



UNODC

United Nations Office on Drugs and Crime

DIGEST OF CASES



International Cooperation in Criminal Matters
Involving the United Nations Convention Against
Transnational Organized Crime as a Legal Basis

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

DIGEST OF CASES

of International Cooperation in Criminal Matters
Involving the United Nations Convention
Against Transnational Organized Crime
as a Legal Basis



UNITED NATIONS
Vienna, 2021

Disclaimer

The contents of the present Digest are the sole responsibility of the United Nations Office on Drugs and Crime (UNODC). The designations employed and the presentation of material in this Digest do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Information on uniform resource locators and links to Internet sites contained in the Digest are provided for the convenience of the reader and were correct at the time of issue. The United Nations takes no responsibility for the continued accuracy of that information or for the content of any external website.

This publication may be reproduced in whole or in part and in any form for educational or non-profit purposes without special permission from the copyright holder, provided that acknowledgement of the source is made. UNODC would appreciate receiving a copy of any publication that uses this publication as a source.

Acknowledgements

This Digest was prepared under the responsibility of the UNODC Division for Treaty Affairs, Organized Crime and Illicit Trafficking Branch, Conference Support Section.

Research and drafting: Andreas Schloenhardt, Professor of Criminal Law, University of Queensland, and Honorary Professor of Foreign and International Criminal Law, University of Vienna. Professor Schloenhardt was supported by his research team based in Brisbane, Australia, and Vienna.

Direct supervision and substantive editing: Dimosthenis Chrysikos, Crime Prevention and Criminal Justice Officer, Conference Support Section.

Overall supervision: Xiaohong Li, Chief, Conference Support Section.

© United Nations, 2021. All rights reserved.

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

Publishing production: English, Publishing and Library Section, United Nations Office at Vienna.

CONTENTS

| | <i>Page</i> |
|---|-------------|
| 1. INTRODUCTION | 2 |
| 1.1. Thematic focus and objective of the Digest | 2 |
| 1.2. Background | 2 |
| 1.2.1. United Nations Convention against Transnational Organized Crime and the Protocols thereto | 2 |
| 1.2.2. International cooperation in criminal matters | 4 |
| 1.2.3. Substantive background of the Digest | 5 |
| 1.3. Purpose of the Digest | 6 |
| 1.4. Structure of the Digest | 7 |
| 1.5. Methodology and source material | 7 |
| 2. OVERVIEW OF AVAILABLE CASES | 12 |
| 2.1. Sources | 12 |
| 2.1.1. Primary sources | 12 |
| 2.1.2. Official reports and submissions | 16 |
| 2.1.3. Sharing Electronic Resources and Laws on Crime (SHERLOC) database | 18 |
| 2.1.4. Secondary sources | 19 |
| 2.2. Depth and quality | 19 |
| 3. TYPES OF INTERNATIONAL COOPERATION | 22 |
| 3.1. Extradition: article 16 of the Organized Crime Convention | 22 |
| 3.1.1. Concept and legal basis | 22 |
| 3.1.2. Structure of article 16 | 23 |
| 3.1.3. Scope of application of article 16 | 23 |
| 3.1.4. Relationship with other extradition treaties | 26 |
| 3.1.5. Conditions and requirements of extradition | 32 |
| 3.1.6. Measures against persons whose extradition is sought | 33 |
| 3.1.7. Non-extradition of nationals and alternatives provided for in lieu of their extradition | 33 |
| 3.1.8. Treatment and rights of persons whose extradition is sought | 35 |
| 3.1.9. Refusal of extradition | 35 |
| 3.1.10. Other extradition cases | 36 |

| | | |
|-----------|---|-----------|
| 3.2. | Mutual legal assistance: article 18 of the Organized Crime Convention | 37 |
| 3.2.1. | Concept and legal basis | 37 |
| 3.2.2. | Scope of application of article 18 | 38 |
| 3.2.3. | Scope and types of mutual legal assistance | 39 |
| 3.2.4. | Transmission of information without prior request. | 47 |
| 3.2.5. | Refusal of mutual legal assistance. | 48 |
| 3.2.6. | Miscellaneous. | 48 |
| 3.3. | Confiscation: articles 13 and 14 of the Organized Crime Convention | 48 |
| 3.3.1. | Concept and legal basis | 48 |
| 3.3.2. | International cooperation for purposes of confiscation | 49 |
| 3.3.3. | Case examples | 51 |
| 3.4. | Transfer of sentenced persons: article 17 of the Organized Crime Convention . . . | 54 |
| 3.5. | Transfer of criminal proceedings: article 21 of the Organized Crime Convention . | 56 |
| 3.6. | Joint investigations: article 19 of the Organized Crime Convention | 57 |
| 3.7. | Special investigative techniques: article 20 of the Organized Crime Convention . . . | 58 |
| 3.8. | Law enforcement cooperation: article 27 of the Organized Crime Convention . . . | 60 |
| 3.9. | Observations | 60 |
| <hr/> | | |
| 4. | CASES BY REGION AND COUNTRY | 64 |
| 4.1. | Africa | 64 |
| 4.2. | Asia and the Pacific. | 65 |
| 4.3. | Eastern Europe | 67 |
| 4.4. | Latin America and the Caribbean | 69 |
| 4.5. | Western European and other States | 70 |
| 4.6. | Observations | 72 |
| <hr/> | | |
| 5. | OFFENCES INVOLVED | 76 |
| 5.1. | Participation in an organized criminal group. | 76 |
| 5.1.1. | Drug trafficking and participation in an organized criminal group . . . | 77 |
| 5.1.2. | Smuggling of migrants, trafficking in persons and participation in an organized criminal group. | 77 |
| 5.1.3. | Other cases involving participation in an organized criminal group . . | 78 |
| 5.2. | Money-laundering. | 79 |
| 5.2.1. | Drug trafficking and money-laundering | 80 |
| 5.2.2. | Corruption and money-laundering | 81 |
| 5.2.3. | Fraud and money-laundering | 81 |
| 5.3. | Corruption | 82 |
| 5.4. | Smuggling of migrants. | 84 |

| | | |
|---------------------------|---|------------|
| 5.5. | Trafficking in persons | 88 |
| 5.6. | Other serious crimes | 89 |
| 5.6.1. | Drug-related offences | 89 |
| 5.6.2. | Fraud and related offences | 90 |
| 5.6.3. | Miscellaneous offences | 91 |
| 5.7. | No crime type specified | 93 |
| 5.8. | Observations | 93 |
| <hr/> | | |
| 6. | INTERPLAY WITH OTHER AGREEMENTS | 96 |
| 6.1. | Use of the Organized Crime Convention in conjunction with other international conventions..... | 96 |
| 6.1.1. | United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 | 96 |
| 6.1.2. | United Nations Convention against Corruption | 98 |
| 6.2. | Use of the Organized Crime Convention in conjunction with regional agreements | 99 |
| 6.2.1. | Inter-American conventions | 99 |
| 6.2.2. | Council of Europe conventions | 102 |
| 6.2.3. | European Union instruments | 106 |
| 6.3. | Use of the Organized Crime Convention in conjunction with bilateral agreements | 107 |
| 6.3.1. | Bilateral extradition treaties | 107 |
| 6.3.2. | Bilateral mutual legal assistance treaties | 110 |
| 6.4. | Stand-alone use of the Organized Crime Convention | 113 |
| 6.4.1. | Preliminary considerations | 113 |
| 6.4.2. | Confirmed cases of stand-alone use of the Organized Crime Convention | 114 |
| 6.5. | Observations | 117 |
| <hr/> | | |
| 7. | CONCLUSIONS AND FUTURE DIRECTIONS | 120 |
| <hr/> | | |
| ANNEX. | LIST OF CASES | 128 |
| <hr/> | | |
| BIBLIOGRAPHY | | 160 |

CHAPTER I.

INTRODUCTION



1. INTRODUCTION

1.1. Thematic focus and objective of the Digest

In the present Digest, reported cases of international cooperation in criminal matters involving the United Nations Convention against Transnational Organized Crime as a legal basis are presented and analysed. On the basis of 104 cases from 34 jurisdictions, observations are made about the circumstances in which States parties used, or attempted to use, the Organized Crime Convention as a legal basis for extradition, mutual legal assistance, the transfer of sentenced persons, the transfer of criminal proceedings, joint investigations or other forms of international cooperation. The Digest represents the first and most comprehensive study of the practical use of the international cooperation provisions of the Convention, as documented in actual cases. Drawing on those cases, the Digest examines the types of international cooperation involved, geographical differences between regions and States, the facts and types of offences that gave rise to the need for international cooperation, and the relationship between the Organized Crime Convention and relevant bilateral and multilateral cooperation treaties in cases of international cooperation.

The goal of the Digest is to present the fullest possible picture of the practical use of the Organized Crime Convention as a legal basis for international cooperation at a significant juncture: having already celebrated the 20-year anniversary of the adoption and opening for signature of the Convention and with the accumulated experience gained after 18 years since its entry into force. The Digest facilitates the sharing of relevant experiences of States parties and, on the basis of the lessons learned, the development of recommendations aimed at enhancing and increasing the use of the Convention as a tool for international cooperation to combat transnational organized crime more effectively.

1.2. Background

1.2.1. United Nations Convention against Transnational Organized Crime and the Protocols thereto

Labelled as one of the most important developments in international criminal law,¹ the Organized Crime Convention marks a significant milestone in the global fight against organized crime, closing the gap that existed in international cooperation in an area generally regarded as one of the top priorities of the international community in the twenty-first century.²

Following two years of deliberations and negotiations by an ad hoc committee on its elaboration, open to all United Nations Member States,³ the Convention was adopted by the General Assembly on 15 November 2000 (together with two of its three supplementary Protocols).⁴ The negotiation and adoption of the Convention took place in an era when States parties were signalling their intention to establish lasting rules based on mutual solidarity and shared responsibilities to combat transnational organized crime, including through enhanced mechanisms of international cooperation. This was particularly illustrated through the inclusion of a wide array of concrete and focused provisions on international cooperation in criminal

¹ Gerhard Kemp, “The United Nations Convention against Transnational Organized Crime: a milestone in international criminal law”, *South African Journal of Criminal Justice*, vol. 14, No. 2 (2001), p. 166.

² Dimitri Vlassis, “The United Nations Convention against Transnational Organized Crime and its Protocols: a new era in international cooperation”, in *The Changing Face of International Criminal Law*, Daniel Préfontaine, QC, ed., (Vancouver, Canada, International Centre for Criminal Law Reform and Criminal Justice, 2002), p. 75.

³ See the *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, 2006), which is a publication tracking the progress of the negotiations in the open-ended intergovernmental Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime.

⁴ United Nations, *Treaty Series*, vol. 2225, No. 39574. Adopted by the General Assembly in its resolution [55/25](#), annex I.

matters in the final text of the Convention, covering not only traditional modalities of cooperation, but also other, many of them new and emerging, forms of cooperation such as joint investigations. The Convention, and two of its Protocols, were opened for signature at a high-level conference held in Palermo, Italy, the heartland of the Italian Mafia, from 12 to 15 December 2000. A total of 132 Member States signed the Convention in Palermo. For this reason, the Organized Crime Convention is sometimes referred to as the “Palermo Convention”. The Convention entered into force on 29 September 2003.⁵ As at 10 May 2021, the Convention had 190 parties.

The Organized Crime Convention is supplemented by three Protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,⁶ the Protocol against the Smuggling of Migrants by Land, Sea and Air,⁷ and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.⁸ The Organized Crime Convention is frequently referred to as the “parent Convention”, as it sets out general rules about organized crime and international cooperation in regard to such crime that also have an impact on the application and interpretation of the three Protocols. The relationship between the Organized Crime Convention and the Protocols is set out in article 37 of the Convention. Moreover, article 1 of each Protocol specifies that: (a) the Protocols supplement the Convention and need to be interpreted together with the Convention; (b) Convention provisions apply, *mutatis mutandis*, to the Protocols unless otherwise provided therein; and (c) the offences established in accordance with the Protocols shall be regarded as offences established in accordance with the Organized Crime Convention. As at 10 May 2021, the Trafficking in Persons Protocol had 178 parties, the Smuggling of Migrants Protocol had 149 parties and the Firearms Protocol had 119 parties.

The purpose of the Organized Crime Convention, as stated in its article 1, is to promote cooperation to prevent and combat transnational organized crime more effectively. The Convention seeks to bridge differences among national legal systems, set standards for domestic laws and establish mechanisms for international cooperation so that States parties can effectively combat transnational organized crime. By becoming parties to the Convention, States commit themselves to taking a series of measures against transnational organized crime, including measures to ensure compliance with the criminalization requirements of the Convention, as well as effective and efficient criminal justice and law enforcement responses to the criminal activities of organized criminal groups; the promotion of international cooperation mechanisms, including extradition, mutual legal assistance and other forms of international cooperation in criminal matters; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities to deal with related challenges.

Comprising 41 articles, the Organized Crime Convention:

- Defines and standardizes certain terms that are interpreted differently in various countries and different legal systems
- Requires States to establish specific criminal offences
- Requires the introduction of specific protective measures, such as protection of victims and witnesses
- Provides for the seizure and confiscation of proceeds of crime derived from the offences falling within the scope of its application
- Promotes international cooperation, for example, through extradition, mutual legal assistance, international cooperation for purposes of confiscation or other forms of international cooperation such as joint investigations, the transfer of criminal proceedings and law enforcement cooperation
- Provides for training, research and information-sharing measures
- Encourages preventive policies and measures

⁵ Compare with article 38 of the Organized Crime Convention.

⁶ United Nations, *Treaty Series*, vol. 2237, No. 39574.

⁷ United Nations, *Treaty Series*, vol. 2241, No. 39574.

⁸ United Nations, *Treaty Series*, vol. 2326, No. 39574.

1.2.2. International cooperation in criminal matters

The emergence and expansion of transnational organized crime has created challenges for criminal justice systems around the world. Individual perpetrators and organized criminal groups are highly mobile and their activities frequently occur across international borders. They often seek to evade detection, arrest and punishment by moving to other jurisdictions or by laundering the proceeds of crime through offshore financial institutions or other companies. Deficiencies in States' capacities to address the threats posed by transnational organized crime, as well as the diversity of legal systems involved and discrepancies in applicable legal requirements, coupled with the absence or limited use of communication channels between cooperating States, often lead to shortcomings and setbacks that have an impact on the effectiveness of international cooperation in criminal matters.

For these reasons, comprehensive, efficient, effective, multi-agency and flexible international cooperation is essential to ensuring the appropriate investigation and prosecution of transnational organized crime. Such cooperation is founded on the agreement between States (and/or their authorities) to work together towards a common goal. International cooperation in criminal matters occurs when States share information or evidence, collaborate to bring criminals to justice and combine resources and staff, including investigators and prosecutors, to achieve the common goal of combating crime, including transnational organized crime.

International cooperation in criminal matters can be based on treaties, such as the Organized Crime Convention or other multilateral, regional or bilateral treaties, or on informal arrangements or memorandums of understanding between the cooperating States.

The provisions of multilateral conventions such as the Organized Crime Convention can play a key role in harmonizing obligations and addressing legal gaps in the field of international cooperation in criminal matters. The Organized Crime Convention offers both a way of filling possible legal gaps where no bilateral or multilateral agreement exists between countries seeking to cooperate and a means for the increased convergence of such bilateral and multilateral agreements.⁹ International cooperation in criminal matters is specifically mentioned in the statement of purpose of the Organized Crime Convention, set out in its article 1. Moreover, there is an interrelationship between the international cooperation provisions and other provisions of the Convention dealing with issues such as the criminalization of offences, the establishment of jurisdiction, the domestic investigation and prosecution of crimes and the protection of witnesses.

Apart from identifying international cooperation in criminal matters as a "treaty purpose", the Convention provides in detail for a wide array of international cooperation modalities, ranging from judicial cooperation, such as extradition and mutual legal assistance, to law enforcement cooperation or other types of cooperation, such as joint investigations and cooperation to conduct special investigative techniques. The Convention opens avenues to obtaining additional evidence, accessing information, and freezing, seizing and confiscating proceeds of crime or property, as well as arresting and extraditing fugitives that would otherwise be immune to prosecution. It allows States parties to choose from a variety of mechanisms that enable and facilitate international cooperation between States parties. Such mechanisms include extradition (art. 16), mutual legal assistance (art. 18), joint investigations (art. 19), international cooperation to conduct special investigative techniques (art. 20, paras. 2 and 4), transfer of sentenced persons (art. 17), transfer of criminal proceedings (art. 21) and law enforcement cooperation (art. 27).

The actual use of the Organized Crime Convention as a legal basis for international cooperation is linked to a number of provisions of the Convention. For example, article 16, paragraph 4, of the Convention provides that, if a State party makes extradition conditional on the existence of a treaty, the Convention may be considered as a legal basis for extradition in respect of an extradition request concerning an offence covered by the Convention received from another State party with which the requested State has no extradition treaty. Similarly, the role of article 18 of the Convention in providing a framework for mutual legal assistance is specifically addressed in its paragraph 7, which obliges States parties to directly apply the "mini-treaty" contained in article 18, paragraphs 9 to 29, when no bilateral treaty binds the parties, and the States parties are encouraged to apply those provisions in a manner that complements existing mutual legal assistance treaties.

