



Centro de Estudios de Justicia de las Américas
Justice Studies Center of the Americas

The cooperation for the investigation and criminal prosecution of Transnational Organized Crime in Bolivia, Peru, Chile and Argentina



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ISBN: 978-956-6413-00-4

Intellectual Propriety: 2024-P-17398

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1. AIAMP: Ibero-American Association of Public Prosecutors
2. CEJA: Justice Studies Center of the Americas
3. CIDH: Inter-American Commission on Human Rights
4. COMJIB: Conference of Ministers of Justice of Ibero-American Countries
5. COT: Transnational Organized Crime
6. DDOT: Department of Transnational Organized Crime
7. JIT: Joint Investigation Team
8. IberRed: Ibero-American Network of Legal Cooperation
9. OAS: Organization of American States
10. PacCTO: Europe Latin America Program of Assistance against Transnational Organized Crime
11. RANDOT: National Authorities Meetings on Transnational Organized Crime
12. REMJA: Ministerial Meetings of Justice of the Americas
13. SIT: Special Investigation Techniques
14. EU: European Union

The cooperation for the investigation and criminal prosecution of Transnational Organized Crime in Bolivia, Peru, Chile and Argentina¹

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This analysis document aims to establish the effectiveness and challenges of various forms of criminal judicial cooperation in the investigation and prosecution of transnational organized crime (TOC), based on the experiences of Bolivia, Peru, Chile, and Argentina. The geographical context of these four neighboring countries allows this research to put a special emphasis on the study of transboundary phenomena of transnational organized crime and their characteristics. Indeed, it acknowledges that transnational organized crime is not always border-crossing, especially with the digitalization and globalization that allow criminal entities to interact without necessarily crossing borders.

The transnationalization of organized crime can be practical, involving cross-border criminal activities, but can also arise from the interests affected by these criminal behaviors. In this case, the object of the crime, the legal good affected, gives the crime an international dimension. While studies on the transnationalization of organized crime by legal goods are increasing, this analysis shows that the cross-border nature of these criminal organizations' actions remains a concerning reality in the region. This phenomenon is especially evident through the instrumentalization of migratory flows and the control of borders by organized crime as a profitable strategy, but also as a means of camouflaged movement.

In response to this rapid territorial and logistical expansion, criminal judicial cooperation has fostered

the development of new tools to undermine this dynamic, understood as the ability of these international criminal organizations to move and adapt. Among the tools created for effective judicial cooperation, Joint Investigation Teams (JITs) stand out. This structure offers numerous advantages over traditional legal cooperation, ensuring a more stable framework of cooperation that fosters mutual trust between the competent authorities of the involved States and allowing for the timely and valid use of new investigation techniques and evidence collection. However, despite the replication of experiences among the States, these cooperation spaces also have weaknesses that do not fully adapt to the characteristics of transnational organized crime in the Latin American region and limit the effectiveness of investigations and prosecutions. These include their limited temporal and material scope.

In response to these limitations, new cooperation structures are emerging, still in the process of implementation, such as mixed investigation bodies, which show promising characteristics in terms of their durability and flexibility. On the other hand, the increasing use of special investigation techniques, regulated in recent national laws, highlights differences across countries, potentially causing difficulties in their implementation within transnational cooperation processes. Additionally, beyond these forms of judicial cooperation, and in the need for fast and useful information gathering, actors in investigations and prosecutions are increasingly

turning to a new type of interinstitutional cooperation characterized by direct and horizontal contact between competent authorities. While this is a fundamentally useful approach and represents the future of cooperation for controlling transnational organized crime, it must be framed within legal protections to ensure the safeguarding of procedural guarantees. Furthermore, it is necessary to address the digitalization of these forms of cooperation,

which, alongside the use of new technologies in the administration of justice, creates both significant opportunities and challenges.

Keywords: *Transnational Organized Crime, Criminal Judicial Cooperation, Joint Investigation Teams, Special Investigation Techniques, Interinstitutional Cooperation, Mutual Trust.*

This research presents a compilation of best practices while emphasizing the challenges related to cooperation in the investigation and prosecution of crimes associated with transnational organized crime in four neighboring countries in the region: Bolivia, Peru, Chile, and Argentina. For this purpose, three research methods were employed: 1) a comparative analysis of regional and national legislations; 2) an examination of secondary sources; 3) semi-structured interviews with members of the specialized teams and international cooperation units of the Prosecutor's Offices in Argentina, Chile, and Peru.²

The study aims to:

- (I) Provide a panoramic overview of the concrete phenomenological and social aspects of transnational organized crime in the analyzed countries
- (II) Establish a compilation of the main instruments and their legal frameworks in the area of judicial cooperation for the investigation and prosecution of these complex crimes
- (III) Compare the experiences of the countries analyzed, which have developed flexible communication flows for more agile and timely cooperation
- (IV) Highlight the current and future challenges
- (V) Propose strategies to prosecute transnational organized crime while respecting the balance between performance and safeguarding procedural guarantees

² Interview of a member of the Directorate-General for Regional and International Cooperation of the Argentine Public Prosecutor's Office on 4 June 2024; Interview of three members of the

Organized Crime and Homicide Team of the Chilean Public Prosecutor's Office, held on 6 June 2024; Interview with a Peruvian prosecutor in June 2024. These interviews were flexibly based on the same pattern of pre-defined questions.

In recent years, the intensification of complex and violent criminality in Latin America, which tends to spread throughout the continent, has become evident. Similar to processes of international trade liberalization, reduced border controls, and the use of new technologies, the clandestine dimensions of globalization have facilitated the cross-border flow of illicit persons, assets, goods, and information. Additionally, new criminal strategies have emerged, and due to the interconnection of criminal structures and the technical sophistication of their operations, they interact while ignoring territorial borders. This results in a dynamic territorial presence that causes the phenomenon to exponentially spread across the continent and even to other regions.³ Therefore, these transnational behaviors demand more sophisticated responses from States.

While the divergences in the conceptualization of Transnational Organized Crime (TOC), as well as the variety and complexity of the phenomenon, complicate its definition, an agreement on minimum common substantive principles was achieved within the framework of the Palermo Convention.⁴ In preliminary terms, transnational organized crime refers

more to a mode of committing crimes than to the crime itself. It is defined as an activity carried out by a structured group of three or more individuals, with a certain degree of permanence, acting concertedly to commit one or more serious crimes,⁵ with the purpose of obtaining a direct or indirect benefit which transcends cultural, social, and geographical boundaries.

However, conceptual, political, and legal asymmetries persist regarding some criminal typification's in national legislations. For example, Article 292 of the Chilean Penal Code describes criminal association without considering the utilitarian component of the economic or material purpose required by the conventional definition. Article 317 of the Peruvian Penal Code follows a similar approach.⁶ This highlights the polarization between typifications focused on "who" forms the criminal organizations and those that emphasize "what" types of activities are

³ As an illustration of this phenomenon, the concern of some legislators in the United States about the possible expansion of the *Tren de Aragua* in that country led the Treasury Department to declare the *Tren de Aragua* a Transnational Criminal Organization in July 2024. In addition, the State Department, in coordination with the United States Department of Justice (DOJ), announced rewards of up to \$12 million under the Transnational Organized Crime Reward Program in exchange for information leading to the arrest and/or conviction in any country of the leaders of the *Tren de Aragua*. This initiative demonstrates that transnational organized crime is not necessarily characterized by a crossing of borders but rather interacts in a much more dynamic way. [https://co.usembassy.gov/es/se-ofrecen-hasta-12-](https://co.usembassy.gov/es/se-ofrecen-hasta-12-millones-de-dolares-de-recompensa-por-informacion-que-conduzca-a-la-detencion-y-o-condena-de-tres-cabecillas-del-tren-de-aragua/)

[millones-de-dolares-de-recompensa-por-informacion-que-conduzca-a-la-detencion-y-o-condena-de-tres-cabecillas-del-tren-de-aragua/](https://co.usembassy.gov/es/se-ofrecen-hasta-12-millones-de-dolares-de-recompensa-por-informacion-que-conduzca-a-la-detencion-y-o-condena-de-tres-cabecillas-del-tren-de-aragua/)

⁴ Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional y sus protocolos adoptados en noviembre de 2000 en Palermo, Disponible: <https://www.unodc.org>

⁵ *Ibid.* Article 2. That is: «conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more severe penalty».

⁶ This element of profit makes it possible to differentiate the criminal organization from terrorist groups which have different aims. It lies in a political objective such as the intimidation of a population or the exertion of pressure on governments.

being carried out.⁷ These divergences create complications and obstacles for establishing a legal framework that allows for the formation of cooperation agreements between States.

