that much of human trafficking is also international, effective international cooperation is essential for combating both crimes.

At its most basic, international cooperation involves **information sharing** on routes, embarkation and entry points, means of transportation, modus operandi and the

particular forms of both crimes.

More concerted cooperation between States, involving **joint operational activities** between law enforcement and judicial authorities, is often required to investigate and prosecute human trafficking and migrant smuggling. Dismantling complex, cross-border criminal networks might also require the support and technical expertise that can be offered by international and inter-governmental organizations. Joint investigative teams (JITs), formed between north-south and/or south-south partners, can strengthen national capacities to both detect and prosecute perpetrators.

APC states have not all brought their national criminal legislation in line with the Palermo Protocols, leaving gaps that impede effective prosecution. Furthermore, not all criminal justice professionals are fully aware of the legislative content or its applicability in practice. In States with the requisite legislation, the absence of legal precedent or practical knowledge on

1. https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf

building a case creates obstacles to effective prosecution.

This session will provide an opportunity to discuss the de facto implementation of existing legislation in conducting investigations and shaping prosecutions of cases of migrant smuggling and human trafficking, as well as to share effective examples of cross-border cooperation in investigations leading to successful prosecutions.

Participants will be invited to reflect on the following questions:

Do all criminal justice actors have sufficient awareness of the content of the legislation and its practical application?

Are cases classified under other offences due to lack of awareness or understanding of the law? Or due to the absence of necessary evidence?

Are there impediments to effective cooperation between police, investigators and prosecutors at the national or sub-national level?

What strategies have been employed to address existing legislative gaps? In the face of an insufficient legislative framework, can other offences be used until the law can be revised?

Can multiple crimes be prosecuted to ensure a conviction? Such as those committed in the course of trafficking or smuggling, such as rape, child abuse or other forms of physical assault?

Does the legal or policy framework provide an effective platform for international cooperation on criminal investigations, and in ensuring victims' return?

Does the existing legislation and national policy provide a framework for joint cross-border investigations?

Do regional mechanisms for cooperation exist? How can they be capitalized upon to strengthen cross-border investigations?

Are specialized investigations or prosecution units at the national level necessary for successful prosecutions?

This session will highlight the best examples of successful international cooperation in conducting investigations and prosecution, and identify the key components necessary for their implementation.