⁹ A/CONF.222/7, para. 6.

Another advantage of the Organized Crime Convention is the extended scope of application of its international cooperation provisions. For example, articles 16 and 18 of the Convention, on extradition and mutual legal assistance, respectively, extend the scope of application of such provisions. Article 16 also applies to serious crime involving an organized criminal group, where the person who is the subject of the request for extradition is located in the territory of the requested State party. Therefore, the condition of transnationality of the offence, as described in article 3, paragraph 2, is not strictly necessary for the application of article 16, and thus article 16 has a more extensive scope of application.

Furthermore, under article 18, States parties are required to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention, including serious crimes, where the requesting State party has reasonable grounds to suspect that the offence is transnational in nature and involves an organized criminal group. That allows for assistance to be provided in the early phases of investigations, when the evidentiary basis of the commission of an offence covered by the Convention and its Protocols may still be weak, and it also provides for an enlarged notion of transnationality of the offence.¹⁰

In addition, “serious crime” is defined in article 2, subparagraph (b), of the Organized Crime Convention as meaning any conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. Consequently, the inclusion and definition of the concept of “serious crime” in the Convention enables its application to a broad range of offences in a flexible manner. It also enables the use of its international cooperation provisions for a series of new forms and dimensions of transnational organized crime that meet the requirements of the aforementioned definition.

1.2.3. Substantive background of the Digest

At its tenth meeting, held in Vienna on 16 October 2018, the Working Group on International Cooperation of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime adopted a recommendation encouraging States parties to:

Provide the United Nations Office on Drugs and Crime with updated legal frameworks and concrete cases in which the Convention has been used as legal basis for international cooperation with a view to expanding the information already available in the knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC) and, subject to the availability of extrabudgetary resources, preparing a digest of cases that incorporates accumulated knowledge on this issue and has the potential of being updated regularly.¹¹

In its resolution [9/3](#), entitled “Implementation of the provisions on international cooperation of the United Nations Convention against Transnational Organized Crime”, the Conference of the Parties endorsed the recommendation as adopted by the Working Group on International Cooperation.¹²

In Vienna, from 9 to 11 April 2019, UNODC convened, with the financial support of China, an informal expert group meeting on international cooperation in criminal matters, in which participants discussed, inter alia, the added value of, and the challenges associated with, the use of the Organized Crime Convention as a legal basis for international cooperation. During the meeting, experts shared information on completed and/or ongoing cases involving such use of the Convention. Many of the cases presented at the meeting are featured in this Digest. In his concluding remarks, the Chair summarized the following recommendation put forward at the meeting:

UNODC should continue working with practitioners from States parties to the Organized Crime Convention with a view to compiling updated information and statistical data on actual cases in which the Organized Crime Convention was used as a legal basis for international cooperation in criminal matters, whether on its own or in combination with other bilateral or regional treaties, for

¹⁰ [CTOC/COP/WG.3/2015/3](#), para. 31.

¹¹ [CTOC/COP/WG.3/2018/6](#), para. 2 (j).

¹² See [CTOC/COP/2018/13](#), annex III, subpara. (j).

further inclusion in tailor-made tools and/or posting on SHERLOC, according to the relevant mandates of the Conference of the Parties to the Organized Crime Convention.¹³

It was against this background that the development of the present Digest was commissioned in October 2019. Research for the Digest was conducted and the final text was drafted at locations in Brisbane, Australia, and Vienna. The Digest was then further updated to reflect developments relating to the tenth session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, held in October 2020, as well as the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.

1.3. Purpose of the Digest

The purpose of this Digest is to document and analyse, to the fullest extent possible, cases in which the Organized Crime Convention was used, or was attempted to be used, as a legal basis for international cooperation in criminal matters. The Digest is based on reported open-source case law; cases reported by States parties to the Conference of the Parties to the United Nations Convention against Transnational Organized Crime and its working groups; cases presented at the aforementioned informal expert group meeting on international cooperation in criminal matters, held in 2019; and cases and other material received by UNODC and the author of this Digest from central authorities or other entities of States parties to the Convention. The Digest examines the types of cooperation involved, the types of offences for which such cooperation was requested, and the extent of the use of the Convention as a legal basis for international cooperation across regions, as well as the use of the Convention alongside or in lieu of bilateral and multilateral agreements specifically on, or containing provisions on, international cooperation in criminal matters.

This Digest represents the first and most comprehensive study of the practical use of the international cooperation provisions of the Organized Crime Convention, as documented in actual cases. The Digest analyses information from 104 cases from States parties around the world to provide a better understanding of the circumstances in which the Convention has been used, the opportunities offered by the pertinent provisions of the Convention on international cooperation, and the challenges and obstacles faced by States parties requesting or receiving requests for such cooperation.

The Digest demonstrates that, since its adoption and opening for signature, the Organized Crime Convention has been used frequently, although not evenly across different regions, as a legal basis for international cooperation, and has matured into an instrument that is alive and that has great potential to be further utilized as a tool for fostering such cooperation. There are still many challenges to be addressed in collecting evidence and pertinent information, which, in turn, have an impact on the systematic gathering of data regarding cases in general, but also the detailed elements and final outcome of the cases. Nevertheless, accumulated data and available information have demonstrated the usefulness and added value of the Organized Crime Convention in closing legal loopholes in international cooperation in criminal matters by enabling such cooperation in situations in which the perpetrators would otherwise evade prosecution or in which investigations and judicial proceedings would be in jeopardy.

Through the presentation of actual cases, the analysis of regional trends and the examination of critical aspects of implementation of the international cooperation provisions of the Organized Crime Convention, this Digest serves the overall goal of accumulating knowledge on how to enhance the effectiveness of international cooperation in criminal matters aimed at combating transnational organized crime and assisting States in their quest to investigate and prosecute relevant cases with a view to bringing the perpetrators of such crime to justice.

¹³ See the Summary of the Chair, para. 6. Available at www.unodc.org/documents/international-cooperation/News_and_events/SUMMARY_OF_THE_CHAIR.pdf.

1.4. Structure of the Digest

This Digest comprises seven chapters. Following the present introduction, chapter 2 provides an overview of the cases examined and outlines how information relating to the cases was collected and obtained, along with the contexts in which they arose. Chapter 2 also includes a short reflection on the depth and quality of the information and other supplementary material examined in relation to the cases. Chapters 3 to 6 examine the cases from four different perspectives.

Chapter 3 explores the cases by type of international cooperation involved. Following the provisions of the Organized Crime Convention, chapter 3 examines extradition (art. 16) in section 3.1, mutual legal assistance (art. 18) in section 3.2, international cooperation for the purpose of confiscation (art. 13) in section 3.3, transfer of sentenced persons (art. 17) in section 3.4, transfer of criminal proceedings (art. 21) in section 3.5, joint investigations (art. 19) in section 3.6, special investigative techniques (art. 20) in section 3.7 and law enforcement cooperation (art. 27) in section 3.8. Other types of international cooperation under the Organized Crime Convention, for which no documented cases could be found, are briefly discussed in section 3.9.

Chapter 4 of the Digest contains a breakdown and analysis of the cases by geographical region, using the United Nations regional groups of Member States, which include Africa (sect. 4.1), Asia and the Pacific (sect. 4.2), Eastern Europe (sect. 4.3), Latin America and the Caribbean (sect. 4.4), and Western European and other States (sect. 4.5). Chapter 4 is supplemented by maps showing the geographical extent of the cases examined in the Digest.

In chapter 5, the cases are grouped according to the principal statutory offences and/or more broadly according to the crime type involved. Sections 5.1 to 5.3 concern the offences set out in the Organized Crime Convention, including participation in an organized criminal group (art. 5), money-laundering (art. 6) and corruption (art. 8). Among the cases consulted for the purposes of this Digest, no records of charges involving obstruction of justice (art. 23) were found. Cases involving the smuggling of migrants and trafficking in persons, as defined in the relevant Protocols, are examined in sections 5.4 and 5.5, respectively. Cases involving other serious crimes not included elsewhere are outlined in section 5.6, followed by those cases in which no crime type was specified (sect. 5.7).

Chapter 6 turns to the interplay between the Organized Crime Convention and other bilateral and multilateral agreements on, or containing provisions on, international cooperation in criminal matters. The use of the Organized Crime Convention alongside other global international agreements is examined in section 6.1, followed by the use of the Organized Crime Convention alongside regional agreements, especially in the Americas and Europe, in section 6.2. Cases in which the Organized Crime Convention was used alongside bilateral cooperation agreements are the subject of section 6.3. Cases in which the Organized Crime Convention was used alone and independently of other agreements are examined in section 6.4.

Observations and conclusions are contained in chapter 7 of the Digest. Throughout the Digest, 15 particularly prominent cases have been set out separately as featured cases. A full list of the cases examined in this Digest is set out in a separate annex, and a bibliography is provided.

1.5. Methodology and source material

In order to retrieve the widest range of high-quality information, the research for this Digest involved a systematic search for case reports in primary sources, supplemented by secondary material relating to individual cases or the implementation of the Organized Crime Convention. For the most part, the information used in the Digest was obtained from open sources and is available from databases or public libraries, or online. In some instances, information was provided directly by State authorities that permitted its use for the purposes of the research for this Digest. The research did not involve, and this Digest does not contain, any classified material. Wherever possible, the Digest does not disclose the names of defendants or other parties involved in actual cases unless they appear in official case citations.

The initial starting point for the collection and organization of cases was the database of the UNODC knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC).

The database contains organized crime cases from over 100 countries around the world. A corpus of cases involving international cooperation with reference to the Organized Crime Convention that are included in the SHERLOC database has been compiled for the purposes of the Digest (see sect. 2.1.3 below). The updating of the SHERLOC database is an ongoing task of UNODC, and includes either the drafting of summaries of cases involving international cooperation under the Organized Crime Convention or ensuring the consistency and accuracy of information relating to such cases.

The research then turned to case law databases that provide full access to reported case law from a range of jurisdictions. Some of these databases are slightly skewed towards common law jurisdictions and those Western countries in which public reporting of judicial decisions has a long tradition. This was followed by a systematic search of open-source websites containing case law, such as the World Legal Information Institute, an independent and non-profit global legal research facility, and a range of national case law databases from African, Asian and European jurisdictions.

The research also benefited from several earlier collections of cases involving the Organized Crime Convention and discussions on the use of the Convention in international law enforcement and judicial cooperation. In 2008 and 2010, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime produced two catalogues of example cases involving extradition, mutual legal assistance or other forms of international cooperation based on the Organized Crime Convention that gave insight into State practice and identified a number of specific cases which also feature in the present Digest.¹⁴ In 2012, UNODC published the *Digest of Organized Crime Cases: A Compilation of Cases with Commentaries and Lessons Learned*, which, inter alia, documented actual cases and shared national experiences of international law enforcement and judicial cooperation in organized crime cases.¹⁵ Furthermore, the present Digest draws on the cases that were presented at the informal expert group meeting on international cooperation in criminal matters that was convened by UNODC in April 2019 and that instigated the work for this Digest.¹⁶

In late 2019 and early 2020, UNODC and the author of this Digest issued a call to participants of the informal expert group meeting, requesting the submission of additional cases for inclusion in the Digest. The call resulted in several cases and case files being submitted directly to the author. A full breakdown of the origin and context of the cases examined in this Digest can be found in chapter 2. A complete list of cases examined is set out in the annex to this Digest.

Wherever necessary, the information found in the cases was validated or supplemented by other sources, which included official reports, academic analyses and, in some cases, media reports. Where additional sources were used, they are identified in the list of cases in the annex to this Digest.

The Organized Crime Convention and its Protocols, as well as the international cooperation measures set out in the Convention and other international treaties, have been the subject of some academic research and analyses by other authors. The body of books, articles, reports and other sources exploring and explaining the background and implementation of the Organized Crime Convention is increasing, although most of them focus on criminalization provisions rather than on examining the spirit and scope of the international cooperation mechanisms. Nevertheless, these secondary materials provide important insights into the purpose of the Organized Crime Convention and critical insights into its implementation, application and practical use. More recent articles and publications have focused on the newly established Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, or also examine this important development in conjunction with the historical background of the negotiation and early implementation of the Convention.¹⁷ Of further note are

¹⁴ [CTOC/COP/2008/CRP.2](#), [CTOC/COP/2010/CRP.5](#) and [CTOC/COP/2010/CRP.5/Corr.1](#).

¹⁵ United Nations Office on Drugs and Crime (UNODC), *Digest of Organized Crime Cases: A Compilation of Cases with Commentaries and Lessons Learned* (Vienna, 2012), pp. 53–85.

¹⁶ See also, UNODC, International Cooperation, “News and events”, available at www.unodc.org.

¹⁷ See Cecily Rose, “The creation of a Review Mechanism for the UN Convention against Transnational Organized Crime and its Protocols”, *American Journal of International Law*, vol. 114, No. 1 (January 2020), pp. 51–67; Ian Tennant, “The promise of Palermo: a political history of the UN Convention against Transnational Organized Crime” (Geneva, Global Initiative against Transnational Organized Crime, 2020).

publications by UNODC aimed at explaining and contextualizing the Convention and its Protocols. Importantly, the outline of the international cooperation measures available under the Organized Crime Convention contained in chapter 3 of this Digest draws extensively on the *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime* (2nd edition, 2015), other interpretative material published by UNODC and secondary sources identified in the footnotes and bibliography contained in this Digest.

Lastly, this Digest has benefited from, and frequently cites, one earlier academic study of the international cooperation provisions of the Organized Crime Convention. These provisions were the subject of a study conducted in 2015, 15 years after the Convention was adopted and opened for signature. The study uses some of the same early source material from 2010 and before. In the article about the study, the author sought to assess as far as possible at a macro level the cooperation provisions of the Organized Crime Convention,¹⁸ rather than examining individual cases in which the Convention had been used as a legal basis, which is the purpose of the present Digest.

¹⁸ See Neil Boister, “The cooperation provisions of the UN Convention against Transnational Organised Crime: a “toolbox” rarely used?”, *International Criminal Law Review*, vol. 16, No. 1 (February 2016), p. 41.

CHAPTER II.

OVERVIEW OF AVAILABLE CASES



2. OVERVIEW OF AVAILABLE CASES

This Digest covers a total of 104 cases from 34 jurisdictions. The cooperation between States parties in these cases occurred at various times between the entry into force of the Organized Crime Convention in 2003 and late 2019. Some cases contain facts dating back to the 1990s. A full list of cases, along with the source or sources of each case and a short summary of the international cooperation involved is set out in the annex to this Digest. Fifteen particularly prominent cases are set out separately as featured cases throughout the Digest.

Many more cases involving the Organized Crime Convention were considered during the research for this Digest but were ultimately not included, either because it could not be established with certainty that the Convention had been used as a legal basis for international cooperation or because the cases involved the application or interpretation of provisions of the Organized Crime Convention that do not relate directly to international cooperation.

It is not possible to gauge the total number of cases in which the Organized Crime Convention was used, or was attempted to be used, as a legal basis for international cooperation between States parties in the 20 years since the Convention was adopted and opened for signature. The number is likely to be higher than 1,000, but reliable information to establish or even estimate that number is not available. At the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, held in Doha in 2015, one speaker noted that his country alone had used the Organized Crime Convention approximately 250 times as a legal basis in extradition and mutual legal assistance cases.¹⁹

The following sections provide an overview of the type and quality of sources from which the cases examined in this Digest were retrieved and of the quality and depth of the material available from those sources. As outlined in more detail in section 1.5 above, all cases included in this Digest were retrieved from open sources; they do not contain any classified or confidential material. Some cases were provided by authorities of States parties specifically for the purposes of this Digest.

The cases examined in this Digest, along with some secondary sources, appear in a range of languages in their original versions and have been translated into English where necessary. Names of the defendants and other parties to the proceedings have been removed unless they appear as part of official case citations.

2.1. Sources

2.1.1. Primary sources

Wherever possible, primary sources were prioritized during the research for this Digest. Furthermore, in the analysis of the facts of each case, elements of international cooperation and related proceedings were prioritized. Primary sources consulted for the purpose of the Digest include reported judicial decisions and files, especially indictments, made available by official authorities, in particular public prosecutors, specifically for inclusion in this Digest.

2.1.1.1. *Reported cases*

Twenty-one of the cases considered in this Digest are based on reports and records of judicial decisions.

¹⁹ A/CONF.222/17, para. 96.

Cases in which measures taken pursuant to the Organized Crime Convention were challenged

Several reported cases examined in this Digest involved judicial decisions directly concerning cooperation requests made pursuant to the Organized Crime Convention. In particular, this includes cases in which the request was challenged before the courts by the person or persons affected.