Emphasizing the type of organizations behind illegal markets and identifying money generated by illegal activities as the main trace, rather than focusing on the types of crimes they commit, allows the consideration of the national and international structures behind the illicit trade.⁸ In fact, accounting for the transnationalization of illegal markets helps to understand the geography and roles of the different actors in the chain that constitutes the criminal activity of the organization. It also reveals the strengthening of their infiltration into public authorities, as well as their connections with private entities that facilitate money laundering. Ultimately, it highlights that the solution cannot concentrate on the weakest link in the commercial chain, such as the local branches with high levels of independence that use violence and extortion to consolidate their territorial control, because their disappearance will not affect the permanence of the illegal market, as their replacement capacity is infinite.⁹

The phenomenon of transnational organized crime is particularly relevant in the Latin American region, where these entities have acquired critical and decisive criminal power, earning the label of "the most violent region" in the world.¹⁰ The expansion of

these criminal structures beyond the borders of the countries where they historically operated is, in part, the result of the "cockroach effect." This term specifically refers to the displacement of criminal networks from one city, state, or region to another within a country or across borders in search of safer havens and more flexible state authorities, based on the idea that decentralized criminal networks are less vulnerable to law enforcement and state repression.¹¹

The dynamism of these organizations is also grounded in lucrative interests, which is the primary reason for the intensification of this phenomenon in recent years in Bolivia, Peru, Chile, and Argentina, through the expansion of groups of individuals from various nationalities committing violent crimes related to drug trafficking, arms trafficking, human trafficking, migrant smuggling, smuggling, illegal mining, and environmental crimes, among others. This is deeply linked to corruption and money laundering.

Indeed, the geographical peculiarities of these four countries, with their very extensive borders and, particularly, the existence of two triple borders—one between Peru, Chile, and Bolivia, and another between Bolivia, Chile, and Argentina—facilitate permeability and generate interest for criminal organizations. It is also important to highlight the sta-

⁷ Paoli, L. & T. Vander Beken (2014) Organized crime: A contested concept. IN Paoli, L. (edit) The Oxford Handbook of Organized Crime, Oxford University Press. 13-31

⁸ Dammert, L. Crimen organizado: la necesidad de apuntar al negocio y no solo al narco. Ciper 17. <https://www.ciperchile.cl/2021/01/09/crimen-organizado-la-necesidad-de-apuntar-al-negocio-y-no-solo-al-narco/>

⁹ *Ibid.*

¹⁰ «¿Por qué América Latina es la región más violenta del mundo? », Prosegur Research, 2022. <https://www.prosegur-research.com/dam/jcr:dcce0ba3-8baa-48fe-845f-4839627eae96/America-Latina-espanol.pdf>

¹¹ La Rosa y Mora, « Neighborly Adversaries » 1999, « Drug Trafficking and Organized Crime in the Americas: Major Trends in the 21st Century » Bruce Bagley, 2015.

tus of Peru and Bolivia as "cocaine-producing" countries,¹² placing them at the starting point of drug routes that continue into neighboring countries, resembling a supply chain for commercialization. Therefore, these countries are characterized as specific geographical and socio-economic spaces that favor cross-border flows and provide conditions for criminal groups to expand across the territories of each of these countries. This is illustrated by the frequent closure of illegal crossings, such as those on the border between Argentina and Bolivia.¹³

The territorial expansion of the Tren de Aragua criminal organization is the most visible illustration of interest in this border area. Previously controlled from the Torocón prison in Venezuela's Aragua state, the organization has expanded beyond its borders since 2019, primarily exploiting migrant populations and diversifying its activities, including extortion, kidnapping, robbery, murder, and illegal mining, in other countries such as Colombia, Ecuador, Peru, Chile, and Bolivia. These countries form one of the most used migration routes in the region, which demonstrates the instrumentalization of migratory flows by organized criminal groups.

The economic gains generated through illegal transportation and other needs of people embarking on a journey in search of better living conditions have historically represented a fundamental source of income for criminal activities.¹⁴ However, the expansion of Tren de Aragua coincides with the expansion of Venezuelan migration. Extortion of migrant individuals in exchange for passage through borders—through the payment of a fee or the obligation to carry drugs or work in prostitution—has led to the criminalization of part of the Venezuelan diaspora, and these are the main methods that have allowed this criminal organization to grow and become more visible. Ultimately, the instrumentalization of migratory flows allowed its members to camouflage themselves and maintain a low profile, as even though people in situations of human mobility are aware of the gang, fear of reprisals, deportation, and a lack of trust in local authorities prevent them from reporting the crimes.¹⁵

These phenomena provoke ambiguous responses from states, often deviating from evidence-based approaches and only amplifying the problem or leading toward authoritarian measure.¹⁶ In this con-

¹² Word Drug Report 2024, *Key findings and conclusions*, UN-DOC, p. 19. https://reliefweb.int/attachments/8618dd63-f3f3-4a1b-aa31-c5223dc8bb63/WDR24_Key_findings_and_conclusions.pdf

¹³ "Argentina cierra los pasos ilegales en la frontera La Quiaca-Villazón para frenar contrabando hormiga" La Razón. <https://www.la-razon.com/economia/2023/12/18/argentina-cierra-los-pasos-ilegales-en-la-frontera-la-quiaca-villazon-para-frenar-contrabando-hormiga/>

¹⁴ Badillo, R. y Bravo, A. «Crimen transnacional organizado y migración: El Clan del Golfo y grupos delictivos en América Latina y África» 2020, <https://revistas.pucp.edu.pe/index.php/inter-nacia/article/download/21834/21324/>

¹⁵ Insights Crime, « Tren de Aragua : De megabanda carcelaria a empresa criminal transnacional », 2023. [https://insightcrime.org/wp-content/uploads/2023/08/Tren-de-Aragua-](https://insightcrime.org/wp-content/uploads/2023/08/Tren-de-Aragua-De-megabanda-carcelaria-a-empresa-criminal-transnacional-InSight-Crime-Oct-2023-4.pdf)

[De-megabanda-carcelaria-a-empresa-criminal-transnacional-InSight-Crime-Oct-2023-4.pdf](https://insightcrime.org/wp-content/uploads/2023/08/Tren-de-Aragua-De-megabanda-carcelaria-a-empresa-criminal-transnacional-InSight-Crime-Oct-2023-4.pdf)

¹⁶ For example, the emergency regimes implemented in El Salvador and more recently in Ecuador tend to implement policies that violate guarantees and human rights on security grounds. The Inter-American Commission denounced the inadequacy of the suspension of rights and guarantees, in a prolonged manner, to deal with the crime. Comunicado de prensa No. 058/23 (2023) <https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2023/058.asp> ; « Los efectos adversos de la "mano dura" y la militarización ». Juan Albarracín. 2023. p.10 : <https://library.fes.de/pdf-files/bueros/la-seguridad/20017.pdf>.

text, judicial cooperation becomes a necessary solution. Although criminal justice continues to be central to national sovereignty for most states, there has been an intensification of judicial cooperation in the face of the systematic threat posed by transnational organized crime.

The right to judicial cooperation in criminal matters is understood as procedural provisions of criminal law with an international character, connecting various foreign legal systems or international regulations. These measures include, traditionally, extradition, the validity of foreign judgments, the transfer of proceedings and detainees, mutual international assistance mechanisms that allow for the collection

of background information, evidence, and the carrying out of procedural actions in foreign territories.¹⁷ Initially bilateral in nature, followed by regional and global procedures, it has resulted in the proliferation of normative and conventional instruments, often lacking connection and coherence between these various levels.¹⁸

Therefore, it is necessary to create a space for reflection on how to improve cooperation instruments for the investigation and prosecution of transnational organized crime between these four countries, which could serve as a foundation for the development of an effective regional roadmap in criminal prosecution policy, ensuring rights.

¹⁷ WERLE, Gerhard. *Tratado de Derecho Penal Internacional*. 2ª edición, Valencia, España, Tirant Lo Blanch, 2011, p. 104.

¹⁸ Resolution 14 April of 2022 parliamentary assembly EUROLAT « La cooperación en materia de justicia penal en la UE y América

Latina ». Puntos E y F. <https://www.europarl.europa.eu/cms-data/251317/1253775ES.pdf>

II.

Legal Tools for Judicial Cooperation in the Investigation and Prosecution of Transnational Organized Crime

Historically, initiatives by the Organization of American States (OAS) have stood out in the area of judicial cooperation for the prosecution of transnational organized crime, such as the Meetings of Justice Ministers of the Americas (REMJA). Since 1997, these forums have served as a platform for exchanging information and experiences, formulating recommendations to state parties, and monitoring the recommendations that were approved, with a special focus on issues related to combating transnational organized crime. Although they have not been held since 2015, these meetings have continually supported the creation of a network of central authorities to assist in the implementation of inter-American conventions on judicial cooperation, and have promoted various initiatives such as the creation of the Hemispheric Network for Information Exchange in Mutual Legal Assistance and Extradition¹⁹ and more specifically, the adoption of a Hemispheric Action Plan on Transnational Organized Crime and Terrorism.²⁰

On the other hand, as part of an institutional redesign, the OAS created the Department against Transnational Organized Crime in 2016,²¹ which has developed the Meetings of National Authorities on

Transnational Organized Crime (RANDOT) and other sectoral forums.

Furthermore, while traditional forms of judicial cooperation continue to be used through international letters rogatory, practical experience demonstrates that traditional tools and methods based on requests for mutual judicial assistance do not meet the specific requirements of investigations into transnational organized crime. Therefore, several regional forums have developed a variety of conventional instruments focused on creating tools adapted to the investigation and prosecution of transnational organized crime.

In this regard, it is worth examining them in detail to identify the challenges of the Joint Investigation Teams, which have provided, until now,²² the most effective space for cooperation and the development of special investigative techniques, as well as the evolution of parallel horizontal cooperation between competent justice operators.

1. Mutual Legal Assistance in Criminal Matters through International Letters Rogatory

¹⁹ Hemispheric Network for Legal Cooperation on Criminal Matters <https://www.oas.org/ext/es/democracia/mla/Inicio>

²⁰ Resolution CP/RES. 908 (1567/06), OEA (2006). <https://www.oas.org/consejo/sp/resoluciones/res908.asp>

²¹ The Department against Transnational Organized Crime (DDOT) was created in 2016 and its main purpose is to provide

technical and legislative assistance to OAS Member States to confront and respond to transnational organized crime in its various manifestations. <https://www.oas.org/ext/es/principal/oea/nuestra-estructura/sg/ssm/ddot>

²² See mixed investigative bodies in Chapter IV about Challenges in Investigating and Prosecuting Transnational Organized Crime

In the regional context, the Inter-American Convention on Mutual Assistance in Criminal Matters,²³ which came into force in 1996, plays a central role. This convention, with an optional protocol on cooperation requests between authorities responsible for investigation or prosecution in the requested state, provides a framework for legal cooperation. These "Central Authorities," designated by each state, play a key role in facilitating international cooperation in criminal matters, not only by sending and receiving requests for assistance but also in constructing deeper cooperation, as will be analyzed later. Among the four countries analyzed, two trends are observed: Peru and Chile designated the National Prosecutor's Office, while Bolivia and Argentina assigned this role to their respective Ministries of Foreign Affairs. The Convention also covers requests for notification of resolutions and judgments, reception of testimonies and declarations, asset immobilization, seizure and confiscation of goods, inspections and confiscations, examination

of objects and places, and the transfer of detainees, among others.

Additionally, under the Mercosur framework, of which Argentina is a member and Chile, Bolivia, and Peru are associated states, a coherent strategy has been developed for judicial cooperation on transnational organized crime. In order to protect the "collective economic interest," which is the core mission of Mercosur, certain criminal activities were identified as significant threats to the economies and sovereignties of the member and associated states.²⁴ The 1996 Decision 2/96 approved the Protocol on Mutual Legal Assistance in Criminal Matters,²⁵ through which member states commit to providing mutual assistance for investigating crimes and cooperating in judicial procedures related to criminal matters. A mutual legal assistance agreement on criminal matters was signed in 2002 between the Mercosur member states, Chile, and Bolivia.

²³ Inter-American Convention on Mutual Assistance in Criminal Matters adopted at Nassau in 1992 and entered into force in 1996. Ratified by the four States analyzed. <https://www.oas.org/Juridico/spanish/tratados/a-55.html>

²⁴ Doldán Breuer, M. «Equipos conjuntos de investigación - ECI en el MERCOSUR. » Investigación en ciencias jurídicas y sociales 2020

²⁵ Resolution MERCOSUR/CMC/ DEC. Nº 2/96, 1996, https://www.oas.org/juridico/spanish/tratados/sp_proto_asis_jur%C3%AD mutua_asun_pena_mercosur.pdf

Key information about Mutual Judicial Assistance in Criminal Matters

	ARGENTINA	BOLIVIA	CHILE	PERU
Internal rules	Ley N°24.767	Titulo VI del Código de Procedimiento Penal	Código Procesal Penal (artículo 20bis) Ley 21016	Libro Séptimo del Código Procesal Penal
Conventions on mutual assistance in criminal matters in force in the Southern Andean Region	<u>ACUERDO DE ASISTENCIA JURIDICA MUTUA EN ASUNTOS PENALES ENTRE LOS ESTADOS PARTES DEL MERCOSUR Y LA REPUBLICA DE BOLIVIA Y LA REPUBLICA DE CHILE</u> Perú [31.03.01]	<u>ACUERDO DE ASISTENCIA JURIDICA MUTUA EN ASUNTOS PENALES ENTRE LOS ESTADOS PARTES DEL MERCOSUR Y LA REPUBLICA DE BOLIVIA Y LA REPUBLICA DE CHILE</u> Perú [05.01.97]	<u>ACUERDO DE ASISTENCIA JURIDICA MUTUA EN ASUNTOS PENALES ENTRE LOS ESTADOS PARTES DEL MERCOSUR Y LA REPUBLICA DE BOLIVIA Y LA REPUBLICA DE CHILE</u> Perú [17.04.45]	Bolivia [05.01.97] Chile [17.04.45] Argentina[31.03.01]
Central authorities	Ministerio de Relaciones Exteriores, Comercio Internacional y Culto	Ministerio de Relaciones Exteriores	Ministerio Público de Chile	Fiscalía de la Nación

Source: CEJA self-elaboration based on national legal framework and conventions between the four analyzed countries.

However, these formal and particularly specific requests involve administrative formalities, which are characterized by the slow pace of processes in response to the emergencies required by COT control and which limit the effectiveness of the potential of criminal judicial cooperation.²⁶ As a result, new instruments were developed, specially designed to coordinate actions that enable greater efficiency in the investigation and prosecution of transnational organized crime.

2. Joint Investigation Teams (JITs)

The Joint Investigation Team (JIT) is a cooperation mechanism established through a specific instrument signed between the designated authorities

("central authorities") of two or more States to coordinate complex or related investigations within the territory of any or all of the participating States.

In response to the intensification and expansion of organized crime, JITs allow for the development of more effective investigation and prosecution techniques to identify, pursue, and prosecute members of transnational criminal organizations. They are generally composed of judges, prosecutors, and security forces involved in investigating a criminal act that directly or indirectly affects the States involved. Once the agreement that constitutes the JIT has been signed, members can exchange information and evidence directly, cooperate in real-time, and carry out joint operations, even moving within the territory of a participating State, without the need to submit multiple official requests for assistance.

²⁶ Information gathered in each interview with the Public Prosecutor's Offices of Peru, Argentina and Chile.

This ensures a more stable framework of cooperation and contributes to establishing and strengthening mutual trust between competent authorities from different States. Thus, all information, evidence, and background collected by the JIT automatically form part of the respective processes and files in the various jurisdictions involved and are deemed to be legally valid.²⁷

The States analyzed are parties to various UN sectoral conventions that empower them to create JITs: the UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances,²⁸ the UN Convention against Transnational Organized Crime²⁹ and the UN Convention against Corruption.³⁰ However, these normative instruments only provide a generic reference to this tool without specifically outlining its creation. Therefore, States enjoy considerable freedom in negotiating terms that best suit their current or future needs. To make these tools effective, other instruments were developed to foresee and regulate their implementation, especially in regional contexts.

In 2010, the Framework Cooperation Agreement between the States Parties of MERCOSUR and Associated States for the creation of Joint Investigation Teams was established, when the investigation concerns "criminal conduct that, by its nature, requires the coordinated action of more than one party."³¹

In this regard, it is worth noting the contribution of this relatively comprehensive standard,³² as it does not limit the constitution of JITs to specific crimes, thus allowing for a broad scope of application, contingent only upon the requirement of transnationality. It also details the constitution and operation of civil and criminal responsibility for JIT members and anticipates how investigation costs will be shared.³³ However, despite its initial purpose, this agreement only entered into force in 2020 and remains of limited scope, having been ratified only by the four MERCOSUR States (Argentina, Brazil, Uruguay, Paraguay), despite the participation of associated States such as Bolivia. Therefore, it does not apply to the constitution of JITs with authorities from Chile, Peru, or Bolivia.

²⁷ Technical note "Equipos Conjuntos de Investigación para la ratificación del Acuerdo Marco de Cooperación entre los Estados Parte del MERCOSUR y Estados Asociados para la Creación de Equipos Conjuntos de Investigación". p.6. [https://www.rempm.org/archivos/Biblioteca_Virtual/4. Equipos conjuntos de investigaci%C3%B3n \(ECI\)/NotaT%C3%A9cnica ECI.pdf](https://www.rempm.org/archivos/Biblioteca_Virtual/4. Equipos conjuntos de investigaci%C3%B3n (ECI)/NotaT%C3%A9cnica ECI.pdf)

²⁸ Vienna Convention of 19 December of 1988. Article 9, 1,c) : Opportunity for joint team building. https://www.unodc.org/pdf/convention_1988_es.pdf

²⁹ Palermo Convention of 15 October of 2000. Article 19. <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-s.pdf>

³⁰ New York Convention of 31 October of 2003. Article 49. https://www.unodc.org/pdf/corruption/publications_unodc_convention-s.pdf

³¹ Mercosur/CMC/DEC 22/10, 2010, : https://normas.mercosur.int/simfiles/normativas/28515_DEC_022-2010_ES_Acuerdo%20Equipos_Conjuntos_Investigaci%C3%B3n.pdf

³² Technical Note "Equipos Conjuntos de Investigación para la ratificación del Acuerdo Marco".: [https://www.rempm.org/archivos/Biblioteca_Virtual/4. Equipos conjuntos de investigaci%C3%B3n \(ECI\)/NotaT%C3%A9cnica ECI.pdf](https://www.rempm.org/archivos/Biblioteca_Virtual/4. Equipos conjuntos de investigaci%C3%B3n (ECI)/NotaT%C3%A9cnica ECI.pdf)

³³ The Agreement provides that the costs will be borne by the country which initiates or requires the formation of the ECI, It also accepts agreements between the participating countries by adopting any other decision on the distribution of these expenses, emphasizing the need for such a decision to be framed in the agreement establishing the association. On this point, it is important to take into account that the establishment of an ECI may generate significant consequential costs. p. 66 <https://elpaccto.eu/wp-content/uploads/2022/12/Publicacion-Ciclo-Justicia.pdf>. In this regard, no public information on the costs incurred by the IECs established among the countries analyzed was found within the framework of this research. Improved transparency would allow for the potential challenges of economic hardship to be addressed.