Several decisions by courts in Ontario, Canada, relate to the evidence and circumstances of an extradition request made by Slovenia on the basis of the Organized Crime Convention (*Canada-2*). On 17 February 2009, the Superior Court of Justice of Ontario in Guelph ordered the surrender of the accused to Slovenia on the basis that the record of the case contained sufficient evidence to justify the committal order on all charges. The accused appealed, arguing that the order ought to be set aside because the judge erred in her appreciation of the discrepancies in the record of the case. The appeal was dismissed on 17 February 2009, as the Court found that the discrepancies were minor, had been corrected and did not taint the remaining evidence, which was sufficient to justify the committal order. In July 2009, the accused sought judicial review of the Minister of Justice's decision to extradite him to Slovenia, arguing, firstly, that he had been denied natural justice when submissions made in his support had been dismissed and, secondly, that he could not be extradited to a place where, on the balance of probabilities, he could face a risk of persecution. On 17 February 2011, the Court of Appeal of Ontario rejected both arguments and found that the judicial system of Slovenia was sufficiently fair and that extradition to that country would not give rise to any concerns of potential persecution. An application for leave to appeal the decision was submitted on 6 June 2011 and was rejected by the Supreme Court of Canada on 14 July 2011.

Two cases examined in this Digest involved judicial considerations of requests to register restraint orders. This includes a case in which the Central Authority of Brazil submitted a request to the Attorney General of Antigua and Barbuda to have a Brazilian judge's restraint order, made under the Organized Crime Convention and the United Nations Convention against Corruption in relation to numerous persons, entities and assets registered and given full legal effect in Antigua and Barbuda (*Antigua and Barbuda-1*). In another case, the High Court of Antigua and Barbuda granted an application to register a restraint order made in the United States of America concerning funds located in Antigua and Barbuda (*Antigua and Barbuda-2*). One particular basis for the decision concerned the existence of a mutual legal assistance treaty between the two States, along with their obligations to assist each other under article 18 of the Organized Crime Convention.

A foreign restraint order made under the Organized Crime Convention and the Convention against Corruption was the subject of proceedings before the Court of Appeal in London (*United Kingdom-3*). These proceedings followed two letters sent by Kuwait to the United Kingdom of Great Britain and Northern Ireland requesting the restraint of assets of two persons accused of theft of public funds and money-laundering. The accused later unsuccessfully appealed against a decision of the Crown Court to issue a restraint order following the request by Kuwait.

In 2014, a court in Hong Kong, China, considered an application to discharge a restraint order and register an external confiscation order following a request for mutual legal assistance received from Indonesia (*Hong Kong, China-1*). The application of the Organized Crime Convention was discussed in this case in the context of the question of the definition of "realizable property" in the Mutual Legal Assistance in Criminal Matters Ordinance of Hong Kong, China.

A request to freeze bank accounts made by Senegal on the basis of article 18 of the Organized Crime Convention was the subject of decisions by courts in Monaco (*Monaco-1*). The Court of Appeal granted the original request. The Director of Judicial Services of Monaco later asked the Prosecutor General to execute a further request received by the Anti-Illegal Enrichment Court of Senegal, resulting in the freezing of bank accounts. Two companies affected by the decision subsequently lodged a complaint against the freezing of their accounts. The complaint was rejected by the Director of Judicial Services, as was their appeal to the Supreme Court of Monaco.

A decision by the Court of Committal of Malta considered an extradition request received from Chile (*Chile-2*). In the absence of other applicable treaties, the Court turned to the Organized Crime Convention as the sole possible legal basis for the request but ultimately denied the request because of a lack of admissible evidence satisfying the Court that the extradition criteria in terms of article 16 of the Organized Crime Convention had been fulfilled in relation to the offences for which the Chilean Authorities had requested the

suspect and as had been proffered in the Minister's Authority to Proceed. Referring to article 8 of the Extradition Act of Malta, the Court concluded that the prosecution had failed to sufficiently prove that the offences of which the suspect had been accused in Chile were extraditable offences in accordance with the Organized Crime Convention. An appeal by the Attorney General against the decision was rejected.

A request for mutual legal assistance made by the United Kingdom to Monaco on the basis of the European Convention on Mutual Assistance in Criminal Matters and the Organized Crime Convention became the subject of proceedings before the High Court of Justice (*United Kingdom-2*). The claimants (several alleged offenders) sought the quashing of the letter of request, the return of materials obtained by the authorities in Monaco and the destruction of any copies of those materials held by the Serious Fraud Office of the United Kingdom.

In *United States-4*, a case involving the smuggling of migrants, the defendants sought to challenge the admissibility of public documents and business records presented at trial after obtaining the documents through a mutual legal assistance request made by Colombia pursuant to article 18, paragraph 3 (f), of the Organized Crime Convention.

Cases in which the application of the Organized Crime Convention was challenged

Six reported judicial decisions examined in this Digest concern the application of the Organized Crime Convention in relation to a request for international cooperation.

Two decisions by the Supreme Court of British Columbia in Canada relate to an extradition request made by Poland on the basis of article 16 of the Organized Crime Convention (*Canada-1*). After the Supreme Court approved the extradition of the accused in accordance with section 3 of the Extradition Act 1999 of Canada, the accused applied for a stay of proceedings under section 7 of the Charter of Rights and Freedoms of Canada, arguing that the requesting State had misused the Organized Crime Convention as a "back-door" approach to effect his extradition for an offence under domestic Polish law for which no bilateral treaty with Canada existed. In a further decision, the Court dismissed that argument.

The use of the Organized Crime Convention as the legal basis for extradition was successfully challenged in a case heard by the Federal High Court of Nigeria on 1 July 2014 (*Nigeria-1*). In the absence of any other treaty, authorities of the Netherlands attempted to use the Organized Crime Convention as a legal basis for international cooperation with Nigeria. The Federal High Court, however, accepted the position of the accused that the Organized Crime Convention did not qualify as a treaty for the purpose of extradition under Nigerian law.

In another case (*Nigeria-2*), the United States submitted an extradition request to Nigeria on the basis of the Organized Crime Convention and the 1931 extradition treaty between the United States and the United Kingdom,²⁰ which had been made applicable to Nigeria in 1935. The Federal High Court heard arguments by the accused asserting that neither the Organized Crime Convention nor the Extradition Treaty had domestic application in Nigeria and that, as a result, the Court did not have jurisdiction to effect his extradition. The Court, however, concurred with the Government's position that the treaty had become domestic law and thus formed part of the Extradition Decree 1966 of Nigeria.

The application of the Organized Crime Convention and its relationship to domestic law was the subject of a case reported from New Zealand (*New Zealand-1*). It followed a request made by the United States for the extradition of four persons from New Zealand. The persons sought had lodged an appeal against a decision made by the District Court in Auckland, which had ruled that they were eligible for extradition, arguing, inter alia, that the offences identified in the request by the United States were not extraditable offences within the meaning of section 4 of the Extradition Act 1999 of New Zealand. Following the ratification by New Zealand of the Organized Crime Convention, section 101B, which deems certain crimes with transnational aspects to be included in extradition treaties, was inserted into the Extradition Act 1999. The High Court and, later on, the Court of Appeal of New Zealand, examined whether the offences in the United States indictment were extraditable offences, which was ultimately found to be the case.

²⁰ League of Nations, *Treaty Series*, vol. 163, No. 3761. Signed on 22 December 1931; entered into force on 24 June 1935.

The Organized Crime Convention also featured in proceedings before a district court in Massachusetts in May 2014 in which the defendant contested his extradition from Croatia to the United States (*United States-2*). He argued that the charges on which the extradition had been sought and granted were not covered by an existing extradition agreement between the two States. The United States authorities, however, contended that, even if the crime was not covered, the Organized Crime Convention effectively amended the extradition treaty. The Court, by and large, concurred with this position, noting that both States were parties to the Organized Crime Convention and that the Convention, inter alia, mandated that both parties classify money-laundering as an extraditable offence.

The application of the Organized Crime Convention was recently challenged before the International Court of Justice, in a case involving France and Equatorial Guinea (*France-1*). France sought mutual legal assistance on the basis of the Organized Crime Convention and also seized property belonging to Equatorial Guinea in Paris. Equatorial Guinea then brought a case to the International Court of Justice seeking a suspension of the criminal proceedings and preventing France from seizing the property. In June 2018, the International Court of Justice held that it did not have jurisdiction to determine the claims of Equatorial Guinea that the criminal proceedings initiated by France unlawfully interfered with the internal affairs of Equatorial Guinea and that the accused was entitled to immunity. The Court stated that the dispute did not concern the implementation by France of its obligations under the Organized Crime Convention. The Court did, however, hold that it had jurisdiction to determine the claim by Equatorial Guinea that the searches and seizure conducted in Paris had been in breach of the Vienna Convention on Diplomatic Relations. The case was still in progress at the time of finalizing this Digest.

Cases involving miscellaneous aspects of implementation of the Organized Crime Convention

Some cases examined in this Digest involved reported judicial decisions that were not directly linked to the use of the Organized Crime Convention for purposes of international cooperation.

One such case is *Australia-1*, which involved extensive court proceedings in Australia concerning a request for mutual legal assistance made to Australia on the basis of the Organized Crime Convention and article XXII of the Treaty on Extradition between Australia and the Republic of Chile of 1996, which refers to mutual assistance, but the relevant court reports related to civil claims, not to cooperation in criminal matters.

A case submitted by Italy involved a mutual legal assistance request made to Switzerland under the Organized Crime Convention and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (*Italy-5*). The available court report related to a decision from 2018 in which a court in Catania, Italy (Tribunale di Catania, Sezione Misure de Prevenzione) ordered the seizure and confiscation of assets of a person considered to be an associate of an organized criminal group (or mafia-type association).

The Organized Crime Convention also featured in proceedings before the United States Court of Appeals for the Fourth Circuit in Richmond, Virginia (*United States-1*). The claimants in the case appealed a district court judgment concerning the forfeiture of their assets in Hong Kong, China, and New Zealand. One of the arguments related to a potential violation of the fair treatment clause under article 16, para. 13, of the Organized Crime Convention. The Court dismissed the appeal, rejecting the contention that a federal statute disentitling a fugitive from defending property claims against government forfeiture actions is a violation of due process rights. The Court also rejected the jurisdictional challenges as to the Court's order on the assets.

A letter requesting mutual legal assistance on the basis of the Organized Crime Convention and the Convention against Corruption sent by the United Kingdom and an unnamed country became the subject of judicial proceedings in London (*United Kingdom-1*). In this case, it was not the nature of the request that brought the case to the courts, but rather the contents of the letter that had been reported in the press.

A case involving the United States and Liberia, which involved charges of fraud and money-laundering and a request for mutual legal assistance under article 18 of the Organized Crime Convention, is documented in several court decisions from the United States, but the extensive proceedings that were held between 2009

and 2014 did not directly concern the use of the Organized Crime Convention (*United States-3*). This case is featured in more detail in a later part of this Digest.

Mutual legal assistance under the Organized Crime Convention and several other instruments also featured in a case involving Kazakhstan and several European States (*Kazakhstan-1*). The reported decisions in the case related to civil proceedings in the United Kingdom and extradition proceedings under the European Convention on Extradition in France. The Organized Crime Convention was reportedly used by Kazakhstan to request mutual legal assistance from several other States, but further details about those proceedings were not available.

2.1.1.2. Case files received from national authorities

Several case files were made available directly from national authorities, along with permission to use the files for the purposes of this Digest.

The Permanent Mission of Italy to the International Organizations in Vienna provided official prosecution documents relating to the following five cases, which are cited in the list of cases contained in the annex to this Digest:

| | | |
|---------|----------|----------|
| Italy-1 | Italy-3 | Italy-11 |
| Italy-2 | Italy-10 | |

2.1.2. Official reports and submissions

2.1.2.1. Cases reported to the Conference of the Parties to the United Nations Convention against Transnational Organized Crime

A significant number of cases (49 in total) examined in this Digest stem from reports of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, which, at its third session, held in Vienna from 9 to 18 October 2006, requested the Secretariat to compile a catalogue of examples of cases of extradition, mutual legal assistance and other forms of international cooperation based on the Organized Crime Convention.²¹ Three documents cataloguing case examples received from States parties were published in 2008 and 2010. The cases were reported by a range of countries from different regions and involved various kinds of offences. Nearly all of the cases involved requests for extradition or mutual legal assistance; in some cases, the Organized Crime Convention was used as a legal basis alongside other bilateral or multilateral treaties.

The first catalogue of examples was presented at the fourth session of the Conference of the Parties, held in Vienna from 8 to 17 October 2008. The catalogue included the following cases cited in the list of cases contained in the annex to this Digest:

| | | |
|----------|----------|----------|
| Brazil-2 | Brazil-4 | Brazil-6 |
| Brazil-3 | Brazil-5 | Brazil-7 |

²¹ *CTOC/COP/2006/14*, decision 3/2, subpara. (v); see also, Boister, “The cooperation provisions of the UN Convention against Transnational Organised Crime”, p. 56.

A further catalogue of examples was presented at the fifth session of the Conference of the Parties, held in Vienna from 18 to 22 October 2010.²² The following cases featured in that catalogue are examined in this Digest:

| | | | |
|--------------|---------------|---------------|------------------------|
| Armenia-1 | Costa Rica-4 | Costa Rica-15 | New Zealand-5 |
| Brazil-8 | Costa Rica-5 | Costa Rica-16 | Poland-1 |
| Brazil-9 | Costa Rica-6 | Costa Rica-17 | Serbia-1 |
| Brazil-10 | Costa Rica-7 | Costa Rica-18 | Serbia-2 |
| Brazil-11 | Costa Rica-8 | Egypt-1 | Slovenia-1 |
| Brazil-12 | Costa Rica-9 | Estonia-1 | Ukraine-1 |
| Canada-2 | Costa Rica-10 | Lithuania-1 | Ukraine-2 |
| Colombia-1 | Costa Rica-11 | Netherlands-1 | United Arab Emirates-1 |
| Costa Rica-1 | Costa Rica-12 | New Zealand-2 | |
| Costa Rica-2 | Costa Rica-13 | New Zealand-3 | |
| Costa Rica-3 | Costa Rica-14 | New Zealand-4 | |

A corrigendum to the second catalogue of examples was published on 18 October 2010.²³ It contains the following cases examined in this Digest:

| | | |
|---------|---------|---------|
| China-1 | Spain-1 | Spain-3 |
| China-2 | Spain-2 | Spain-4 |

The catalogues of case examples also contain information from some States that did not report specific cases but provided a general account of their use of Organized Crime Convention for the purpose of international cooperation. Some States parties also explained that they had been unable to use the Organized Crime Convention in individual cases or explained why they were unable to report case examples. This information is discussed further in chapter 4 of this Digest.

Moreover, and apart from the reported case examples of international cooperation, there have been individual instances in which States parties have orally presented examples of international cooperation under the Organized Crime Convention to the Conference of the Parties and its working groups.

States parties have also reported cases in other meetings and to UNODC on several other occasions and have submitted case examples for inclusion in the SHERLOC database, which are further outlined below.

2.1.2.2. Cases presented to the United Nations Office on Drugs and Crime

In April 2019, UNODC convened an informal expert group meeting on international cooperation in criminal matters in Vienna to discuss, among other things, the added value of, and the challenges associated with, the use of the Organized Crime Convention as a legal basis for international cooperation. During the meeting, experts shared information on completed and/or ongoing cases in which the Organized Crime

²² CTOC/COP/2010/CRP.5.

²³ CTOC/COP/2010/CRP.5/Corr.1.

Convention had been or was being used as a legal basis for international cooperation. Seven of the cases presented at that meeting are further discussed in this Digest. They are the following:

| | | | |
|---------|---------|---------|--------|
| Italy-4 | Italy-6 | Italy-8 | Peru-2 |
| Italy-5 | Italy-7 | Peru-1 | |

2.1.2.3. *Case summaries delivered directly to author of the present digest*

In late 2019, UNODC and the author of this Digest requested participants of the informal export group meeting held in April 2019 to provide additional cases for inclusion in this Digest.

The Permanent Mission of Mexico to the International Organizations in Vienna responded to that request by providing case summaries of 10 cases recorded between 2012 and 2018. They are the following:

| | | | |
|----------|----------|----------|-----------|
| Mexico-1 | Mexico-4 | Mexico-7 | Mexico-10 |
| Mexico-2 | Mexico-5 | Mexico-8 | |
| Mexico-3 | Mexico-6 | Mexico-9 | |

The Permanent Mission of Italy to the International Organizations in Vienna also responded to the request by providing case summaries of five additional cases recorded between 2014 and 2017. They are the following:

| | | |
|---------|----------|----------|
| Italy-1 | Italy-3 | Italy-11 |
| Italy-2 | Italy-10 | |

2.1.3. **Sharing Electronic Resources and Laws on Crime (SHERLOC) database**

As already mentioned, the SHERLOC knowledge management portal (www.sherloc.unodc.org) was established and is maintained by UNODC to collect and disseminate information, including laws, cases, a directory of central authorities, and references to secondary literature relating to transnational organized crime.. SHERLOC hosts a database containing cases involving a great range of offences relating to organized crime and terrorism. Many of these cases refer to, or involve, provisions under the Organized Crime Convention and its Protocols.

For the purposes of this Digest, the following 12 cases in which the Organized Crime Convention was used as a legal basis for international cooperation were selected from the SHERLOC case law database:

| | | | |
|----------------------|---------------|---------------|-----------------|
| Brazil-1 | El Salvador-1 | New Zealand-1 | United States-1 |
| Chile-1 | Italy-9 | Portugal-1 | United States-2 |
| Dominican Republic-1 | Italy-12 | Romania-1 | United States-3 |

Most of these cases are supplemented in this Digest by judicial decisions or secondary sources.

2.1.4. Secondary sources

Several cases in which the Organized Crime Convention was used as a legal basis for international cooperation have been discussed in the academic literature and in official reports. These sources were consulted to supplement information received from primary sources; no case information in this Digest is based solely on secondary material.

One of the cases examined in this Digest (*El Salvador-1*) is also featured in the *Digest of Organized Crime Cases: A Compilation of Cases with Commentaries and Lessons Learned*, published by UNODC in 2012.

In some instances, news reports were consulted in order to obtain additional information about the facts of some cases and details about the perpetrators, and to validate information about criminal proceedings. This was done to complement information retrieved from other sources, not as a way to identify and add additional cases to this Digest.

The secondary sources consulted in relation to specific cases are set out in the annex to this Digest, which contains a list of all the cases examined in this Digest. Secondary sources relating to the Organized Crime Convention and other matters are identified in the footnotes and in the bibliography.

2.2. Depth and quality

The depth and quality of the cases and other sources used in this Digest vary considerably. Every attempt was made to retrieve information about individual cases from more than one source, but it was generally only possible to do so for several high-profile and/or large-scale cases. As mentioned earlier, wherever necessary or possible, secondary sources were consulted to complement and/or validate the information set out in primary material.

Generally, information concerning cases for which reported judicial decisions were available is of the highest quality, especially insofar as these decisions document the offences, the background of the perpetrators and the criminal proceedings involved. Some decisions also detail the processes and obstacles involved in international cooperation, and some discuss why requests for international cooperation were granted or denied. Some judicial decisions used in this Digest, however, do not directly relate to the use of the Organized Crime Convention but are complementary to information reported elsewhere or are incidental to the international cooperation between the States involved.

The variety of cases that States reported to the Conference of the Parties to the United Nations Convention against Transnational Organized Crime in 2008 and 2010 demonstrate the breadth of situations and offences in which the Organized Crime Convention has been used as a legal basis for international cooperation, as well as the diversity of countries involved. These case reports, however, are generally rather short on detail and contain little information about the offences and the facts of the cases, the specific offences charged, the criminal proceedings that followed and the challenges associated with international cooperation. In some cases, it was possible to complement the reports with information from other sources, but in most cases, that could not be achieved. The same challenge was posed by a number of other cases presented or submitted by States parties, which could not be supplemented or validated by other sources.

In a small number of cases examined in this Digest, it is not clear what specific role the Organized Crime Convention played in the international cooperation between the States involved and whether the Convention was used as the sole basis for international cooperation or was used alongside other bilateral or multilateral treaties. Furthermore, many cases had to be eliminated from the selection for this Digest because there was insufficient information to substantiate that they had involved international cooperation under the Convention. Instances in which the Convention was used in contexts other than international cooperation, or where details about the use of the Convention in those contexts remain unclear, are clearly flagged throughout the Digest.

CHAPTER III.

TYPES OF INTERNATIONAL COOPERATION



3. TYPES OF INTERNATIONAL COOPERATION

Effective international cooperation to prevent and combat transnational organized crime is the principal purpose of the Organized Crime Convention, as stated in its article 1. Such cooperation comprises a range of frameworks, practical measures, and institutional and administrative arrangements that facilitate communication, exchange and collaboration between States parties, and involve their law enforcement, prosecution and judicial authorities, as well as, where applicable, border control agencies and other entities mandated to prevent and combat organized crime.

The specific provisions relating to international cooperation can be found in articles 13 to 21, and 27 of the Organized Crime Convention. They include extradition (art. 16), mutual legal assistance (art. 18), joint investigations (art. 19), law enforcement cooperation (art. 27), transfer of sentenced persons (art. 17), transfer of criminal proceedings (art. 21) and the use of special investigative techniques (art. 20). Some authors have noted that these provisions were the primary motivation of States during the development of the Convention.²⁴

The following sections examine the available cases by type of international cooperation. The requirements under the relevant provisions of the Convention are outlined and relevant cases are discussed either in the context of the specific provisions that were applied or more generally at the end of each section.

3.1. Extradition: article 16 of the Organized Crime Convention

3.1.1. Concept and legal basis

Extradition is a formal process to return or deliver fugitives from the jurisdiction where they are present (the requested State) to the jurisdiction where they are wanted in relation to criminal activities (the requesting State).²⁵ Extradition is aimed at facilitating the requesting State's criminal process; it allows the State to lawfully acquire custody of alleged criminals located in other States in order to exercise its already established criminal jurisdiction.²⁶ Extradition is usually based on a treaty, which may be a bilateral treaty between two States or a multilateral treaty developed by an international or regional organization. In the absence of relevant treaty provisions, there is no obligation under international law to extradite to another State.²⁷

Since the late nineteenth century, States have signed bilateral extradition treaties in their efforts to eliminate safe shelters for serious offenders. The earliest multilateral extradition treaties date back to the 1930s and 1950s.²⁸ In the past, extradition treaties commonly contained a list of extraditable offences, that is, offences for which extradition could be sought or granted. Such established lists created difficulties when a new crime type emerged for which no corresponding extraditable offence could be found. The situation required legislatures to constantly review and amend the list of extraditable offences, which was all the more challenging with the advancement of technology and other social and economic changes.²⁹

²⁴Alexandra V. Orlova and James W. Moore, "'Umbrellas' or 'building blocks'? Defining international terrorism and transnational organised crime in international law", *Houston Journal of International Law*, vol. 27, No. 2 (2005); also cited in Boister, "The cooperation provisions of the UN Convention against Transnational Organised Crime", p. 45.

²⁵UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime* (Vienna, 2016), para. 471.

²⁶Neil Boister, *An Introduction to Transnational Criminal Law*, 2nd ed. (Oxford, Oxford University Press, 2018), p. 353.

²⁷Robert J. Currie and Joseph Rikhof, *International and Transnational Criminal Law*, 2nd ed. (Toronto, Canada, Irwin Law, 2014), p. 478.

²⁸See also Matti Joutsen, "International cooperation against transnational organized crime: extradition and mutual legal assistance in criminal matters", in *Resource Material Series No. 59* (Tokyo, Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, 2003), p. 366.

²⁹UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, para. 472; Currie and Rikhof, *International and Transnational Criminal Law*, p. 482.

For this reason, instead of listing extraditable offences, more recent extradition treaties define extraditable offences by reference to a threshold or minimum penalty or to other criteria for the purpose of establishing double criminality.³⁰ The relevant thresholds may be different depending on the different stages of the prosecution and trial. Defining extraditable offences in this manner obviates the need to list individual offences and renegotiate a treaty or supplement it if both States pass laws dealing with a new type of criminal activity, or if the list inadvertently fails to cover a type of criminal activity punishable by both States.

Multilateral conventions dealing with extradition or including extradition provisions, such as the Organized Crime Convention, provide the legal basis and set basic minimum standards for extradition for the offences that the conventions cover. They also encourage the adoption of a variety of mechanisms designed to streamline the extradition process.³¹

States may introduce domestic laws and regulations that permit extradition even when there is no treaty with the requesting State, and many States have done so.³² Furthermore, in some instances, extradition may take place voluntarily and in the absence of a treaty between the States concerned, subject to the principle of reciprocity.

3.1.2. Structure of article 16

Article 16 of the Organized Crime Convention contains 17 paragraphs, which can be grouped broadly into eight categories:

- Paragraphs 1 and 2 set out the scope of application of article 16.
- Paragraphs 3 and 17 concern the interplay of article 16 with other extradition treaties, including existing and future treaties.
- Paragraphs 4 to 6 relate to the legal bases for extradition, whether treaty-based or not.
- Paragraphs 7 and 8 relate to conditions and requirements of extradition.
- Paragraph 9 concerns custody or other measures against the person whose extradition is sought in the requested State party.
- Paragraphs 10 to 12 set out special provisions concerning the non-extradition of nationals and alternatives provided for in lieu of their extradition.
- Paragraph 13 concerns the treatment and rights of the person sought during the extradition proceedings in the requesting State.
- Paragraphs 14 to 16 deal with situations in which extradition may be refused (anticipated discriminatory treatment or punishment, or political reasons) or may not be refused (fiscal offences) and the relevant consultations involved.

3.1.3. Scope of application of article 16

The obligation to extradite arises in two situations set out in article 16, paragraph 1, as described below.

3.1.3.1. Convention offences (article 16, paragraph 1)

The obligation to extradite applies, first, to the offences covered by the Convention. By reference to article 3, paragraph 1 (scope of application), this includes:

³⁰ Gavan Griffith and Claire Higgins, “Recent developments in the law of extradition”, *Melbourne Journal of International Law*, vol. 6, No. 1 (2005), pp. 37–38.

³¹ UNODC, *Criminal Justice Assessment Toolkit: Cross-Cutting Issues – International Cooperation* (Vienna, 2006), p. 8.

³² David McClean, *Transnational Organized Crime: A Commentary on the UN Convention and its Protocols*, (Oxford, Oxford University Press, 2007), p. 179.

- Offences established in accordance with articles 5 (participation in an organized criminal group), 6 (money-laundering), 8 (corruption) and 23 (obstruction of justice) of the Convention that are transnational (defined in art. 3, para. 2) and involve an organized criminal group (defined in art. 2 (a))
- Serious crimes (defined in art. 2 (b)) that are transnational and involve an organized criminal group

By reference to article 1, paragraph 3, of each of the Protocols to the Convention, the obligation to extradite also applies to offences established in accordance with the provisions of the Protocols to which States are parties.

Article 3, paragraph 1, of the Organized Crime Convention requires that the offences to which the Convention applies must meet two criteria: they must involve an organized criminal group and must be transnational in nature. Under article 34, paragraph 2, these two conditions are not required for the criminalization of offences in the domestic law of each State party, but they are required if States parties seek to use the Convention for international cooperation.³³

The term “organized criminal group” is defined in article 2 (a) as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

Transnational offences

According to article 3, paragraph 2, an offence covered by the Organized Crime Convention is transnational in nature if it is committed:

- (a) In more than one State;
- (b) In one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) In one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) In one State but has substantial effects in another State.

The requirement that the offence for which extradition is sought be “transnational”, as set forth in article 16, paragraph 1), is at the heart of a case reported by Brazil in 2008 (*Brazil-6*). In the case, the Netherlands sought the extradition of a Netherlands national who had been accused of conspiracy and extortion by means of emails. In extradition proceedings before the Supreme Court of Brazil, the defence argued that the alleged offences were not transnational in nature and that extradition should thus be denied. Having regard to articles 3 and 5 of the Organized Crime Convention, the Supreme Court rejected that argument and the extradition request was granted.

Serious crime

Extradition under article 16, paragraph 1, is not limited to offences established in accordance with the relevant provisions of the Organized Crime Convention and its Protocols but, by virtue of article 3, paragraph 1 (b), also extends to serious crime as defined in article 2 of the Convention. According to article 2 (b), serious crime is defined as conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. This requirement ensures that the offence is sufficiently serious to warrant extradition.

The application of the Organized Crime Convention to offences punishable by a maximum deprivation of liberty of at least four years or a more serious penalty was relevant in a case reported by the Netherlands in 2010 (*Netherlands-1*). Authorities of the Netherlands spotted two persons who were being sought by the Dominican Republic in relation to a murder committed by an organized criminal group. The two persons were the subject of an International Criminal Police Organization (INTERPOL) arrest warrant issued by the Dominican Republic. Once informed of their presence in the Netherlands, the Dominican Republic filed an

³³Boister, *An Introduction to Transnational Criminal Law*, p. 84.

extradition request on the basis of article 16. On 1 April 2010, the extradition law of the Netherlands was amended to allow extradition for any offence carrying a penalty of four years or more when committed transnationally by an organized criminal group. The two suspects were arrested on 20 April 2010 and extradited to the Dominican Republic on 9 May 2010 after applying for a shortened procedure.

3.1.3.2. *Beyond the element of transnationality: article 16, paragraph 1*

The extradition obligation under article 16, paragraph 1, applies, secondly, in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State party. Under this alternative, the condition of transnationality of the offence, as described in article 3, paragraph 2, is not strictly necessary for the application of article 16.³⁴ This includes:

(a) Offences established in accordance with articles 5, 6, 8 and 23 of the Convention, where the person who is to be extradited is located in the territory of the requested party, and where the offences involve an organized criminal group;

(b) Serious crime, where the person who is to be extradited is located in the territory of the requested party, and where the offence involves an organized criminal group.

A question that can be raised about the wording of article 16, paragraph 1, is whether the offence must be punishable by four years or more in both cooperating States parties. It has been suggested that the principle of reciprocity in international cooperation would allow the requested State to refuse the request if the offence in question did not qualify as a serious offence under its domestic law.³⁵ The case of “accessory” extradition in accordance with article 16, paragraph 2, of the Convention is addressed below.

The case *Netherlands–I*, discussed above, in which Netherlands authorities extradited two suspects who were accused of murder committed by an organized criminal group, falls into the second category (serious crime, as stated in subparagraph (b) above) insofar as murder is a serious crime punishable by imprisonment of four years or more, the offence involved an organized criminal group and the two suspects were located in the territory of the Netherlands.

3.1.3.3. *Dual criminality*

Both alternatives of article 16, paragraph 1, further require that the offence for which extradition is sought be punishable under the domestic law of both the requesting State party and the requested State party. In other words, this dual criminality requirement (also referred to as double criminality), which is a fundamental principle of extradition law, seeks to ensure that the State in whose territory a person is present will not extradite that person unless the offence for which the person is wanted is qualified as a crime in both States.³⁶ This reflects the general criminal law maxim *nullum crimen sine lege*.³⁷

Dual criminality, for instance, was the basis of an extradition request made by Romania to Colombia on the basis of the Organized Crime Convention (*Romania–I*). The accused persons in the case were involved in a tax fraud, document forgery and money-laundering scheme that resulted in a loss of 870,000 euros by Romania. Some of the transactions involved fraudulent sales of apartments in Colombia, where one of the accused, a Romanian national, was located. Using article 16 as the legal basis, it became possible for Romania to request extradition of that person from Colombia, noting that money-laundering had been made a criminal offence in both States, pursuant to the Organized Crime Convention.

³⁴ CTOC/COP/WG.3/2015/3, para. 29; UNODC, *Manual on Mutual Legal Assistance and Extradition* (Vienna, 2012), paras. 59 and 98.

³⁵ Boister, *An Introduction to Transnational Criminal Law*, pp. 85–86.

³⁶ Stefano Betti, “New prospects for inter-state co-operation in criminal matters: the Palermo Convention”, *International Criminal Law Review*, vol. 3, No. 2 (January 2003), pp. 151 and 162; see also, UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, paras. 474–475.

³⁷ Boister, *An Introduction to Transnational Criminal Law*, p. 359; see also Currie and Rikhof, *International and Transnational Criminal Law*, p. 481.

3.1.3.4. Article 16, paragraph 2, of the Organized Crime Convention

Extradition may be sought for multiple offences, some of which may not meet the dual criminality requirement. In such situations, article 16, paragraph 2, allows for States parties to apply the extradition article to offences other than those set forth in article 16, paragraph 1; as long as the request refers to at least one offence that is extraditable under the Convention, the requested State party may grant extradition for all of the serious offences covered in the request.

This is of great benefit to both requesting and requested States parties, as it allows for extradition to be undertaken pursuant to the Organized Crime Convention in respect of a fugitive or group of fugitives who are alleged to have committed a plethora of offences covering a broad range of criminal activities. It allows just one request to go through to the requested State party, and gives that State party the option of dealing with the request through a single action, thereby greatly streamlining the extradition process.³⁸ This option reflects the so-called “eliminative” or “evaluative” approach, often found in civil law jurisdictions, which makes all sufficiently serious offences extraditable. It has been noted that the evaluative approach fosters a subjective approach to double criminality, automatically includes new crimes with the requisite penalty and broadens the number of extraditable offences.³⁹

3.1.4. Relationship with other extradition treaties

Paragraphs 3 and 17 of article 16 relate to the interplay of article 16 with other extradition treaties, as well as existing and/or future treaties.