The Ibero-American Convention on Joint Investigation Teams, signed in 2013 during the XVIII Conference of Ibero-American Ministers of Justice (COMJIB), was also promulgated but has not yet entered into force.³⁴

Additionally, within the framework of the Ibero-American Association of Public Prosecutors (AIAMP),³⁵ during the XXVI Ordinary General Assembly held in Mexico City in 2018, a Model Agreement for the creation of a JIT³⁶ was approved, outlining the steps for its formation.³⁷

³⁴ Convention adopted in Viña del Mar, ratified only by Ecuador, therefore that according to article 19 two ratifications are missing for its entry into force : <https://comjib.org/wp-content/uploads/2020/07/ES-Convenio-de-Cooperacion-de-Equipos-Conjuntos-de-Investigacion.pdf>

³⁵ The AIAMP was born as an Inter-American Association of Public Ministries in Brasilia, in 1954 and later, with the incorporation of Spain and Portugal, at the 12th Congress, in Cartagena de Indias in 2002, became the Ibero-American Association.

³⁶ Model Agreement for the Establishment of a Joint Research Team, AIAMP. 2023. <https://www.aiamp.info/images/aiamp--2023--modelo-de-acuerdo-eci.pdf>

³⁷ Steps towards the establishment of a Joint Research Team, AIAMP. 2023. <https://www.aiamp.info/images/documentos/aiamp--2023--pasos-para-la-creacion-eci.pdf>

Process for the formation and functioning of a joint investigation team (JIT)



Source: Self-elaboration by CEJA based on information about the creation of a Joint Investigation Team from the AIAMP (2023).

Finally, it is important to recognize that the ECI model has primarily been imported from the working framework of the European Union, where it has been extensively implemented since 2002.³⁸

However, according to the Prosecutor's Office staff interviewed, the realities and needs in the Latin American region are profoundly different, revealing the major weaknesses of this tool. While its purpose is to stabilize cooperation in transnational research and criminal prosecution, such agreements remain

limited in time and dependent on specific goals and cases. In particular, the principle of specialty prevails, which states that the information gathered by the team can only be used for the investigation within which it was collected, and not for other matters. However, the phenomenon of transnational organized crime in Latin America shows that crimes are often interconnected and require more technical and sustained coordination. The urgency to act against fast-moving transnational organizations, which challenge borders, calls for the need to establish more durable and comprehensive cooperation

³⁸ Framework Decision of 2002 on Joint Investigation Teams <https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:32002F0465&from=ES>.

that considers the interconnectedness of these criminal phenomena. Therefore, the idea arises that Mixed Investigation Bodies (MIBs) might offer a more suitable solution to this issue, as will be explained later.

3. Special Investigation Techniques (SIT)

On the other hand, in the field of cooperation for the investigation and prosecution of transnational organized crime (TOC), especially within the framework of the ECIs, it is worth mentioning the use of Special Investigation Techniques (SIT). These tools are criminal intelligence methods that address the insufficiency of traditional means to investigate serious crimes, enabling proactive intervention to neutralize criminal activity and obtain direct, reliable, first-hand evidence for the prosecution of crimes.³⁹ They are outlined in various treaties, from which guiding principles for the implementation of these techniques have been developed.⁴⁰ These techniques include controlled deliveries, undercover operations, communication interception, the installation of hidden microphones, covert surveillance, undercover agents, relevant agents, informants, and new measures to monitor financial transactions, investigate cybercrimes, and collect electronic evidence.

However, the international instruments in force define a rather generic framework in this area, with considerable potential to enhance the effectiveness of the fight against transnational organized crime, provided their use is deemed necessary, leaving the

development of these tools to the states. Moreover, this research proposes a comparative study of national laws to focus on the discrepancies that might create obstacles in the use of SITs within the framework of ECI operations.

Preliminarily, it is important to underline the increased use of these techniques in recent years in Peru, Chile, and Argentina, thanks to their incorporation into national legislations, especially by extending their use to all crimes related to organized crime that require such techniques due to their complexity. Previously, these techniques were primarily applied to drug trafficking offenses. Bolivia, however, diverges from this trend, as its legislative framework for these tools has not been developed, and it only has Law No. 1970 of 1999,⁴¹ which predates the Palermo Convention, regulating only undercover agents and controlled deliveries. It is also worth noting the promulgation in 2009 of a Manual on Best Investigative Practices, with legal advice from the United Nations Office on Drugs and Crime in Bolivia.⁴²

In Peru, the Organized Crime Act No. 30.077⁴³ passed in 2013, includes in Chapter II the regime for undercover agents, surveillance actions, the controlled circulation and delivery of criminal goods, postal interception, and communication interception.

³⁹ Vinicio Rosillo, *Las técnicas especiales de investigación*. Poder del Derecho, 2017.

⁴⁰ United Nations Convention against Transnational Organized Crime or 'Palermo Convention.' Articles 2 and 20 <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-s.pdf>

⁴¹ Idem

⁴² UNDOC, *Manual of Special Investigation Techniques*. 2009. https://www.unodc.org/documents/colombia/2013/diciembre/Manual_Tecnicas_Especiales_de_Investigacion_Bolivia.pdf

⁴³ <https://www.gob.pe/institucion/congreso-de-la-republica/normas-legales/218476-30077-2013>. These techniques are also provided for in Article 17 of Legislative Decree 14 No. 1241, which strengthens the fight against Illicit Drug Trafficking and other sectoral sources.

In 2016, Argentina enacted two laws: the Law No. 27.319,⁴⁴ which regulates the roles of undercover agents, revealing agents, informants, controlled deliveries, and jurisdictional extension; and the Law No. 27.304⁴⁵ which frames the concept of the "repentant defendant." According to the Public Ministry's 2023 management report, a clear positive impact of this regulation is evident, as 2 instances of special investigation techniques were implemented in 2016, compared to 23 in 2023.⁴⁶

In the case of Chile, the Law No. 21.577,⁴⁷ enacted in 2023, which establishes special techniques for investigating crimes related to organized crime, marked a significant paradigm shift in the criminal prosecution of organized criminality. The legislator generalized the use of these techniques, with the particularity of establishing a comprehensive and precise framework for their application. Moreover, it makes an important contribution by permitting the interception and recording not only of telephone communications but also other forms of communication, a matter that the previous regulation (Law No. 20,000) did not address. The term "telephone and communication" is replaced by the phrase "public telecommunications service providers and internet service providers," with the aim of expanding the entities that may be subject to these measures. In this sense, it represents a major difference with the corresponding Argentine law, in which

the interception of communications has not been included as part of the extraordinary measures catalog for criminal investigation. Instead, this measure is regulated by a specific National Intelligence Law (Law No. 25,520),⁴⁸ which has been the subject of criticism due to the lack of guarantees it entails.⁴⁹ This categorization may result in a lack of clarity regarding the special techniques available for investigation.

Furthermore, from a comparative analysis of these national legislations, some divergences stand out due to the structuring and variable degree of precision of each norm. Additionally, there is a variation regarding the regime for authorizing the use of these techniques, with the judicial figure playing a prominent role. For example, in Argentina, this enhanced role is evident: the authorization and approval of these methods is judicial, which implies a thorough examination of proportionality.

In the same regard, in Chile, the judge of guarantees plays an important role in authorizing certain techniques such as the interception and recording of telephone communications. However, more prerogatives are granted to the Regional Prosecutor for the use of others, such as undercover agents and informants, for which judicial authorization is not required. In comparison, in the case of Peru, a much

⁴⁴ Ley 27319 sobre Investigación, Prevención y Lucha de los delitos complejos. Herramientas. Facultades. <https://www.argentina.gob.ar/normativa/nacional/ley-27319-268004/texto>

⁴⁵ Law 27304 on the figure of the 'repentant' (cooperator). <https://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/267115/norma.htm>

⁴⁶ See the 2023 Management Report of PROCUNAR, Information Analysis and Operational Planning Area 2024, p. 25. <https://www.mpf.gob.ar/procunar/files/2024/02/Informe-de-Gesti%C3%B3n-2023.pdf>

⁴⁷ Law No. 21,577 that strengthens the prosecution of organized crime offenses, establishes special techniques for their investigation, and strengthens the confiscation of proceeds. <https://www.bcn.cl/ley-chile/navegar?idNorma=1193423>

⁴⁸ Report 'On Criminal Intelligence in Argentina: Notes for Discussion' Citizen Initiative for the Control of the Intelligence System. 2024. <https://www.cels.org.ar/web/wp-content/uploads/2021/11/Inteligencia-criminal-Arg-FINAL-3.pdf>

⁴⁹ Center for Legal and Social Studies. An urgent re-foundation of the national intelligence system is necessary. December 18, 2023. <https://www.cels.org.ar/web/2023/12/refundar-sistema-inteligencia/>

more predominant role is observed for the prosecutor, which is based on the idea that the use of these tools occurs in a preliminary investigative stage led by the prosecution. Thus, the judge only intervenes through judicial review if there is a violation of rights due to the use of this special technique. In this sense, the challenge arises of determining under which guarantee system the use of special investigation techniques will be authorized by a Joint Investigation Team (ECI) formed by two States with legislation stipulating different regimes.