3.1.4.1. Inclusion of offences in existing extradition treaties

Article 16, paragraph 3, obliges States parties to treat the offences described in article 16, paragraph 1, as automatically included in all extradition treaties existing between them. The effect of this paragraph is that it alters the scope of existing extradition treaties, bilateral and multilateral, between States parties to the Organized Crime Convention to include the offences referred to in article 16, paragraph 1.⁴⁰ In addition, the parties are obliged to include the offences in all future extradition treaties between them.⁴¹

The effect of article 16, paragraph 3, is perhaps best reflected in an extradition case involving Croatia and the United States (*United States-2*). The accused in this case had set up a fictitious private equity firm in the United States that had defrauded developers by inducing them to make what they had believed to be fully refundable deposits. The accused had claimed that the deposits would be kept safe but, when requested, had then refused to return the developers’ money. Several of the accused had also established different entities and bank accounts in order to conceal the origin of the developers’ deposits and had then used the money for their own benefit. In May 2012, one of the accused was arrested in Croatia and was subsequently extradited to the United States in February 2013. In proceedings before a district court in Massachusetts in May 2014, the defendant argued that his extradition to the United States had been improper because the “rule of speciality” warranted that the offence he was being tried for, conspiracy to commit money-laundering, was deemed to be an extraditable offence by the requesting State and requested State and that the existing extradition agreement between the United States and Croatia dating back to 1902 did not cover that offence. The Government instead argued that that “speciality” challenge must fail for three reasons: (a) Croatia had clearly indicated its intent to extradite the defendant on the charge of conspiracy to commit money-laundering; (b) United States courts could try extradited defendants for crimes that involved similar conduct as that charged in an extradition order; and (c) even if the crime of money-laundering was not covered by the original extradition treaty between the United States and Croatia, the Organized Crime Convention effectively amended the extradition treaty.⁴²

³⁸ UNODC, *Manual on Mutual Legal Assistance and Extradition*, para. 99.

³⁹ Boister, *An Introduction to Transnational Criminal Law*, p. 364.

⁴⁰ McClean, *Transnational Organized Crime*, p. 179.

⁴¹ UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, paras. 494–495.

⁴² United States District Court, District of Massachusetts, *United States v. John Condo et al.*, Criminal Action No. 11-cr-30017-NMG, 7 March 2014.

The Court rejected the defendant's motion to dismiss the charge (and the entire indictment), adopting, by and large, the Government's position. The Court further noted that both States were parties to the Organized Crime Convention and that the Convention, inter alia, mandated that both parties classify money-laundering as an extraditable offence.

An extradition case between the United States and New Zealand (*New Zealand–I*) involved provisions of the Extradition Act 1999 of New Zealand that had been introduced to reflect the obligations arising from article 16, paragraphs 1 and 3, of the Organized Crime Convention. Between 2005 and January 2012, the defendants in the case were involved in copyright violations and money-laundering schemes with global reach, causing losses in excess of 500 million dollars to copyright holders. They operated an online file-sharing system called "Megaupload", which, by January 2012, reportedly had 60 million registered users worldwide. In 2015, the United States sought the extradition of four accused persons who were residing in New Zealand at the time. They were wanted for trial on a range of conspiracy charges relating to racketeering, copyright infringement and wire fraud. On 23 December 2015, the District Court in Auckland, New Zealand, ruled that the men were eligible for extradition under the 1970 treaty on extradition between New Zealand and the United States and the Extradition Act 1999 of New Zealand. The Court noted that United States authorities had presented a large body of evidence to support a prima facie case. The accused appealed against the decision to the High Court, raising more than 300 questions of law: *Ortmann et al. v. United States of America*, [2017] NZHC 189.

One of the key issues in the appeal was the question of whether the offences set out in the indictment were extradition offences within the meaning of section 4 of the Extradition Act 1999 of New Zealand. Section 11 of that Act further states that section 4 may be overridden if an offence is an extradition offence listed in a treaty, such as the extradition treaty between the United States and New Zealand. It is in this context that article 16 of the Organized Crime Convention became relevant. Following ratification by New Zealand of the Organized Crime Convention, the Extradition Amendment Act 2002 of New Zealand was enacted. The amendment involved the insertion into the Extradition Act 1999 of section 101B, which deems certain crimes with transnational aspects to be included in extradition treaties. This includes a range of specified offences under New Zealand law, set out in subsections 101B(1) (a) and (b), as well as (c), which refers to "any offence against any enactment", if the offence is punishable by imprisonment for a term of four years or more, and the offence for which extradition is requested is alleged to involve an organized criminal group, as defined in article 2 (a) of the Organized Crime Convention, and the person whose extradition is sought is, or is suspected of being, in, or on his or her way to, the requested country.

The Court subsequently examined whether the offences in the indictment were extradition offences. One of the main issues was whether the offence of copyright infringement by digital online communication of copyright protected works to members of the public was a criminal offence in New Zealand under the Copyright Act 1994. While the District Court found this to be the case, the High Court disagreed. The High Court did, however, find that the offence of conspiracy to commit copyright infringement under United States law corresponded to the New Zealand offence of conspiracy to defraud, which was an extradition offence under the bilateral treaty. It further held that other charges against the accused corresponded to several serious offences under the Crimes Act. The High Court confirmed that the evidence presented had satisfied a prima facie case against the appellants and ruled that they were eligible to be extradited.

In a further appeal, the New Zealand Court of Appeal overruled the High Court, arguing that extradition for the United States copyright infringement offence was permissible, as the possession of digital copyrighted works with an intention to disseminate them was an equivalent offence in New Zealand, in the case *Ortmann et al. v. United States of America*, [2018] NZCA 233.

A further appeal against the decision that the accused were eligible for extradition to the United States and application for judicial review was heard by the Supreme Court of New Zealand in 2020 in the case *Ortmann et al. v. United States of America*, [2020] NZSC 120. In a major judgment delivered in November 2020, the Supreme Court revisited the extradition request, the double criminality requirement and the eligibility requirements, and examined in detail the offences covered by the Copyright Act 1994 and the Crimes Act. The Supreme Court allowed the judicial review appeals and the appeal against the Court of Appeal's finding that money-laundering was an extradition offence, but it confirmed that the other offences provided extradition pathways.

The purpose of article 16, paragraph 3, of the Organized Crime Convention, while not expressly mentioned, is also reflected in an extradition case involving the United States and Nigeria that was decided by the Federal High Court in Lagos, Nigeria, on 9 January 2012 (*Nigeria-2*): *Attorney General of the Federation v. Rasheed Abayomi Mustapha*. The accused was charged in relation to fraudulent dealing with, and embezzlement of, distribution cheques. Together with other associates, the accused gained access to retirement accounts in the United States by stealing the account owners' personal information, which he then used to take over the accounts and remove over \$750,000. After one of the co-conspirators was arrested in the United States, the accused fled to Nigeria, where he too was arrested. The United States subsequently sought his extradition on the basis of the Organized Crime Convention and the 1931 extradition treaty between the United States and the United Kingdom, which had been made applicable to Nigeria in 1935. In an extradition hearing before the Federal High Court, the accused argued that neither the Organized Crime Convention nor the bilateral extradition treaty had domestic application in Nigeria and that, as a result, the Court did not have jurisdiction to effect his extradition. The Government, in response, argued that the treaty had become domestic law through a legal notice and had been gazetted in 1967 and thus formed part of the Extradition Decree of 1966 of Nigeria. The Court accepted this position and determined that the Decree was enforceable law in Nigeria and that the Court thus had jurisdiction. The Government further argued that the offences identified in the extradition request were extraditable offences under Nigerian law, as well as under the Organized Crime Convention. The Court accepted this position and ultimately ordered that the accused be taken into custody pending his removal to the United States, although it did not comment further on the domestic application of the Organized Crime Convention in Nigeria or on the question of whether the offences were extraditable offences under the Convention. The case nevertheless reflects the relationship between the Organized Crime Convention and existing extradition treaties and how the offences covered by the Organized Crime Convention may be deemed to be part of such treaties, as envisaged by article 16, paragraph 3.

3.1.4.2. *Treaty- and statute-based extradition*

Article 16, paragraph 4

Article 16, paragraph 4, allows, but does not require, States parties to use the Convention as a treaty basis for extradition, if such a treaty basis is a prerequisite to extradition.⁴³ In such circumstances, the Organized Crime Convention may serve as a surrogate extradition convention.⁴⁴

On the basis of the available case reports, it appears that the Organized Crime Convention is regularly used for this purpose, thus enabling extradition between States where extradition would not be possible otherwise.

For example, article 16, paragraph 4, was used to enable the extradition of a suspected migrant smuggler from Italy to the Dominican Republic in 2013. In that case (*Dominican Republic-1*), the accused was involved in a seaborne smuggling venture that departed from the Dominican Republic on 6 March 2011, intending to bring three migrants to Miami, Florida, United States. The vessel capsized en route and while the two smugglers were able to swim to shore, the three migrants, who could not swim, drowned. The smuggler who was later the subject of the extradition was arrested a few days after he returned to the Dominican Republic. He then fled from custody, was arrested again, then was released from pretrial detention on bail and then absconded to Italy. Authorities of the Dominican Republic subsequently issued an INTERPOL Red Notice that led to his arrest in Italy in March 2013. Following the arrest, the Dominican Republic submitted a request for the fugitive's extradition on 1 April 2013. In the absence of any bilateral extradition treaty between the two countries, article 16, paragraph 4, of the Organized Crime Convention was cited as the legal basis for extradition. Italian authorities approved the request on 8 May 2013 and the accused was subsequently returned to the Dominican Republic, where he was tried and convicted. On 25 February 2014, he was sentenced to imprisonment for 15 years on charges relating to the smuggling of migrants.

⁴³ CTOC/COP/WG.3/2015/3, para. 26.

⁴⁴ Boister, *An Introduction to Transnational Criminal Law*, p. 358.

In four cases reported by Spain, the Organized Crime Convention was used as the legal basis for extradition from countries with which Spain had no other avenue to obtain extradition. The first of these cases involved eight persons, nationals of Spain or Ukraine, who were wanted in Spain for their involvement in a shipment of 75 tons of illicit drugs discovered on a ship near the Galician coast (*Spain-1*). The eight persons, who were part of a larger network, were located in Cabo Verde and, in the absence of extradition treaty with that country, the Organized Crime Convention, along with the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, was used to request their extradition. The persons were then taken into custody in Cabo Verde and extradited to Spain, where they were later convicted for their offences. The same approach was taken in a case in which a national of Spain who had been sentenced to 11 years imprisonment was arrested in Ghana and subsequently extradited to Spain on the basis of the two conventions (*Spain-2*). Similarly, a national of the United Kingdom accused of drug trafficking was arrested in the United Arab Emirates in 2009 and subsequently extradited to Spain (*Spain-3*). The fourth of these cases involved a national of Georgia who was the leader of an organized criminal group operating in several successor States of the former Soviet Union (*Spain-4*). He was arrested in the United Arab Emirates and extradited to Spain in 2006.

The question of how the Organized Crime Convention can be used to extradite a fugitive in the absence of a bilateral (or other) extradition treaty between two States stands at the heart of a 2013 case before the Supreme Court of British Columbia, Canada (*Canada-1*). The accused in this case allegedly assisted in the planning of a robbery of a post office vehicle that was carried out by an organized criminal group known as “Willy’s Group” in Gdansk, Poland, on 5 October 1999. It was further alleged that he had been involved in an earlier heist which had led to his association with the group and the 1999 robbery. The accused was later apprehended in Canada. In December 2009, in the absence of any bilateral extradition treaty, Poland sought his extradition on the basis of article 16 of the Organized Crime Convention. On 5 July 2013, the Supreme Court of British Columbia approved the accused’s extradition in accordance with section 3 of the Extradition Act 1999 of Canada: *Republic of Poland v. Grynia*, [2013] BCSC 1203. The accused then applied for a stay of proceedings under section 7 of the Canadian Charter of Rights and Freedoms, arguing that Poland had misused the Organized Crime Convention as a back-door approach to effect his extradition for an offence under domestic Polish law for which no bilateral treaty with Canada existed. The Court did not find an abuse of process and dismissed this argument: *Republic of Poland v. Grynia*, [2013] BCSC 1777. The accused was later extradited to Poland on charges relating to robbery and participation in the activities of, and committing indictable offences for, an organized criminal group.

The Organized Crime Convention was used in lieu of a bilateral extradition treaty in another Canadian case that involved an extradition request from Slovenia (*Canada-2*). The accused in this case was an official who, along with other offenders, had allegedly abused his position by forging official documents and misappropriating government funds by arranging for certain corporations to receive government subsidies in return for kickbacks. Slovenia sought the extradition of the accused from Canada to stand trial on charges relating to corruption, abuse of office and forging of official documents. On 17 February 2009, the Superior Court of Justice of Ontario in Guelph ordered that the accused be surrendered to Slovenia on the basis that the record of the case contained sufficient evidence to justify the committal order on all charges. The accused appealed, arguing that the order ought to be set aside because the judge had erred in her appreciation of the discrepancies in the record of the case. The appeal was dismissed on 17 February 2009, as the Court found that the discrepancies were minor, had been corrected and had not tainted the remaining evidence, which was sufficient to justify the committal order: *Slovenia v. Soba*, [2011] ONCA 137. In July 2009, the accused sought judicial review of the Minister of Justice’s decision to extradite him to Slovenia, arguing, firstly, that he had been denied natural justice when submissions made in support of his appeal had been dismissed; and, secondly, that he could not be extradited to a place where, on the balance of probabilities, he could face a risk of persecution. On 17 February 2011, the Court of Appeal of Ontario rejected both arguments and found that the judicial system of Slovenia was sufficiently fair and would not give rise to any concerns about the potential for persecution: *Slovenia v. Soba*, [2011] ONCA 206. An application for leave to appeal this decision, submitted on 6 June 2011, was rejected by the Supreme Court of Canada on 14 July 2011: *Soba v. Slovenia*, [2011] SCCA 177.

The way in which the Organized Crime Convention can enable extradition between States that have no bilateral treaties and that are not both parties to another (regional) extradition convention is perhaps best

demonstrated in a 2007 case involving the United Arab Emirates and the Netherlands (*United Arab Emirates-1*). The extradition request made by the United Arab Emirates followed an armed robbery of a jewellery store in the Wafi shopping centre in Dubai, United Arab Emirates, on 15 April 2007. The suspect in this case was believed to be part of the notorious group known as the Pink Panthers. This organized criminal group specialized in thefts and robberies from jewellery stores in a range of countries and is believed to currently have some 800 members and to have been responsible for nearly 300 robberies in 35 countries since 1999. The jewellery and watches stolen from the store in Dubai in April 2007 were valued at 14.7 million United Arab Emirates dirhams. When the United Arab Emirates first requested extradition of the suspect, the Netherlands refused the request in the absence of any legal basis to grant extradition. Subsequently, on 7 May 2007, the United Arab Emirates ratified the Organized Crime Convention and resubmitted its extradition request to the Netherlands. In turn, the High Court of the Netherlands in The Hague granted the request on the basis of the Convention and the suspect was extradited in February 2009. Subsequent investigations, however, revealed that the person had not been involved in the heist.

Article 16, paragraph 5

The use of the Organized Crime Convention as a legal basis for extradition is optional. The law of some States parties prevents the use of the Convention as a legal basis for extradition in the absence of other relevant treaties between the requesting and the requested State. Under article 16, paragraph 5 (a), States parties for which a treaty basis is a prerequisite to extradition are required to notify the Secretary-General of the United Nations as to whether or not they will permit the Organized Crime Convention to be used as a treaty basis for extradition. By 2007, 21 States parties had declared that they would accept the Organized Crime Convention as a basis for extradition; four had indicated that they would not.⁴⁵ As at 4 October 2016, 31 States parties had filed formal notifications under article 16, paragraph 5 (a), that they would use the Organized Crime Convention as the legal basis for extradition, with some specifying additional conditions, and 14 States parties had declared that they would not use the Convention as the legal basis or had not expressly declared whether or not they would do so.⁴⁶ It has been suggested that the majority of States parties have made no statement either way, possibly because they may be able to do so on the basis of their legislation but do not want to commit themselves, or because they would insist on reciprocity.⁴⁷

It is not generally possible to effect extradition from another State party that makes extradition conditional on an existing treaty and does not accept the Organized Crime Convention as the legal basis. This problem arose, for instance, when, in 2006 and 2008, Lithuania sought the extradition from Kuwait of one of its citizens who was wanted on charges relating to participating in an organized criminal group, violating public order and involving a child in a criminal act (*Lithuania-1*). The extradition request was made solely on the basis of the Organized Crime Convention and was rejected because Kuwait, unlike Lithuania, did not accept the Organized Crime Convention as a legal basis for international cooperation.

⁴⁵ McClean, *Transnational Organized Crime*, p. 180; those countries are listed in footnotes 16 and 17.

⁴⁶ *CTOC/COP/WG.3/2016/CRP.1*, paras. 4–6.

⁴⁷ Boister, “The cooperation provisions of the UN Convention against Transnational Organised Crime”, p. 55.

FEATURED CASE 1: NIGERIA-1

A similar position was expressed in a decision by the Federal High Court of Nigeria dated 1 July 2014 (*Nigeria-1*). The decision related to a request made by the Netherlands for the extradition of an accused person sought on charges relating to trafficking in persons, the smuggling of migrants, document fraud, abduction of minors and participating in an organized criminal group. As part of an organized criminal group, the accused had allegedly recruited six women of approximately 25 years of age in Nigeria, provided them with accommodation, arranged for their transportation, provided them with fraudulent documents and instructed them to apply for asylum upon arrival in the Netherlands.

The Netherlands authorities later uncovered the group as part of Operation Koolvis. Three other members of the group were charged, convicted and sentenced to terms of imprisonment ranging from 7 to 15 years. An arrest warrant for the accused was issued by the Netherlands authorities and communicated to Nigeria through the Netherlands embassy in Abuja. The documents were accompanied by an extradition request dated 19 June 2012.

The application for extradition was heard in the Federal High Court on 1 July 2014: *Attorney-General v. Edegbe*. In their submission, the Nigerian authorities asked the Court to recognize that the United Nations Convention against Transnational Organized Crime had become part of the domestic law of Nigeria, and stated that the extradition of the person sought was predicated on article 16, paragraph 1, of the Convention. It further noted that the offences covered by Netherlands law identified in the extradition request were also criminalized under Nigerian law and thus met the dual criminality requirement. The person sought asked the Court to consider whether there was an extradition treaty between Nigeria and the Netherlands, whether the Organized Crime Convention and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and Protocol against the Smuggling of Migrants by Land, Sea and Air were enforceable law in Nigeria and whether the Court had jurisdiction in the matter. The person sought argued that there was no enforceable extradition treaty between Nigeria and the Netherlands, as required by the Extradition Act of Nigeria. The person sought contended that, even if the Organized Crime Convention did constitute domestic law, it did not satisfy section 1 of the Extradition Act, which required an extradition treaty or agreement between Nigeria and the requesting country. Further to his other arguments, the person sought contended that, in the absence of a relevant treaty between the two States, the Court could not exercise jurisdiction.

The central question in the case was, given that Nigeria had signed the Organized Crime Convention on 13 December 2000, whether the Convention should qualify as a treaty for the purpose of extradition. The Court answered the question in the negative. It pointed out that Nigeria had several extradition treaties with other countries and that the treaties had been given effect in domestic law through acts of parliament. The Court stressed that the Organized Crime Convention, unlike several other international conventions Nigeria was party to, had not been given domestic effect in such a way. The Court stated that a treaty, until it was made enforceable by an act of the National Assembly, could not apply in any proceedings before the courts in the country.

In support of its finding, the Court referenced the case *Udeozor v. Federal Republic of Nigeria*, (2007) 15 NWLR Part 1058, section 499, in which the Court of Appeal of Nigeria held (at sect. 522) that the right of one State to request of another State the extradition of a fugitive accused of a crime, and the duty of the State in which the fugitive finds asylum to surrender the said fugitive, exist only when created by a treaty. The Court further cited the case of *Abacha v. Fawehinmi*, (2005) 51 WRN 29, in which the Supreme Court of Nigeria (at sects. 82 and 83) stated that, before its enactment into law by the National Assembly, an international treaty had no such force of law as to make its provisions justiciable in Nigerian courts. In the present case, the Federal Court in Abuja concluded that it had no jurisdiction over the case and refused to consider the Government's request for the surrender and extradition of the accused.

States parties that can extradite pursuant to a domestic statute (i.e., those that do not require a treaty basis for extradition) are required under article 16, paragraph 6, to include the offences described in article 16, paragraph 1, as extraditable offences under their applicable statute governing international extradition.

3.1.5. Conditions and requirements of extradition

3.1.5.1. Conditions for extradition

Article 16, paragraph 7, of the Organized Crime Convention provides that grounds for refusal and other conditions for extradition, such as the requirement of a minimum penalty for an offence to be considered as extraditable, are governed by the applicable extradition treaty in force between the requesting and requested States or, otherwise, the law of the requested State. In some States, statutory grounds for refusal of extradition are linked to the constitutional obligations in relation to the protection of fundamental rights and freedoms of the person sought for extradition.⁴⁸

3.1.5.2. Evidentiary issues: article 16, paragraph 8

The differences between prosecutorial practices under common law systems and those under civil law systems can make effective interregional and international cooperation difficult. In the field of extradition, such differences are even more acute in relation to the documents to be presented to the requested State and the evidentiary requirements for granting an extradition request, especially in complex cases. In particular, the requirement of many common law jurisdictions to provide the courts of the requested country with a prima facie case is often regarded by civil law jurisdictions as a major barrier to effective cooperation.⁴⁹

Modern extradition practice has been to simplify requirements in respect of the form and channels of transmission of extradition requests, as well as evidentiary standards for extradition. Accordingly, article 16, paragraph 8, provides that States parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of the offences set forth in article 16, paragraph 1.⁵⁰ According to the *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, one example of implementation of article 16, paragraph 8, would be speedy and simplified procedures of extradition, subject to the domestic law of the requested State party, for the surrender of persons sought for the purpose of extradition, subject to the agreement of the requested State party and the consent of the person in question. The consent, which should be expressed voluntarily and in full awareness of the consequences, should be understood as being in relation to the simplified procedures and not to the extradition itself.⁵¹

The evidentiary threshold required to authorize extradition on the basis of the Organized Crime Convention was the subject of proceedings before courts of Malta following an extradition request made by Chile (*Chile-2*). The case involved a fraudulent investment (or “Ponzi”) scheme that resulted in charges relating to financial fraud and money-laundering. In 2011, the accused person in the case, along with his mother, founded an investment and wealth management firm that offered interest payments to investors. By the time the Chilean authorities charged the accused many years later, the scheme was worth some 40 million dollars. The accused then fled to and was arrested in Malta. On 7 April 2017, the Court of Committal of Malta determined the extradition request of Chile. In the absence of other applicable treaties, the Court turned to the Organized Crime Convention as the sole possible legal basis for the request: *Police v. Rajii*. The Court denied the request because of a lack of admissible evidence satisfying the Court that the extradition criteria in terms of article 16 of the Organized Crime Convention had been fulfilled in relation to the offences for

⁴⁸ UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, para. 499.

⁴⁹ UNODC, *Manual on Mutual Legal Assistance and Extradition*, para. 15; McClean, *Transnational Organized Crime*, p. 182; Currie and Rikhof, *International and Transnational Criminal Law*, pp. 484–485.

⁵⁰ UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, para. 516.

⁵¹ *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, p. 162.

which the Chilean authorities had requested the suspect and as had been proffered in the Minister's Authority to Proceed. Referring to article 8 of the Extradition Act of Malta, the Court concluded that the prosecution had failed to sufficiently prove that the offences for which the suspect had been accused in Chile were extraditable offences in accordance with the Organized Crime Convention. The lack of admissible evidence, analysed from the perspective of the law on evidence and procedure of Malta, was based on three considerations: (a) witnesses' declarations had not been confirmed on oath; (b) the person translating the documents forwarded by the Chilean authorities had not confirmed on oath that they were faithful translations of the original; and (c) most of the testimonies had been given by persons deemed to be accomplices under Maltese law and were thus inadmissible. The Attorney General subsequently appealed the order rejecting the extradition request, arguing, in general terms, that the evidentiary requirements should be interpreted less restrictively, suggesting that the Court of Committal should merely determine on a prima facie basis whether the requested person had a case to answer and whether the offences were extraditable offences at law. On 5 November 1998, the Court of Criminal Appeal rejected those arguments, stating that, on a practical level, that would mean that a Maltese court would be rendered irrelevant, as it would have to accept all that the Attorney General declared to be admissible and acceptable and stop at that, which would usher in an era in which one does not need the courts anymore. The Court thus upheld the essential function of the judiciary in extradition proceedings under Maltese law and, by extension, the separation of powers. The case also highlighted the difficulties faced by requesting States in fulfilling high evidentiary standards under the domestic law of the requested State in extradition cases.

3.1.6. Measures against persons whose extradition is sought

Provisions on provisional arrest and detention pending extradition are standard features of extradition treaties.⁵² Accordingly, article 16, paragraph 9, of the Organized Crime Convention provides that the requested State party may take a fugitive into custody or take other appropriate measures to ensure his or her presence for the purposes of extradition.⁵³ For States that consider the Convention as a treaty basis for extradition (art. 16, para. 4), article 16, paragraph 9, provides the treaty basis needed for the provisional arrest of a person pending the outcome of extradition proceedings.⁵⁴

Given the available case law, it appears to be common practice for States that accept extradition requests received on the basis of the Organized Crime Convention to place the person sought into custody to facilitate that person's extradition to the requesting State. In four cases reported by Spain, for instance, it was expressly stated that the relevant persons had been arrested by the requested States, namely, Cabo Verde (*Spain-1*), Ghana (*Spain-2*) and the United Arab Emirates (*Spain-3* and *Spain-4*).

These cases need to be differentiated from those in which the arrest preceded the extradition request by another country, that is, where the requesting country became aware of the person's location through the arrest and subsequently sought that person's extradition (see, for example, *Dominican Republic-1*, *Netherlands-1* and *Nigeria-2*).

3.1.7. Non-extradition of nationals and alternatives provided for in lieu of their extradition

Many States are reluctant to extradite their own nationals; some have incorporated a prohibition from doing so in their domestic law, while some are even constitutionally prohibited from extraditing their nationals.⁵⁵ The rationale for such a view, it has been noted, is a mixture of the obligation of a State to protect its citizens, a lack of confidence in the fairness of foreign legal proceedings, the many disadvantages that defendants

⁵² UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, para. 521.

⁵³ See also, UNODC, *Manual on Mutual Legal Assistance and Extradition*, paras. 57–58.

⁵⁴ McClean, *Transnational Organized Crime*, p. 183; Joutsen, "International cooperation against transnational organized crime", pp. 375–376.

⁵⁵ See also, Currie and Rikhof, *International and Transnational Criminal Law*, p. 480.

face when defending themselves in a foreign legal system and the many disadvantages of being in custody in a foreign country.⁵⁶

Article 16, paragraph 10, of the Organized Crime Convention provides that, where a requested State party does not extradite a person found in its territory for an offence referred to in article 16, paragraph 1, on the grounds that the person is one of its nationals, that State shall, at the request of the State party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. This reflects the established principle of *aut dedere aut judicare*, namely, the obligation to either extradite or prosecute. Article 16, paragraph 10, does not go so far as to compel a State to prosecute. Instead, it compels the requested State that refuses extradition, when requested by the State seeking extradition, to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities are to determine whether to proceed with a prosecution and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State party. This means that the State in question should make an earnest effort to bring the suspect to justice.⁵⁷ The States parties concerned are to cooperate with each other, in particular on procedural and evidentiary aspects, so as to ensure the efficiency of future potential prosecutions.⁵⁸

The difficulty of successfully mounting a prosecution in these types of cases is of course compounded by the fact that the crimes are not perpetrated in the State party where the suspect currently resides. Differences between legal traditions and systems where the investigation is conducted and those where the case is to be tried can further compound the problem. This is particularly the case if there is a question as to whether the requested State has the jurisdiction to prosecute the case domestically. Mutual legal assistance should be utilized in cases of this type to aid in the proposed prosecution in the requested State. Evidence gathered by the requesting State can be provided, and any additional evidence can be acquired, through additional mutual legal assistance requests.⁵⁹

No cases were found or reported concerning the practical application of article 16, paragraph 10, of the Organized Crime Convention.

In cases where the requested State refuses to extradite a person on the grounds that the person is one of its own nationals, the State is often seen, under binding international legal instruments, to have an obligation to submit the person for prosecution upon request.

Article 16, paragraph 11, refers to the possibility of temporary surrender of the person on the condition that he or she will be returned to the requested State party for the purpose of serving the sentence imposed. This option can serve as a tool to overcome the reluctance of some States to extradite their own nationals. The text of this provision is flexible, allowing the two cooperating States to determine the precise conditions, which could, for example, include time limits on the commencement of proceedings in the requesting State, the availability of lawyers from the requested State, and the circumstances and conditions of provisional custody.⁶⁰

No cases were found or reported concerning the practical application of article 16, paragraph 11, of the Organized Crime Convention.

Article 16, paragraph 12, calls upon a State party that has denied, on the grounds of nationality, a request by another State party to extradite a fugitive to serve a sentence, to consider enforcing the sentence itself. It is for the law of the requested State to determine, for example, the possibility of early release or parole or the effect of any general amnesty. The enforcement of the foreign sentence is to be without prejudice to the principle of double jeopardy (*ne bis in idem*).⁶¹

⁵⁶ Joutsen, "International cooperation against transnational organized crime", p. 369.

⁵⁷ Ibid., p. 370. See also Boister, *An Introduction to Transnational Criminal Law*, p. 371.

⁵⁸ UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, para. 500.

⁵⁹ UNODC, *Manual on Mutual Legal Assistance and Extradition*, para. 109.

⁶⁰ Ibid., para. 110; [CTOC/COP/WG.3/2018/2](#), paras. 41–42.

⁶¹ [CTOC/COP/WG.3/2018/2](#), para. 43. See also *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, p. 163.

No cases were found or reported concerning the practical application of article 16, paragraph 12, of the Organized Crime Convention.

3.1.8. Treatment and rights of persons whose extradition is sought

Article 16, paragraph 13, of the Organized Crime Convention refers to rights with regard to due process and the fairness of the domestic extradition proceedings in the requested State party, reading as follows:

Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

In many countries, certain rights and guarantees that are applicable under the domestic legal systems to ordinary criminal proceedings are normally considered to be extendable, or tailor-made, to other judicial proceedings, including extradition. The trend towards strengthening the rights and legal position of individuals in proceedings relating to international cooperation, including extradition proceedings, was reflected in the outcome document of the sixteenth Congress of the International Penal Law Association, held in Budapest from 5 to 11 September 1999, which reads:

In extradition proceedings and in mutual assistance proceedings that involve coercive measures in the requested State, the individuals involved in such proceedings should have the following minimum rights:

- (a) The right to be informed of the charges against them and of the measures that are requested, except where providing such information is likely to frustrate the requested measures;
- (b) The right to be heard on the arguments they invoke against measures on international cooperation;
- (c) The right to be assisted by a lawyer and to have the free assistance of a lawyer if he does not have sufficient means to pay for his own lawyer, as well as the right to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (d) The right to expedited proceedings;
- (e) In case of detention for the purpose of extradition, the individual subject to this procedure should have the same rights as any other person who is deprived of his liberty in a domestic criminal case.⁶²

As indicated elsewhere in this Digest, in a case before the United States Court of Appeals for the Fourth Circuit in Richmond, Virginia (*United States-1*), the claimants appealed a district court judgment concerning the forfeiture of their assets in Hong Kong, China, and New Zealand, with one of their arguments relating to a potential violation of the fair treatment clause under article 16, paragraph 13, of the Organized Crime Convention. The Court dismissed the appeal, rejecting the contention that a federal statute disentitling a fugitive from defending property claims against government forfeiture actions was a violation of due process rights. The Court also rejected the jurisdictional challenges as to the Court's order on the assets.

3.1.9. Refusal of extradition

3.1.9.1. Discrimination

Article 16, paragraph 14, of the Organized Crime Convention provides that nothing in the Convention is to be interpreted as imposing an obligation to extradite if the requested State party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions, or that compliance with the request would cause prejudice to that person's position for any one of those reasons.⁶³ This provision,

⁶² CTOC/COP/WG.3/2018/5, paras. 15–16.

⁶³ See also, UNODC, *Manual on Mutual Legal Assistance and Extradition*, paras. 115–119.

which reflects provisions under the Convention relating to the Status of Refugees,⁶⁴ preserves the ability of the requested State party to deny extradition on such grounds, unless such grounds for refusal are not provided for in its extradition treaty in force with the requesting State party, or in its domestic law governing extradition in the absence of a treaty. It is worthy to note in this context that the Organized Crime Convention does not make reference to political offences as grounds for refusing extradition.⁶⁵

While none of the cases consulted for the purpose of this Digest involved a situation where the requested State refused extradition on any of the grounds listed in article 16, paragraph 14, an issue of this kind was raised in an application for judicial review to the Court of Appeal of Ontario, Canada, by a person whose extradition from Canada was sought by Slovenia (*Canada-2*). In *Slovenia v. Soba*, [2011] ONCA 206, a case discussed at more length above, the applicant suggested that he might face a risk of persecution in Slovenia should he be extradited. In this context, he argued that section 44 (1) (b) of the Extradition Act 1999 of Canada prohibited extradition to a place where the persons faced a mere risk of persecution and that the balance of probabilities would suffice to prove that risk. The Court rejected this argument and found that the judicial system of Slovenia was sufficiently fair and would not give rise to any concerns of the potential for persecution. An application for leave to appeal this decision was rejected: *Soba v. Slovenia*, [2011] SCCA 177.

3.1.9.2. Fiscal offences

Historically, many extradition treaties have excluded fiscal offences from the scope of extraditable offences.⁶⁶ Article 16, paragraph 15, of the Organized Crime Convention, however, provides that States parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters. This is particularly important because many cases of transnational organized crime have fiscal implications.⁶⁷ States parties must therefore ensure that no such ground for refusal may be invoked under its extradition laws or treaties.⁶⁸

No cases were found or reported concerning the practical application of article 16, paragraph 15, of the Organized Crime Convention.