Additionally, it is observed that the legal bases for special investigation techniques are fundamentally structured according to recent national laws, which diverge in several aspects. Therefore, they must continue to approximate, establishing sufficient protection guarantees to avoid difficulties in using these techniques and in recognizing the evidentiary value of the evidence obtained through

these techniques, especially within the framework of transnational cooperation processes, such as a transnational investigation by a Joint Investigation Team (ECI).

4. Horizontal Interinstitutional Cooperation

In complement to these forms of legal cooperation (which materialize through international requests), and in response to the growing sophistication of organized criminal activities and the need to obtain information in a useful and timely manner, there is an

increasing reliance on a new form of direct and horizontal cooperation between the competent authorities. Likewise, information is exchanged internationally between counterpart authorities from different countries, without the intervention of Ministries of Foreign Affairs or Central Authorities.

It can complement legal cooperation to obtain information for the proper preparation of a formal request that will be sent through the traditional cooperation process, but it can also be autonomous. This latter form is particularly interesting because it allows investigators to obtain information or documentation of interest in the ongoing case in a simple and rapid manner.

This type of cooperation is particularly suitable for the criminal prosecution of crimes related to transnational organized crime. Thus, the Interinstitutional Cooperation Agreement between the Public Prosecutor's Offices and Prosecutors Members of the AIAMP⁵⁰ provides in its Article 2 that its purpose is "to foster rapid and efficient cooperation between the Public Prosecutor's Offices or Prosecutor's Offices of the AIAMP members, through the exchange of information in a fluid, continuous, secure, timely, and effective manner within their respective competencies, in order to assist in the prosecution and adjudication of crimes." This type of cooperation has been widely developed as the basis for the information channels of INTERPOL, and within the framework of the AIAMP, as exemplified below.⁵¹

⁵⁰ Agreement signed on September 6, 2018, in Mexico City, ratified by Bolivia, Peru, Chile, and Argentina, among others. <https://www.mpf.gob.ar>

⁵¹ Manual on International Legal Cooperation to Counter Organized Crime. DDOT. OAS. 2024. Pages 23-25. Available <https://www.oas.org/ext/DesktopModules/MVC/OASDnnModules/Views/Item/Download.aspx?type=1&id=903&lang=1>

This section proposes a study of the best practices in the region which have a positive impact on the investigation and prosecution of crimes associated with transnational organized crime. This study also allows for the identification of pending challenges to improve these initiatives.

1. Successful Joint Investigation Team (JIT) Experiences in the Four Analyzed Countries

Since the implementation of the AIAMP Model Agreement in 2018, there has been a multiplication of Joint Investigation Team (JIT) experiences in the region, some of which have already yielded good results. Several relevant examples of cooperation between the four countries analyzed stand out:

- In August 2020, the National Prosecutor of Chile and the Prosecutor's Office of the Nation of Peru, represented by the Attorney General, signed an agreement that allowed the creation of a Joint Investigation Team (JIT) on crimes related to the illicit trafficking of migrant persons. According to the specialized prosecutor in human trafficking in Lima, who was part of the team, it allowed for a drastic reduction in the investigation time, leading to the taking of testimony in Peru from a Chilean defendant whose operations were detected in Chile and continued in the neighboring country, as

both countries were used as transit countries to reach the United States.⁵²

- In September 2022, the first agreement to establish a JIT on Human Trafficking for Sexual Exploitation was signed between the Specialized Prosecutor's Office of High Complexity in Santiago and the Human Trafficking and Exploitation Prosecutor's Office of the National Prosecutor's Office of Argentina. The investigation was carried out in both countries regarding a woman accused of trafficking at least six young women from Argentina to the neighboring country for sexual exploitation. Cooperation between the two public prosecutors led to the arrest of the accused on February 26, 2024, in Santiago de Chile, and she will soon be tried for these offenses.⁵³
- In November 2022, a JIT was formed between the Local Prosecutor's Office of Los Andes (Chile) and the Federal Prosecutor's Office No. 2 of Mendoza (Argentina), resulting in a joint operation in March 2024 to dismantle a transnational criminal organization dedicated to the trafficking of firearms, which were being brought into Chile from Argentina via border crossings and stored in the Metropolitan

⁵² AIAMP Journal, 'International Criminal Cooperation: How Joint Efforts Improve the Outcome of Investigations,' January 2022. Pages 11 and 12. Available at: http://www.fiscaliadechile.cl/Fiscalia/quienes/Revista_AIAMP_enero_2022.pdf

⁵³ See: <https://www.fiscales.gob.ar/trata/la-protex-colaboro-para-recoger-la-prueba-que-permitira-juzgar-en-chile-a-una-mujer-por-la-explotacion-sexual-de-jovenes-argentinas/>

Region. A total of 17 individuals were arrested in both countries through joint operations.⁵⁴

- In March 2023, a JIT was formed between the Regional Prosecutor's Office of Magallanes and Antarctica (Chile) and the Federal Prosecutor's Office of Río Gallegos (Argentina). Several meetings and on-site evidence collection were carried out, demonstrating direct contact with the evidentiary source. The investigations resulted in simultaneous raids in August 2023 to dismantle a transnational organization dedicated to smuggling various goods and narcotics, as well as money laundering from these illicit activities.⁵⁵

The multiplicity of experiences between these countries highlights that the formation of a JIT creates a climate of mutual trust conducive to repeating cooperation. It also reveals the suitability of constituting a JIT between two countries for a more seamless implementation. Finally, it is important to emphasize the significance of evaluating the functioning of the JIT, as it not only favors the increase in knowledge and the improvement of the performance of this tool, but it also allows for the adoption of strategic investigative and procedural decisions, such as extending or not extending the JIT's operational period. For example, in December 2022, a JIT agreement was signed between the prosecutor's offices of Bolivia and Chile for the investigation of human trafficking crimes by the organization known as

"Tren de Aragua".⁵⁶ However, no follow-up regarding the implementation or results of this agreement was found.

2. Establishment of National Thematic Units Specializing in Transnational Organized Crime

The creation of specialized teams at the national level for the investigation of crimes related to organized crime, which include legal and analytical areas, contributes to the implementation and improvement of strategic plans and ensures the presence of expert and trained personnel for the use of specific tools for the criminal prosecution of transnational organized crime. It also facilitates coordination with various public and private institutions, such as foreign Public Prosecutor's Offices, national customs services, internal revenue services, and banks. However, these national instruments do not seem to address the transnational dimension of organized crime.

For example, in Chile, several teams within the Public Prosecutor's Office have been formed to investigate transnational organized crime. Since 2002, the Specialized Unit for Money Laundering, Economic Crimes, Environmental Crimes, and Organized Crime

⁵⁴ See: <https://www.fiscales.gob.ar/fiscalias/mendoza-detienen-a-17-personas-por-contrabando-de-armas-en-un-caso-impulsado-por-un-equipo-conjunto-de-investigacion-de-los-ministerios-publicos-de-argentina-y-chile/>

⁵⁵ See: [https://www.fiscales.gob.ar/criminalidad-economica/realizan-allanamientos-simultaneos-en-argentina-y-chile-en-la-investigacion-](https://www.fiscales.gob.ar/criminalidad-economica/realizan-allanamientos-simultaneos-en-argentina-y-chile-en-la-investigacion-de-una-organizacion-dedicada-al-contrabando-de-bienes-y-de-estupefacientes/)

[de-una-organizacion-dedicada-al-contrabando-de-bienes-y-de-estupefacientes/](https://www.fiscales.gob.ar/criminalidad-economica/realizan-allanamientos-simultaneos-en-argentina-y-chile-en-la-investigacion-de-una-organizacion-dedicada-al-contrabando-de-bienes-y-de-estupefacientes/)

⁵⁶ See: <https://www.fiscalia.gob.bo/noticia/fiscalias-de-bolivia-y-chile-conforman-equipo-conjunto-de-investigacion-para-delitos-de-trata-de-personas>

(ULDE-CCO)⁵⁷ has been operating. In 2023, Organized Crime and Homicides Teams (ECOH) were implemented in several regions of Chile.⁵⁸

Similarly, in Argentina, the Specialized Public Prosecutor's Office for Organized Crime (UFECO) was created in 2023⁵⁹. It assists prosecutors across the country in optimizing the response capacity and increasing the efficiency of the Public Prosecutor's Office in addressing organized crime, which involves both the identification and prosecution of perpetrators. The Narcocriminality Prosecutor's Office (PROCUNAR) supports investigations at the request of local prosecutors but does not have specialized investigative powers in the matter. Additionally, the Specialized Public Prosecutor's Office for Cybercrime (UFECI) intervenes and assists prosecutors in cases involving attacks on computer systems or when criminal conduct involves the use of computer systems.

In Peru, several specialized teams are notable, such as the Public Prosecutor's Offices specialized in Corruption Crimes and Organized Crime (FECOR) and those specialized in Human Trafficking Crimes (FISPAR).

In Bolivia, there are several technical units, such as the Specialized Prosecutor's Office for Narcotrafficking, the Specialized Prosecutor's Office for Money

Laundering and Terrorism Financing, and the Specialized Prosecutor's Office for Environmental Crimes. These units are responsible for investigating specific crimes related to organized crime.⁶⁰

Although differences exist in the investigative powers of these specialized teams (simple assistance or autonomous investigative competencies), all play an important role in the analysis of criminal information, necessary to establish an adequate strategy for prosecuting transnational organized crime. However, it is observed that these teams are largely national in scope, and it is particularly surprising, based on the information collected earlier, that these specialized teams are not the ones forming the experienced JITs.