3.1.9.3. Consultations prior to refusal of extradition

Article 16, paragraph 16, provides that, where appropriate, the requested State party shall consult with the requesting State party before refusing extradition. This process could enable the requesting State party to present additional information or explanations that may result in a different outcome.⁶⁹

No cases were found or reported concerning the practical application of article 16, paragraph 16, of the Organized Crime Convention.

3.1.10. Other extradition cases

In addition to the cases outlined above, the Organized Crime Convention has been used as a legal basis for extradition in a range of other cases outlined in more detail in other parts of this Digest. This includes the extradition from Monaco to Brazil of a person wanted for the fraudulent administration of a financial institution and corruption (*Brazil-3*), the extradition from the Dominican Republic to Chile of the ringleader of a migrant smuggling network that brought nationals of Colombia and the Dominican Republic to Chile (*Chile-1*), the extradition of a person from the Netherlands who was wanted in Peru on charges relating to

⁶⁴ United Nations, Treaty Series, vol. 189, No. 2545. Opened for signature 28 July 1951; entered into force 22 April 1954. See also, UNODC, *Manual on Mutual Legal Assistance and Extradition*, paras. 125–128.

⁶⁵ Joutsen, “International cooperation against transnational organized crime”, p. 371; Griffith and Higgins, “Recent developments in the law of extradition”, pp. 41–42.

⁶⁶ See also, Griffith and Higgins, “Recent developments in the law of extradition”, pp. 35–37.

⁶⁷ Boister, *An Introduction to Transnational Criminal Law*, p. 375.

⁶⁸ UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, para. 509.

⁶⁹ *Ibid.*, para. 511; UNODC, *Manual on Mutual Legal Assistance and Extradition*, para. 129.

drug trafficking and money-laundering (*Peru-2*), the extradition from the United States of a person accused of conspiracy to commit credit card fraud in Slovenia (*Slovenia-1*), and the extradition from Estonia of three persons wanted for computer-related bank fraud in the United States (*Estonia-1*).

In a case reported by Ukraine, the Office of the Prosecutor General of Ukraine sought the extradition of a Ukrainian woman wanted on charges of trafficking in persons, smuggling of migrants, abuse of office and knowingly using fraudulent documents (*Ukraine-2*). The person was residing in the United Arab Emirates at the time and a formal request for extradition using the Organized Crime Convention as the legal basis was transmitted in March 2010. At the time that the case was reported, the response to the request was still pending.

Mexico submitted a total of nine cases to the author of this Digest, in which the Organized Crime Convention, along with a bilateral extradition treaty, was used as the legal basis for extradition requests sent to the United States. Seven of these cases involved members of organized criminal groups involved in trafficking drugs from Mexico to the United States and laundering proceeds of crime in the reverse direction (*Mexico-1* to *Mexico-7*). One case (*Mexico-8*) concerned the member of a migrant smuggling group and another case related to a person involved in computer-related fraud (*Mexico-9*).

Prosecution authorities from Italy reported a case in which extradition was sought from Egypt of a man accused of participating in an organized criminal group involved in the smuggling of migrants (*Italy-3*). In another case, Italy used the Organized Crime Convention to request extradition and mutual legal assistance from Libya (*Italy-10*). The person whose extradition was sought was charged for his role in an organized criminal group engaged in trafficking and illegally recycling diesel fuel from Libya. It was later revealed that the person had been prosecuted for similar offences in Libya, and through the mutual legal assistance request, Italy sought to obtain additional documents concerning the investigation in Libya and to obtain access to computers, telecommunications and bank documents associated with that person.

3.2. Mutual legal assistance: article 18 of the Organized Crime Convention

3.2.1. Concept and legal basis

Mutual legal assistance is a vital tool of international criminal justice cooperation in combating transnational organized crime. Broadly, mutual legal assistance, often referred to by the acronym MLA, enables States to receive and provide assistance in gathering evidence for investigations and criminal prosecutions, including where coercive measures are required.

In order to allow law enforcement and judicial authorities to collaborate internationally, States have enacted laws permitting them to provide such cooperation and have increasingly resorted to treaties enabling mutual legal assistance in criminal matters, such as the Organized Crime Convention. Such treaties commonly list the kind of assistance to be provided, the rights of the requesting and requested States relative to the scope and manner of cooperation, the rights of alleged offenders and the procedures to be followed in making and executing requests. Information-sharing and agency-to-agency communication are also important for facilitating mutual legal assistance and may make it possible to provide assistance without a formal request.

Article 18 of the Organized Crime Convention contains detailed provisions concerning mutual legal assistance in investigations, prosecutions and judicial proceedings concerning the offences covered by the Convention. The article sets out types of mutual legal assistance and procedures in detail, and for this reason has been referred to as a “mini mutual legal assistance treaty” in its own right.⁷⁰ If the parties are not bound by a treaty, then the procedures in article 18 apply. If there is a treaty, the parties can still agree to apply the procedures under article 18 where it is easier to do so. Article 18, it has been noted, is an attempt to overcome the problems of long-windedness and obstructive formality inherent in rogatory processes that require

⁷⁰ UNODC, *Manual on Mutual Legal Assistance and Extradition*, para. 4; [CTOC/COP/WG.3/2015/3](#), paras. 25 and 27; Boister, “The cooperation provisions of the UN Convention against Transnational Organised Crime”, p. 52.

the use of diplomatic channels to funnel requests for assistance and the use of foreign courts to supervise and authenticate the taking of evidence. It is aimed at doing so among a large group of States parties that do not have extant legal assistance arrangements of a more direct and informal kind.⁷¹

3.2.2. Scope of application of article 18

Article 18, paragraph 1, establishes the scope of the obligation to provide mutual legal assistance. States parties are required to provide the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention, as provided in article 3. This includes:

- Offences established in accordance with articles 5, 6, 8 and 23 that are transnational (defined in art. 3, para. 2) and involve an organized criminal group (defined in art. 2 (a))
- Serious crimes (defined in art. 2 (b)) that are transnational and involve an organized criminal group
- Offences established in accordance with the three Protocols to the Convention, to which States are parties

In addition, States parties are obliged by article 18, paragraph 1, to reciprocally extend to one another similar assistance where the requesting State has reasonable grounds to suspect that the offence as referred to in article 3, paragraph 1 (a) or (b), is transnational in nature. Under article 3, the Organized Crime Convention applies where the offence in question is transnational in nature and involves an organized criminal group. In contrast, article 18, paragraph 1, requires the provision of mutual legal assistance where the requesting State party has reasonable grounds to suspect that the offence is transnational in nature and involves an organized criminal group.⁷² The mere fact that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State party constitutes in itself sufficient reasonable grounds to suspect that the offence is transnational in nature. This allows for assistance to be provided in the early phase of investigations when the evidentiary basis of the commission of an offence covered by the Convention and its Protocols may still be weak.⁷³ It sets a lower evidentiary standard intended to facilitate assistance requests for the purpose of determining whether elements of transnationality and organized crime are present and whether international cooperation may be necessary and may be sought under the Convention for subsequent investigative measures, prosecution or extradition.⁷⁴

Article 18, paragraph 2, provides that mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10.⁷⁵

Article 18, paragraphs 6 and 7, address the interplay between the Organized Crime Convention and bilateral and multilateral mutual legal assistance treaties. The Convention does not override any existing mutual legal assistance treaty already in place between State parties (art. 18, para. 6). Instead, the Convention gives States parties the option to use article 18, paragraphs 9 to 29, if it would facilitate cooperation. Where no other agreement binds the parties, article 18, paragraph 7, encourages States to use the provisions under paragraphs 9 to 29 as a framework for mutual legal assistance. If a State has ratified the Convention, it is bound by those obligations that are viewed as non-discretionary. For example, article 18, paragraph 8, provides that States parties are not to decline a mutual legal assistance request on the ground of bank secrecy.⁷⁶

⁷¹ Boister, “The cooperation provisions of the UN Convention against Transnational Organised Crime”, pp. 52–53.

⁷² UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, para. 547.

⁷³ [CTOC/COP/WG.3/2015/3](#), para. 31.

⁷⁴ UNODC, *Manual on Mutual Legal Assistance and Extradition*, paras. 61–62; UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, paras. 548–549.

⁷⁵ UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, para. 552.

⁷⁶ UNODC, *Manual on Mutual Legal Assistance and Extradition*, para. 51.

3.2.3. Scope and types of mutual legal assistance

Article 18, paragraph 3, of the Organized Crime Convention sets forth eight specific types of mutual legal assistance that a State party must be able to provide.⁷⁷ This list is not exhaustive and extends to any other type of assistance that is not contrary to the domestic law of the requested State party (art. 18, para. 3 (i)). While not all reported cases examined in this Digest contain specific details about the type or types of mutual legal assistance sought, the following sections seek to give some insight into the different kinds of assistance afforded by States parties.

3.2.3.1. Taking evidence or statements from persons

In cases involving transnational organized crime, witnesses and victims of a crime, along with other persons who have relevant information and may need to be interviewed, are frequently located abroad. This makes it necessary to ask the State where those persons are located to take evidence or statements from that person (art. 18, para. 3 (a)). As evidenced by the available cases, such requests are frequently made using the Organized Crime Convention as the legal basis.

For example, in a case involving the laundering of proceeds deriving from drug trafficking through foreign banks and offshore companies, Brazil sought mutual legal assistance from as many as 23 other States. Thirteen of the requests were made on the basis of the Organized Crime Convention to other States parties, asking them to hear witnesses, provide banking information relating to the defendants and freeze bank accounts (*Brazil-2*). Although some requests were still pending at the time that this case was reported, Brazilian authorities stressed that the information thus obtained was vital to enabling the commencement of criminal proceedings against the defendants and could not have been obtained through channels other than the Organized Crime Convention.

In a mutual legal assistance request addressed to Brazil, Swiss prosecutors urgently sought the hearing of a witness residing in Brazil at that time (*Brazil-7*). The witness had vital information for criminal proceedings pending in Switzerland. The Brazilian central authority specifically advised the Swiss authorities to transmit the request on the basis of the Organized Crime Convention in order to eliminate bureaucratic delays and speed up the process within Brazil. Once received, the request was swiftly forwarded to the public prosecution authority and was executed within the time limit stipulated by Switzerland.

In November 2009, New Zealand authorities received a request from Romania for mutual legal assistance on the basis of the Organized Crime Convention (*New Zealand-2*). The case involved allegations of fraud and Romania sought statements from several victims residing in New Zealand and sought to obtain relevant supporting documentation. New Zealand accepted the request, conducted the relevant inquiries and transmitted the documentation to Romania in April 2009.

New Zealand similarly sought statements from a number of Canadian nationals who were witnesses in a case involving drug-related offences (*New Zealand-5*). Relying in part on the circumstance that both States were parties to the Organized Crime Convention, Canada made the relevant inquiries and transmitted the information to New Zealand in April 2004.

Obtaining witness statements was also part of a request for mutual legal assistance sent by the United Kingdom to China (*China-2*) in a tax fraud case. Upon receipt of the request, Chinese authorities deemed the request to be in accordance with the Organized Crime Convention and forwarded it to the customs authority for execution. On 15 April 2008, the Chinese authorities compiled the witness statements and, along with related documentation, sent it to their counterparts in the United Kingdom.

Witness statements were also sought using the Organized Crime Convention and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 as part of a request made by El Salvador to several neighbouring countries in a case involving charges of drug trafficking, smuggling of contraband and participation in an organized criminal group (*El Salvador-1*).

⁷⁷ See also article 46, paragraph 3 (a)–(i), of the United Nations Convention against Corruption for an identical list.

Furthermore, a statement sought from a high-profile accused person on the basis of the Organized Crime Convention was at the heart of a prominent case involving Equatorial Guinea and France (*France-1*) that is featured later in this Digest.

Obtaining testimony from a suspect was also part of a request sent by Peru to Andorra in a major corruption and money-laundering case discussed in detail in later parts of this Digest (*Peru-1*). Under the request, Peruvian authorities sought to interview via video link the general manager of the Uruguay branch of a bank incorporated in Andorra about his part in an elaborate offshore banking scheme designed to funnel bribes to public officials in Brazil.

In 2014, Italy transmitted a mutual legal assistance request to Egypt pursuant to article 18 of the Organized Crime Convention requesting the taking of evidence in relation to two persons accused of smuggling migrants (*Italy-2*). In the same year, Italy requested mutual legal assistance from Egypt to secure further evidence in relation to the activities of a suspected migrant smuggler whose extradition from Egypt was also sought (*Italy-3*). In 2015, Italy sought mutual legal assistance from Turkey on the basis of article 18 and the European Convention on Mutual Assistance in Criminal Matters to secure evidence against a member of an organized criminal group engaged in the smuggling of migrants (*Italy-1*).

3.2.3.2. *Effecting service of judicial documents*

Under article 18, paragraph 3 (b), mutual legal assistance may be sought to effect the service of judicial documents in another State party. The requesting State may specify the mode of service that the requested State should follow, if its law so allows. If the request does not specify a mode of service, the law of the requested State will apply. In most jurisdictions, it is standard procedure to deliver the relevant documents to the person or a person's address. Some jurisdictions instruct the person to collect the relevant document from an official place, such as a police station or a court.⁷⁸

3.2.3.3. *Executing searches and seizures, and freezing*

Under article 18, paragraph 3 (c), a State party may request another to conduct searches, seize assets or freeze bank accounts in the requested State. Article 12 provides additional guidance on the freezing and seizure of proceeds of crime and of property, equipment and other instrumentalities used in, or destined for, offences covered by the Convention.

A request for mutual legal assistance pursuant to article 18 submitted by the United States to Costa Rica, for instance, entailed the request to search specific premises in Costa Rica with the aim of confiscating evidence relevant to a fraud and money-laundering investigation in the United States (*Costa Rica-1*). Costa Rica accepted the request and was able to collect and submit a large volume of documents and electronic data to United States authorities.

The search of premises and the seizure of business records were the subjects of a mutual legal assistance request made by the United Kingdom to Monaco (*United Kingdom-2*). Monegasque authorities subsequently searched the premises of several persons accused in the United Kingdom case, seized documents, computers and other properties, and also arrested three persons. The case involved allegations of bribery and other corrupt practices, and the Serious Fraud Office of the United Kingdom had identified three suspects believed to be residing in Monaco. In its letter requesting assistance from Monaco, the Serious Fraud Office made express reference to the European Convention on Mutual Assistance in Criminal Matters and the Organized Crime Convention as the legal bases for their request. The letter of request was the subject of the proceedings before the High Court of Justice in *R (Unaenergy and others) v. Director of the SFO*, [2017] EWHC 600. The claimants in the case, several alleged offenders, sought the quashing of the letter of request, the return of materials obtained by the authorities in Monaco and the destruction of any copies of those materials held by the Serious Fraud Office. The High Court was asked to decide whether or not the common law duty of disclosure of evidence applied to letters of request from foreign authorities. The Director of the Serious Fraud Office argued that the duty of disclosure, as it applied to domestic search

⁷⁸ McClean, *Transnational Organized Crime*, p. 209.

warrants, did not apply to such letters. In its decision, the High Court agreed with that position, thus refusing the claimants' application. This case is discussed in further detail below.

FEATURED CASE 2: MONACO-1

The freezing of bank accounts was the subject of a mutual legal assistance request made by Senegal to Monaco on the basis of article 18 of the United Nations Convention against Transnational Organized Crime (*Monaco-1*). According to the available information, the accounts (or the account holders) were implicated in an unjust enrichment case. On 23 June 2014, the Court of Appeal of Monaco granted the request from Senegal. On 27 June 2014, the Director of Judicial Services of Monaco asked the Prosecutor General to execute a further request received by the Anti-Illegal Enrichment Court of Senegal, resulting in the freezing of 24 bank accounts on 7 July 2014. Among the affected account holders were two companies headquartered in the British Virgin Islands that subsequently lodged a complaint against the freezing of their accounts.

The complaint was rejected by the Director of Judicial Services, as was a further appeal to the Supreme Court of Monaco: *Société Orach Placement S-A et Société Fontabel Trading S.A. c/ Direction des Services Judiciaires*. In the appeal to the Supreme Court, the appellants claimed, inter alia, that the request submitted by Senegal had insufficiently established the existence of an organized criminal group, had not sufficiently specified the illicit origin of the funds in question, and had involved an excessive infringement of the fundamental rights (property rights) of third parties. In a decision dated 9 June 2015, the Supreme Court rejected the appeal and declared that it had no jurisdiction, as argued by the Director of Judicial Services. A further complaint filed by the companies on 24 June 2015 was rejected by the Court of Review of Monaco on 3 March 2016: *Société Orach Placement S-A et Société Fontabel Trading S.A. c/ Ministère Public*.

The freezing of bank accounts was part of a mutual legal assistance request sent by Brazil to 23 other jurisdictions, which included 13 requests made on the basis of the Organized Crime Convention (*Brazil-2*, discussed above). In a case reported by Serbia, article 18, paragraph 1 (c), was applied in a request sent to Spain to freeze the property of a Spanish national accused of producing and trafficking illicit drugs, illegal border crossing and trafficking in persons (*Serbia-1*). In a case involving charges relating to tax evasion and money-laundering, Finland sought the assistance of Brazil pursuant to article 18 in order to seize immovable assets (*Brazil-9*). Italy reported another case in which article 18 had been invoked alongside the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime to seize and confiscate assets, including bank accounts, in Switzerland of a person suspected to be a member of an organized criminal group (*Italy-5*).