3. Digitalization of Criminal Judicial Cooperation

It also seems essential to emphasize the trend toward digitalizing judicial assistance processes to improve the agility and speed of cooperation in cross-border cases, and thus minimizing, for example, the significant costs that participants' travel to States may generate. The COVID-19 pandemic surely played a role in accelerating this process, encouraging States to ratify existing instruments, as the digital exchange of information was previously an exception but became mainstream due to the forced

⁵⁷ The ULDECCO aims to provide legal support for investigations within its scope, particularly those related to special laws and other areas of law such as civil, commercial, tax, among others. It places special emphasis on the investigation of money laundering activities derived from crimes other than drug trafficking, such as public corruption or certain economic crimes.

⁵⁸ The ECOH are activated upon receiving news of a homicide, kidnapping, or another crime committed in the context of organized crime, immediately establishing themselves at the crime scene to collaborate

with the development of the investigation. <https://www.subinterior.gob.cl>

⁵⁹ Created through Resolution PGN No. 79/23, which actually expands the powers of the former Specialized Prosecutor's Unit for Extortion Kidnappings (UFESE) created in 2016 by Resolution PGN 1583/16 and extended by Resolutions PGN No. 1548/17 and 58/18."

⁶⁰ See: <https://www.fiscalia.gob.bo/pagina/direccion-de-la-fiscalia-especializada-en-delitos-de-narcotrafico-medioambiente-perdida-de-dominio-financiamiento-del-terrorismo-y-legitimacion-de-ganancias-ilicitas>

digitalization of communications in all areas of society.⁶¹

The need to regulate these new forms of cooperation prompted the approval of updated frameworks. For example, in 2018, the Ibero-American Convention on the Use of Videoconferencing in International Cooperation between Justice Systems was signed, which also provides operational guidelines to ensure respect for all rights and procedural guarantees.⁶²

Additionally, the creation of a secure and accessible platform at the regional level was found to be necessary. While the Hemispheric Network for Mutual Legal Assistance in Criminal Matters and Extradition, created in 2000 within the framework of the third REMJA among OAS member states, includes a public website, a private internet site, and a secure electronic communication system, this tool is not used.

Therefore, in 2019, the Iber@ digital support system was created within the Ibero-American Network for Legal Cooperation (IberRed), implemented by the COMJIB under the Medellín Treaty on the Electronic Transmission of Requests for International Legal Cooperation between Central Authorities.⁶³ Although it is too early to evaluate the results of this initiative, it is poised that this technological tool will ensure greater security in the exchange of information compared to the traditional system, which involves sending physical documents through international

mail services. This will allow justice institutions in Ibero-American States, alongside organizations such as Eurojust and Interpol, to share information and legal consultations in civil and criminal matters.

One of the notable measures of the Medellín Treaty is the standardization of the use of electronic signatures, as each user from the authorities will have such a signature, which will necessarily be used in every transmission of international legal cooperation requests made through the system. This will overcome requirements like apostille processes, of which some States will still have to apply for judicial assistance. But, above all, it would have a positive impact on one of the pillars of criminal judicial cooperation: the protection of data within the transmission channels of information collected through criminal judicial cooperation, particularly through awareness and training on this matter. It is also part of a greater regularization process for digital evidence, a current and future challenge for criminal judicial cooperation.⁶⁴

4. Horizontal Cooperation Networks Among Prosecutors for Inter-institutional Cooperation

Inter-institutional cooperation was largely developed through the creation of cooperation networks among specialized prosecutors that allow the swift and spontaneous transmission and exchange of op-

⁶¹ The impact of COVID-19 on Judicial Cooperation in Criminal Matters. Analysis of Eurojust Casework, 17 de mayo de 2021. Disponible: <https://www.eurojust.europa.eu/publication/impact-covid-19-judicial-cooperation-criminal-matters>

⁶² Signed in Buenos Aires, ratified only by Argentina among the countries analyzed. Available at: https://www.comjib.org/wp-content/uploads/imgDrupal/Convenio-Videoconferencia-ES-publicaciones_1.pdf

⁶³ Signed in 2019 and entered into force on May 9, 2022. Ratified by Bolivia (03/03/2022) and Chile (05/06/2024) among the countries analyzed. Available at: https://comjib.org/wp-content/uploads/2019/08/Tratado_Medellin_ES.pdf

⁶⁴ In this regard, the COMJIB held a Webinar on July 16 titled 'Digital Evidence in International Legal Cooperation.' Available at: <https://www.youtube.com/watch?v=c3Wf2Xj8lb8>

erational information. These are groups that facilitate communication between "contact points" in the countries that make up the network, designated by the competent authorities. Due to its horizontal nature, it strengthens and enhances the competence of the authorities in charge of national investigations against supranational or international bureaucracies, allowing direct communication flows, promoting the use of controlled deliveries as an investigative technique, and facilitating training and the exchange of best practices.

In the region, there are several networks established by different organizations. For example, the Group of Experts for the Control of Money Laundering (GELAVEX)⁶⁵ within the OAS framework, though it is characterized by a lack of speed and relevance in communications, since it is composed of professionals from different fields (judges, police, prosecutors, among others).⁶⁶ Therefore, networks that stand out particularly for their efficient communication and effectiveness in prosecuting organized crime are the thematic prosecutor networks created within the framework of the AIAMP and its Criminal Cooperation Network (REDCOOP).⁶⁷

In this regard, the Ibero-American Anti-Drug Prosecutors' Network (RAFI) was established in July 2014 during a drug trafficking workshop held in Montevideo, Uruguay, with the presence of specialized prosecutors from the Public Prosecutors' Offices and Ministries of Justice in the AIAMP member countries. This network was the result of their global

strategy aimed at strengthening the effectiveness of drug trafficking investigations. Additionally, there is the Ibero-American Anti-Corruption Prosecutors' Network, the Ibero-American Cybercrime Prosecutors' Network (CyberRed), and the Ibero-American Network of Prosecutors Specializing in Human Trafficking and Illicit Migrant Trafficking (REDTRAM). These groups also have the advantage of forming a bi-regional cooperation space, since they integrate Spain, Portugal, and Andorra.

These types of "informal" communication flows are also used in the formation and coordination of a JIT (Joint Investigation Team), to verify the existence of common objectives and purposes, determine the measures that can be adopted, and align expectations regarding the results of the team. Moreover, once the agreement is concluded, the execution of the JIT is characterized by an informal exchange. According to collected information, the contact points that make up these networks create spaces, such as WhatsApp groups, where they communicate directly.⁶⁸

This informality responds to the need for speed, and although the information obtained through these means cannot be used in court, it serves the purpose of analysis and research aimed at obtaining valid evidence through formal mechanisms. Indeed, the exchanged information is intended for the designated competent authority and is not disclosed to third parties or used for other purposes without prior consent from the communicating authority. In order

⁶⁵ Created in 1990, through the convening of the first meeting of the Inter-American Group of Experts to develop model regulations on money laundering related to illicit drug trafficking.

⁶⁶ Observation reported by an official from the Chilean Public Prosecutor's Office during the interview conducted on June 6, 2024

⁶⁷ See <https://www.aiamp.info/index.php/redes-permanentes-aiamp/redcoop-red-de-cooperacion-penal-internacional-2>

⁶⁸ Observations reported in each interview conducted with the Public Prosecutor's Offices of Peru, Argentina, and Chile.

to present this as evidence in the judicial process,
the data exchanged in these informal networks

must be formalized through a judicial assistance request or by formalizing a JIT agreement.

Through this study, based on interviews with authorities from the Public Prosecutor's Offices of Chile, Argentina, and Peru, and the observation of the limited successful experiences of JITs in the Southern Andean region, several challenges were identified to improve the investigation and prosecution of transnational organized crime between these countries and more broadly at the regional level:

- **Clarification of the Legal Framework for Judicial Cooperation in Investigating and Prosecuting Transnational Organized Crime**

There is a significant overlap of national legal frameworks that provide for the prosecution of transnational organized crime and its various tools, compounded by the failure of some instruments to enter into force.⁶⁹ This situation creates confusion in interpreting the instruments and complicates their effective application by justice operators. Furthermore, despite the multitude of existing norms, most have implemented a generic framework without providing concrete harmonization measures to facilitate cooperation. Therefore, technical obstacles still exist due to conceptual asymmetries in criminal classification and the prescription rules for crimes related to organized crime in domestic laws.

Thus, it is necessary to ensure a unified interpretation of transnational organized crime; aligned with the Palermo Convention, and to establish a regional guide that clarifies the legal framework of existing instruments, so that it can be used by authorities in charge of investigations as a reference for improving the prosecution of transnational organized crime. In this regard, the guides developed by the General Directorate of Regional and International Cooperation of the Public Prosecutor's Office of Argentina could serve as a model.⁷⁰

Likewise, although inter-institutional cooperation undoubtedly appears to be the future of judicial cooperation due to its speed, it is essential to clearly define the limits of the elements and information that can be exchanged within the framework of inter-institutional cooperation, in order to ensure the respect for guarantees related to due process and the protection of the rights of the people involved.

- **Flexibilization of the formation of Joint Investigation Teams (JIT)**

Firstly, there is a significant legal gap at the national and regional levels regarding the regulation of JITs. Bolivia is the only country with a national law in this area.⁷¹ While the absence of such legislation at the

⁶⁹ For example: Convenio Iberoamericano de Equipos Conjuntos de Investigación; Acuerdo sobre el orden Mercosur de detención y procedimientos de entrega entre los Estados parte del Mercosur y Estados Asociados

⁷⁰ The Guidelines "Equipos conjuntos de investigación: Herramientas de cooperación internacional frente a la delincuencia organizada transnacional". Available at: <https://www.fiscales.gob.ar/Guía de Cooperación>

Interinstitucional del Ministerio Público Fiscal de la Nación. Available at: <https://www.mpf.gob.ar/cooperacionjuridica/files/2023/12/Guia-de-Cooperacion-Interinstitucional-del-Ministerio-Publico-Fiscal-de-la-Nacion.pdf>

⁷¹ Specifically regulated in the Bolivian Code of Criminal Procedure (Law No. 1970), Article 148 (International Investigations).

national level is not an obstacle for the creation and operation of JITs, as there are international conventions and regional agreements that provide the necessary legal coverage, having specific national legislation that regulates the necessary requirements for creating and operating a JIT would make this tool more accessible and widespread within institutions in charge of criminal investigations in each country. It should be noted that in 2022, the AIAMP created an expert committee on JITs.⁷²

Secondly, to facilitate the use of this tool, it is essential to mention the progress that would constitute the ratification of the COMJIB Convention of the Mercosur Framework Agreement by the Associated States. Its entry into force in Chile, Peru, and Bolivia would mean having a specific and comprehensive regional agreement to address the gaps in the United Nations instruments, progressively eliminating barriers and bureaucracies that hinder the implementation of these teams.

Thirdly, there is a difficulty in processing the agreement and implementing JITs due to the distinction made in certain countries between central authorities and competent authorities within the JIT. This issue was highlighted by an official from the Public Prosecutor's Office of Chile interviewed for this research. Examples from Argentina and Bolivia illustrate this situation, where the Foreign Ministry, designated as the central authority, is involved in the process of forming the JIT. This institutional design, which reflects the

sensitivity of international cooperation relations in criminal matters, has been criticized for involving executive supervision in the validation of the team's operations and in the legitimization and incorporation of the information and evidence obtained into the respective criminal records of the States involved.

Moreover, it implies bureaucracy that sometimes imposes extended deadlines, which does not respond to the urgency of investigating crimes related to transnational organized crime. On the one hand, it is interesting to note that most of the States in the region have designated their Public Prosecutor's Offices as central authorities for judicial cooperation⁷³ enabling the agencies and organizations responsible for criminal investigations to sign the agreement for the creation and operation of the JIT. On the other hand, a limitation identified in this research is the lack of precise, public, and transparent evaluation of the functioning, costs, and results of the JITs formed between States.

Finally, it is essential to continue promoting the creation of JITs between the analyzed countries. In August 2023, during the X Peru-Bolivia Mixed Commission Meeting, both countries agreed to intensify cooperation to counteract the transnational criminal actions of organized crime groups through the creation of a JIT.⁷⁴ However, to date, no agreements have been implemented between these States, despite the significance that such a tool would have in the context of important trafficking activities in their

72 VII Annual Meeting of the International Criminal Cooperation Network AIAMP. November 30, December 1 and 2, Santiago, Chile. Available at: <chrome-extension://efaidnbmnnnibpcajpcgiclfendmkaj/https://www.aiamp.info/images/Actas1/acta-vii-reunion-redcoop-aiamp.pdf>

73 See the list of central authorities at <https://www.oas.org>

74 See: <https://www.gob.pe/institucion/rree/noticias/825613-peru-y-bolivia-cooperan-para-contrarrestar-la-amenaza-comun-del-narco-trafico>

territories, being countries with high drug production, significant mercury and gold smuggling⁷⁵ and being transit territories for migratory routes.

- **Protection of Victims, Witnesses, and Prosecutors Within the JIT Framework**

It has been observed that States do not foresee protection measures for witnesses or investigators involved in the JIT agreements, nor is there sufficient protection for victims in judicial cooperation processes.⁷⁶ This is a significant gap, especially for victims and witnesses who are key to the investigation and prosecution of organized crime, where intimidation and reprisals are frequent. Provisions governing such protection could be incorporated into the agreement establishing the JIT based on Article 24 of the Palermo Convention⁷⁷ and the Santiago Guidelines on victim and witness protection developed under the AIAMP framework,⁷⁸ which would ensure understanding between the involved authorities, despite the heterogeneity of national protection systems in the region.⁷⁹

- **Development of the Mixed Investigation Bodies**

As noted, the JIT tool is an essential advancement in investigating transnational organized crime. However, some of its characteristics do not adapt to the

reality of this phenomenon in Latin America, particularly because they are established for a limited time and with a specific purpose regarding a particular case. It is necessary to implement a comprehensive approach to transnational crime phenomena that considers the interconnected nature of criminal actions as well as their temporality, specialization, and links to corruption, thus giving relevance to the concept of “joint investigation bodies” (“órgano mixto de investigación” in Spanish).

Although the mixed investigation body tool seems relatively similar to the JIT, it is observed in the same regulations,⁸⁰ and while its definition still requires more clarity, it seems to differ in terms of duration and purpose. It is conceived as a more permanent structure, based on an agreement between two or more States, which focuses on investigating a specific type of crime (for example, human trafficking) over longer periods (for example, five years or more), instead of investigating isolated, specific criminal cases.⁸¹

Thus, the goal of addressing these complex phenomena globally is fulfilled, intervening in the entire criminal chain (including the supply chain), which is relevant in transnational organized crime. Therefore, there is an opportunity in the region to develop

⁷⁵ DDOT, Informe «Tras el dinero del oro ilícito: fortaleciendo la lucha contra las finanzas de la minería ilegal», OEA, 2021 Disponible: <https://www.oas.org/es/sms/ddot/docs/Tras-el-dinero-del-oro-ilicito-El-caso-de-Peru.pdf>

⁷⁶ Información recopilada en las entrevistas realizada con las Fiscalías de Chile y de Argentina.

⁷⁷ La Convención de las Naciones Unidas Contra la Delincuencia Organizada Transnacional, en su artículo 24 estableció de manera muy clara que cada Estado Parte adoptaría las medidas necesarias para proteger a quienes en calidad de testigos participaren en los procesos penales.

⁷⁸ Available at: https://www.mpf.gob.ar/dovic/files/2020/12/Guias_de_Santiago-2020.pdf

⁷⁹ Fiscalía Nacional Chile. «Programa de protección a víctimas y testigos» Jenny Fonseca, Ponencias del Seminario Internacional “Desafíos actuales y futuros de la persecución penal y de la atención a víctimas y testigos en Chile”. Pág. 108. http://www.fiscaliadechile.cl/Fiscalia/Ponencias_Seminario_diciembre_2014.pdf

⁸⁰ Article 49 of the United Nations Convention against Corruption, Vienna, 2004.

⁸¹ CTOC/COP/WG.3/2020/2, The Use and Function of Joint Investigation Bodies in the Fight against Transnational Organized Crime, Working Group on International Cooperation 2020, para. 9. Available at: https://www.unodc.org/documents/treaties/International_Cooperation_2021/CTOC-COP-WG3-2020-2/CTOC_COP_WG.3_2020_2_S.pdf

a legal framework for this tool that better adapts to the transborder characteristics.

- **Harmonization of the Legal Framework for Special Investigation Techniques (SIT)**

It has been observed that there is a diversity of regulatory instruments of a criminal and procedural nature governing special investigation techniques, whose coexistence hinders their application. There is considerable dispersion and incoherence in the design and formulation of procedures and strategies.⁸²

Furthermore, the regulation of digital evidence is certainly one of the challenges that requires new measures from the States. Despite national procedural reforms in accordance with the Budapest Convention,⁸³ which aims to improve international cooperation and sharing of electronic evidence in cybercrimes, there are no norms regulating the collection, transmission, and use of digital evidence. Although often associated with cybercrime, its application is much broader: the collection of electronic or digital evidence and its incorporation as evidence into criminal proceedings is linked to criminal investigations for both cybercrimes and common crimes committed through electronic means or for common crimes whose evidence is in electronic or digital form.⁸⁴ Thus, the growing importance of digital evi-

dence in elucidating criminal cases involving technology and cybercrime committed by transnational criminal organizations is emphasized.

Finally, the use of SITs raises questions about guarantees related to proportionality and specificity regarding the crime under investigation and due process. In this regard, it is essential that judicial authorities or other independent bodies adequately oversee the use of SITs within a JIT framework, through prior authorization, supervision during the investigation, or post-investigation review. However, differences between national legislations demonstrate that these guarantees for the acquisition and admissibility of evidence are not implemented to the same extent in all countries, remaining an unresolved challenge for the States of the region.

In addition, the adoption of harmonized regulations, such as a Model Law, would contribute to ensuring public trust in the use of special investigation techniques. In this regard, the PACCTO project stands out for developing a Model Law for electronic evidence.⁸⁵

- **Data Protection in Judicial Cooperation for Investigating Transnational Organized Crime**

The development of these new tools facilitating the proliferation, transmission, and collection of biometric data and sensitive personal information highlights the importance of protecting personal data for

⁸² As an illustration, despite having a law on Special Investigation Techniques (TEI) in Argentina, only the regulation of some techniques is developed, separately enshrining the technique of interception and collection of communications

⁸³ Convention on Cybercrime, Council of Europe. 2001. Ratified by Peru, Chile, and Argentina. Available at: https://www.unodc.org/documents/treaties/International_Cooperation_2021/CTOC-COP-WG3-2020-2/CTOC_COP_WG3_2020_2_S.pdf

⁸⁴ Díaz Almeida, J. (2023) Digital Evidence and its Necessary Regulation. Challenges of Justice in the Face of Organized Crime within the Framework of the Political Justice Cycle. El PACCTO. Page 27. Available at: <https://www.elpaccto.eu/wp-content/uploads/2022/12/Publicacion-Ciclo-Justicia.pdf>

⁸⁵ Model Law on Electronic Evidence. 2022. Available at: <https://elpaccto.eu/wp-content/uploads/2022/12/Publicacion-Ley-modelo-de-prueba-electronica.pdf>

judicial cooperation.⁸⁶ Experiences have shown that the lack of an adequate level of data protection presents obstacles in judicial cooperation processes in the region, but also in cooperation with the European Union, for example. Indeed, in the context of judicial cooperation, for example, in a JIT,⁸⁷ data processing is done in accordance with the domestic laws of the participating countries, and this differs significantly even within the region.⁸⁸ For this reason, it seems essential to establish an approach to these national regulations to avoid emerging obstacles due to differing protection levels, which would render these tools ineffective. This is critical to ensure their operation while respecting fundamental rights, especially dignity, privacy, and personal data protection, as well as procedural guarantees.

Considering these differences, it is necessary to establish a common legal framework for the processing of personal data in criminal cooperation between countries in the region. The Principles on Privacy and Personal Data Protection adopted by the OAS General Assembly could serve as a basis, taking European standards into account to ensure a similar level of protection, thus allowing for more effective and guaranteed cooperation.⁸⁹

- **Trainings and capacitation of Authorities in Charge of Investigations and Prosecution**

Based on the practical experiences shared by officials interviewed from Peru, Chile, and Argentina, a persistent lack of training of personnel in charge of investigating crimes related to transnational organized crime has been identified. It was emphasized that an important part of the personnel is still unaware of the existing tools, the current legislation, and the details of their application.

While there has been an increase in workshops and seminars, training initiatives in the investigation and prosecution of crimes related to transnational organized crime are very limited⁹⁰ and have the following characteristics: they are centralized at the territorial level, offer partial content that does not demonstrate a sufficiently deep and operational-practical approach to these interventions, creating disparities at the national and regional levels, and a lack of focus on judicial cooperation tools.

In this regard, it is crucial to highlight the initiative of the DDOT to implement the Technical Assistance Program for the Effective Application of Investigation Instruments to Combat Transnational Organized Crime in 2023.⁹¹ This project aims to

⁸⁶ In this regard, the COMJIB held a Webinar on March 5, 2024, titled 'Data Protection and International Legal Cooperation.' Available at: https://www.youtube.com/watch?v=2encoz_Wg8E

⁸⁷ See, for example, Law No. 25,326 (Argentina); Law No. 29,733 (Peru); Law No. 19,628 (Chile); Bolivia, despite having an ongoing draft law, still lacks a comprehensive data protection regime; Article 21 of the Constitution only provides that Bolivians have the right to privacy, intimacy, honor, image, and dignity.

⁸⁸ Argentina, for example, illustrates a high level of personal data protection with a criminal regulation on the matter and has an autonomous control agency. Additionally, it adhered to Convention 108+ of the Council of Europe, which is of global importance regarding the automated processing of personal data. In contrast, Bolivia still lacks a specific regime for personal data protection. For more details, refer to the COMJIB Webinar 'Data Protection and International Legal Cooperation.' Available at: https://www.youtube.com/watch?v=2encoz_Wg8E

⁸⁹ "Principles on Privacy and the Protection of Personal Data (with annotations)." Adopted by the Inter-American Juridical Committee and approved by Resolution AG/RES. 2974 (LI-O/21) on November 11, 2021. Available at: https://www.oas.org/es/sla/cji/docs/Publicacion_Proteccion_Datos_Personales_Principios_Actualizados_2021.pdf

⁹⁰ For example, in Chile, the training of professionals who joined the Early Reaction Team for Homicide Investigations in the Context of Organized Crime from the Antofagasta Regional Prosecutor's Office in November 2023. See: <http://www.fiscaliadechile.cl/>; A workshop on the dynamics of organized crime and corruption was also held in Peru by the Institute of Democracy and Human Rights at the Pontifical Catholic University of Peru. See: <https://idehpucp.pucp>.

⁹¹ Technical assistance program for the effective implementation of investigation tools to combat Transnational Organized Crime. OAS. See: <https://www.oas.org/ext/es/securidad/asistencia-instrumentos-investigacion>

strengthen the technical capacities of officials in charge of criminal investigations, prosecution, and the adjudication of crimes related to transnational organized crime. However, despite the program's great potential, its reach remains limited, as it only benefits Peru among the countries analyzed, and it has not yet demonstrated any results.⁹²

Therefore, it is important to emphasize comprehensive training programs that spread practical knowledge for the proper development of the tools available to prosecutors and authorities in charge of investigations. In this sense, it would be ideal to extend the training programs implemented through the Technical Assistance Program to other countries in the region.

⁹² In total, the program benefits seven countries: Peru, Costa Rica, El Salvador, Guatemala, Honduras, Paraguay, and Uruguay.

Based on the needs and opportunities identified in previous chapters, this section presents the proposals that we from CEJA have considered for strengthening the instruments of judicial cooperation in criminal matters for the prosecution of crimes related to transnational organized crime. This is directed at actors and institutions, international organizations, and international cooperation agencies involved in the processes of investigating and prosecuting organized crime, as well as at the justice operators themselves. To all of them, CEJA expresses its willingness and interest in building alliances to implement all or some of the actions detailed below.

Considering the findings of this research, the following opportunities are presented to strengthen the effectiveness of judicial cooperation tools and the performance of criminal cooperation in the fight against transnational organized crime:

1. Designing a Guide for the Proper Application of Available Judicial Cooperation Tools for Effective Investigation and Prosecution of Transnational Organized Crime
Among other contents, this guide should include international, regional, and national normative instruments, central and competent authorities, inter-institutional cooperation entities, among other elements.
2. Formulating Diagnostics to Deepen the Use and Potential of Judicial Cooperation Tools in Combatting Organized Crime at the National and Transnational Levels
3. Implementing Pilot Programs for Optimizing the Information Management Systems of Judicial Cooperation Based on Best Practices in the Region
4. Organizing International Seminars or Meetings for the Exchange of Best Practices and Strengthening Mutual Trust Between Investigation Teams and Available Tools
5. Designing and Implementing a Specialized Training Program on Best Practices in Judicial Cooperation for Effective Investigation and Prosecution of Transnational Organized Crime
6. Formulating New Studies to Replicate the Analytical Objectives of This Document and Deepen the Effectiveness of Judicial Cooperation in Other Contexts of Transnational Organized Crime, Whether in Transborder or Non-Transborder Realities

In Latin America, the current situation highlights the transnationalization of organized crime, which is further complicated with the digitalization and sophistication of criminal activities. This context underscores the urgency of ensuring the most effective cooperation possible between States, without compromising the rights and procedural guarantees of victims and offenders, which are intrinsic to the common constitutional traditions of the rule of law States.

- Indeed, in judicial cooperation processes, it is crucial to safeguard the rights of all individuals involved, especially those in situations of extreme vulnerability who are exploited by criminal organizations.
- To ensure these guarantees, equivalent levels of protection must be established, especially in the legislation governing special investigative techniques, as their application within judicial cooperation can present obstacles and violations of rights if inconsistencies exist across jurisdictions.
- The ECI (International Cooperation Teams) and, more particularly, mixed investigative bodies, represent the most promising form of regional cooperation, making processes more agile without compromising procedural validity. While the experiences in the four countries analyzed have intensified in recent years, these remain evolving tools that need greater visibility, adaptation to

the regional context, and clarification in their legal frameworks to guarantee their application and the protection of rights and guarantees.

- In this regard, the development of tools that enable the digitalization of these forms of cooperation is particularly relevant, as it would help overcome the high costs associated with establishing an ECI, which involves travel and in-person meetings.
- Inter-institutional cooperation also represents a significant step forward toward the possible formation of a collaborative unit at the supranational level, breaking borders to establish direct communication flows between the authorities responsible for investigations.

The trend toward the increased use of these available tools shows that the apparent distrust between Latin American countries when it comes to cooperating in the investigation and prosecution of transnational organized crime-related offenses should not actually exist. These countries share cultural and linguistic similarities, which are particularly favorable for creating patterns of judicial cooperation and establishing mutual trust, in contrast to the situation within the European Union. Therefore, there should be a continued focus on current dynamics and efforts to move toward greater cooperation in the region, ensuring the consolidation, permanence, and effectiveness of initiatives such as the Iber@ platform or the OAS Technical Assistance Program for

the Effective Application of Investigation Instruments to Combat Transnational Organized Crime, so that they can serve as a safe and protected environment to improve the investigation and prosecution of these crimes.

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