3.2.3.4. Examining objects and sites

Pursuant to article 18, paragraph 3 (d), States parties to the Organized Crime Convention may request that another party examine objects or sites that may be of relevance for a case pending in the requesting State. This may include, for instance, the viewing or taking of photographs or the taking and supply of measurements or descriptions of the object or sites concerned.⁷⁹

While none of the cases consulted for the purposes of this Digest expressly referred to mutual legal assistance requests of this kind, it is likely that many requests implicitly involved the examination of objects and sites, which may be part of a search of premises or the provision of evidence or information discussed elsewhere in the present section.

⁷⁹ *Ibid.*, p. 210.

3.2.3.5. Providing information, evidentiary items and expert evaluations

Article 18, paragraph 3 (e), broadly refers to mutual legal assistance requests to obtain information, evidentiary items and expert evaluation from another State party. The supply, and use, of information is further qualified by article 18, paragraph 19, and, where applicable, by paragraph 29. The supply of evidence under article 18, paragraph 3 (f), presupposes that such evidence is in the possession of the requested State. Otherwise, the measure may either require permission by the owner or the person in possession of the item or may require seizure of the item (art. 18, para. 3 (c)).⁸⁰

Given the breadth of application of this subparagraph, it is not surprising that a significant number of cases consulted for the purposes of this Digest involved mutual legal assistance requests of this kind.

For example, in a request for mutual legal assistance made on the basis of the Organized Crime Convention, China asked the Home Office of the United Kingdom to provide evidence in a case involving the smuggling of contraband (*China-1*). In 2009, United Kingdom authorities completed the investigation and transferred the evidence relating to the case to China. The United Kingdom, in turn, asked for permission to attend the subsequent proceedings. The request was granted by China.

A request for information about persons, financial transactions and user registrations was the subject of a request from the Netherlands to Brazil (*Brazil-1*). The Netherlands authorities sought legal assistance in a major money-laundering investigation, referred to as Operation Curaçao, involving some 56 Brazilian nationals who were operating tourism agencies and a currency exchange service to conceal proceeds of drug and corruption-related crime. It has been estimated that some 300 million dollars were transferred between 2004 and 2006 by those individuals through accounts of offshore companies in various tax havens to conceal the true owners of the accounts and obstruct criminal investigations. Using article 18 of the Organized Crime Convention as the legal basis made it possible to obtain information relevant to the prosecution and eventually led to the closing of the First Curaçao International Bank in the Netherlands Antilles, where many of the offshore accounts were held. The facts and circumstances of this case are discussed in more detail later in this Digest.

Costa Rica reported 10 cases recorded in 2008 and 2009 that involved mutual legal assistance requests for information and evidence pursuant to article 18, paragraph 3 (e). These included the following:

- A request by Mexico to Costa Rica for information about persons, their assets, cross-border movements, drivers' licences and involvement in associations (Costa Rica-4). The persons were under investigation in Mexico for offences relating to trafficking in children and organized crime
- A request by Denmark to Costa Rica for information about the assets, socioeconomic status and telephone records of several persons under investigation for drug trafficking (Costa Rica-5)
- A request by Costa Rica to Nicaragua for information about the cross-border movements of victims of trafficking in persons who had transited through Nicaragua (Costa Rica-6)
- A request by Costa Rica to Mexico for information about natural and legal persons, along with a request for police reports, forensic and expert analyses, and certification of documents, photographs and video recordings, as well as certified copies of witness statements in a drug trafficking investigation (Costa Rica-7)
- A request by Ecuador to Costa Rica for information about persons, including their cross-border movements, involvement in associations and companies, bank account statements, criminal records, assets and financial transactions (Costa Rica-9). The request was made on the basis of article 18 of the Organized Crime Convention and the "first provision" of the Agreement to Promote Cooperation and Mutual Legal Assistance among Members of the Ibero-American Association of Public Prosecutors
- A request by Guatemala to Costa Rica in connection with a money-laundering investigation for information about the cross-border movement of persons, their financial transactions and banking details, and their involvement in associations and companies (Costa Rica-12)

⁸⁰ Ibid.

- A request by Nicaragua to Costa Rica for information about the criminal records, immigration status, drivers' licences and other details of persons under investigation for the production of pornographic material (Costa Rica-13)
- A request by Guatemala to Costa Rica for information about certain public limited companies, witness statements concerning several persons, bank details and other information relevant to a money-laundering investigation (Costa Rica-14)
- A request by the Netherlands to Costa Rica in connection with a drug trafficking investigation for information about, and surveillance of, persons involved in the case, including their employment, banking details, addresses and registered immovable assets (Costa Rica-17)
- A request by Guatemala to Costa Rica to obtain information about the criminal record of a person under investigation for money-laundering (Costa Rica-18)

In a further case involving Costa Rica, as well as El Salvador, Guatemala and Nicaragua, national authorities of the four States cooperated in a major drug trafficking investigation (*El Salvador-1*). The case concerned an organized criminal group that operated an unregistered freight company offering transportation services between the four States and Mexico. The vehicles used were registered to individual "straw men" acting as subsidiaries in order to conceal any link to the main freight company. Between 2004 and 2008, authorities in Costa Rica and Nicaragua made seven separate interceptions, thus confiscating a total of 3,800 kilograms of cocaine and money with a value totalling \$2,219,000. On the basis of the Organized Crime Convention, along with the 1988 Convention, authorities sought mutual legal assistance to obtain a range of documents and files, including bank records and witness statements, as well as certified documents. Several of the accused later faced criminal charges relating to drug trafficking, conspiracy and criminal association, and participation in an organized criminal group, as well as for various customs offences, before a court in San Miguel, El Salvador.

In May 2005, New Zealand received a request for mutual legal assistance from the Netherlands in relation to suspected trading of military goods without the appropriate export licences (*New Zealand-4*). The accused in this case had allegedly sold military parts, and the Netherlands requested the New Zealand authorities to look for evidence showing that parts of that type had been imported into New Zealand. New Zealand accepted the request on the basis that both States were parties to the Organized Crime Convention.

In 2010, Serbia reported a case in which it sought mutual legal assistance from Uruguay in a drug trafficking investigation (*Serbia-2*). Using article 18 of the Organized Crime Convention and the 1988 Convention as legal bases, Serbia requested, and received, evidentiary items relating to the seizure of illicit drugs. The evidence later enabled the commencement of criminal proceedings against the organized criminal group involved in the case.

In a case involving the use of fraudulent documents to launder proceeds of crime, the United Kingdom employed article 18 to seek assistance from Brazil in order to obtain information and confiscate assets (*Brazil-8*). Brazil reported a further case in which it had received a request from Switzerland to investigate suspects in a drug trafficking and money-laundering case and to provide documents held in Brazil (*Brazil-10*). The first request was received in December 2008 and executed shortly thereafter; an additional request was received in May 2009.

Colombia reportedly used article 18 to request legal assistance from the Plurinational State of Bolivia (*Colombia-1*). In this case, the public prosecutor in Villavicencio, Colombia, sought information about the certificate of registration and ownership of an aeroplane for the purpose of seizure and confiscation. No other information about this request and the alleged offences has been reported.

Another case (discussed elsewhere in this Digest) involving requests for information and evidence concerned a request by Romania for documentation from New Zealand (*New Zealand-2*).

3.2.3.6. *Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records*

Article 18, paragraph 3 (f), of the Organized Crime Convention makes specific mention of mutual legal assistance requests for the purpose of obtaining certain official documents or financial transaction records such as government documents and records, bank records, financial documents, transaction records, and corporate and business records. The request may be aimed at obtaining the original documents or certified copies of such documents and records.

Article 18, paragraph 3 (f), must be read in conjunction with article 18, paragraph 8, which mandates that States parties shall not decline to render mutual legal assistance pursuant to article 18 on the ground of bank secrecy. While today it is commonly accepted that bank secrecy should not hinder investigations of and international cooperation against transnational organized crime and other serious crime,⁸¹ domestic law may make it difficult to fulfil some requests made under article 18, paragraph 3 (f), and the inclusion of subparagraph (f) faced some controversy during the development of the Organized Crime Convention.⁸² It has been argued that article 18, paragraph 8, applies regardless whether there are other binding mutual legal assistance treaties between the requesting and requested States and that banking secrecy must not be used as grounds to decline mutual legal assistance requests if the case falls within the scope of the Convention, even if such refusal is permitted as grounds for refusal of assistance under another treaty.⁸³

Several of the cases discussed above in the context of article 18, paragraph 3 (a), (c) and (e), involved, inter alia, a request to provide information relating to bank accounts and financial transactions, or to obtain original, or certified copies of, official documents (*Brazil-1, Brazil-2, Costa Rica-7, Costa Rica-9, Costa Rica-12, Costa Rica-14, Costa Rica-17, El Salvador-1 and United Kingdom-2*).

Notably, bank records and financial transaction reports were part of a request for mutual legal assistance by the United States to Egypt on the basis of the Organized Crime Convention and the Treaty between the Government of the United States of America and the Government of the Arab Republic of Egypt on Mutual Legal Assistance in Criminal Matters (*Egypt-1*). In this case, the perpetrators, by means of online identity theft and other fraudulent methods, illegally accessed bank accounts and transferred funds to other accounts. Some 43 offenders, who were Egyptian nationals, created websites pretending to belong to financial institutions in the United States and then sent emails to clients of those institutions asking them to update their personal information. The data obtained from clients who responded to the emails were then used to access their bank accounts and transfer funds into bank accounts held by offenders who were United States nationals and who then transferred the funds using wire-transfer companies to the Egyptian offenders. A total of 1.117 million dollars were fraudulently acquired in this way. As part of their investigation, United States authorities later requested assistance from Egypt to also obtain evidence stored on digital devices kept by the persons under investigation, as well as records and data from Internet service providers in Egypt. The Attorney General of Egypt accepted the request on 3 October 2009 and ordered its execution.

The admissibility of a letter rogatory submitted by Italy to obtain bank documents (along with the hearing of witnesses and the freezing of property) from Brazil was the subject of proceedings before the Superior Court of Justice of Brazil (*Brazil-5*). The defendant filed a petition to deny the request because the letter rogatory had not been issued by a judicial authority (and was thus invalid and could not be executed) and because its execution required the prior summons and manifestations of interested parties. The Court rejected the petition, pointing out that the Organized Crime Convention allowed the Brazilian authorities to proceed with the measures requested by Italy. The only obstacle identified by the Court was the decision on the proper venue for lifting restrictions related to bank secrecy and the freezing of property.

A further case reported by Brazil involved a mutual legal assistance request received from France in August 2009 (*Brazil-11*). The Brazilian authorities were asked to loosen bank secrecy provisions and to obtain witness statements, carry out investigations and apprehend suspects in a drug trafficking investigation by France. Another request, received in March 2009 from the Bolivarian Republic of Venezuela in a

⁸¹ See also article 46, paragraph 9, of the Convention against Corruption.

⁸² McClean, *Transnational Organized Crime*, p. 211.

⁸³ *Ibid.*, pp. 215–216; UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, para. 563.

money-laundering and tax evasion matter, similarly asked Brazil to loosen bank secrecy provisions and provide information about one or more companies (*Brazil-12*). In this case, the request could only be partially executed, and the Brazilian authorities sought further information from the Bolivarian Republic of Venezuela to fully complete the request.

Costa Rica recorded several cases in 2008 and 2009 that involved mutual legal assistance requests under article 18, paragraph 3 (f), for documents and records. These cases included the following:

- A money-laundering investigation that involved a request by Costa Rica to Panama to provide certified documents relating to financial transactions originating in Panama (Costa Rica-3)
- A money-laundering investigation that involved a request by Guatemala to Costa Rica for information on several Costa Rican nationals under investigation, including copies of personal identity documents, photographs, information on commercial activities and the registration of movable and immovable assets, bank statements, information on investments in stocks and migratory movements, and criminal records (Costa Rica-8)
- A drug trafficking investigation that involved a request by Costa Rica to Spain to provide a certified copy of an application for extradition handled by Spain (Costa Rica-11)
- An investigation into an “offence of misrepresentation” that involved a request by the United States to Costa Rica and other States on the basis of article 18, paragraph 3 (f), to provide information from banks, Internet service providers and telephone companies (Costa Rica-16)

Documents obtained from Colombia by United States authorities pursuant to article 18, paragraph 3 (f), of the Organized Crime Convention were at the centre of a case heard in the United States District Court, Southern District of Florida, in 2018 (*United States-4*). In the criminal proceedings against them, the defendants challenged the use of foreign public documents for trials in the United States without the testimony of a witness. The Court held that the documents met the necessary requirements under the rules of evidence and criminal procedure and were thus admissible. Business documents obtained from Colombia, along with the record of the conviction of the defendants in Colombia, were also ruled to be admissible.

A mutual legal assistance request made by the United Kingdom on the basis of the Organized Crime Convention and the United Nations Convention against Corruption in order to obtain banking and business records was at the centre of a case before the High Court of Justice in London: *ZXC v. Bloomberg L P* (*United Kingdom-1*). The request came about as part of an investigation in 2013 of a company in relation to allegations of corruption, proceeds of crime, fraud and conspiracy. The investigation was reported in the media and in 2016 two articles were published in connection with the investigation, based on a confidential law enforcement document. The articles reported the content of that document, which was a letter sent by a United Kingdom law enforcement agency to an undisclosed jurisdiction requesting mutual legal assistance. The letter contained a full description of the investigation and a detailed assessment of the evidence collected thus far, specified the company under investigation and named at least one individual (hereafter referred to by the acronym ZXC). Nine days after the publication of the letter, lawyers acting for ZXC asked the news company that had published the article to retract it, but the request was denied. ZXC then filed an application for an interim injunction to mandate the retraction of the article, arguing that private information was being misused in breach of the Data Protection Act 1998 of the United Kingdom. In March 2017, the High Court refused the application, noting that the publication of the article was permissible, although much of the information had come from a confidential source. Given the circumstances, the publisher reasonably believed that the publication was in the public interest and the Court found that, under the circumstances, the right to freedom of expression outweighed the right to privacy. Subsequently, ZXC pursued a claim for damages for misuse of private information and a final injunction. In this instance, the claimant was successful. In a decision dated 17 April 2019, the High Court reassessed the interim injunction and noted that a copy of the letter of request had not been produced in the earlier proceedings and that the news company had failed to disclose that the law enforcement agency had previously objected to the disclosure of the letter because it could harm the ongoing investigation. The Court held that the interim injunction would have been granted in such circumstances. The Court further reassessed the public interest justification and concluded that the claimant’s private information had been misused. The Court awarded damages of 25,000 pounds to the claimant.

A further case involving a request to obtain documents relating to a company, along with a request to make inquiries into that company, originated in New Zealand, where such a request was received in August 2006 from the Department of Justice of Canada (*New Zealand-3*). The request was part of a fraud investigation of several companies and Canadian nationals by the Royal Canadian Mounted Police. One of the companies was incorporated in New Zealand. In November 2006, New Zealand provided the requested information.

Italy reported three cases in which the Organized Crime Convention had been used as the legal basis to obtain legal documents, although few details about the cases have been made available.

The first of these cases (*Italy-4*) was received from an undisclosed State in the context of a money-laundering investigation and involved a request for criminal records and information on several companies under investigation, and on several businesses, associations and foundations in which some of the suspects had interests. The letter received by Italy further requested the setting up of a joint investigation team.

In a case relating to scams carried out by an organized criminal group, Italy received a request from an unnamed State on the basis of the Organized Crime Convention, the European Convention on Mutual Assistance in Criminal Matters, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (*Italy-8*). The request involved the provision of documents relating to the investigation in Italy into the same group, including information about the offences and criminal records of members of the group, as well as about a user for which a mobile telephone number had been registered.

A letter requesting copies of documents, including banking and financial documents, concerning a company and its associates was received by Italy from an unnamed State in the context of an investigation into drug trafficking, tobacco smuggling and money-laundering, which is further outlined in later parts of this Digest (*Italy-7*).

3.2.3.7. Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes

Under article 18, paragraph 3 (g), of the Organized Crime Convention, mutual legal assistance may be requested for the purpose of identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes. This provision is closely related to article 12, paragraph 2, which deals with measures to enable the identification, tracing, freezing, or seizure of items referred to in article 12, paragraph 1. While article 12 deals with measures for the purpose of eventual confiscation, requests under article 18, paragraph 3 (g), are made for evidentiary purposes, although there may be cases involving both of these purposes.

No cases that specifically fall into this category, and not already covered by article 18, paragraph 3 (e) and (f), were found or reported.

3.2.3.8. Facilitating the voluntary appearance of persons in the requesting State party

Article 18, paragraph 3 (h), of the Organized Crime Convention enables States to ask another State party to facilitate the voluntary appearance of persons, who may be witnesses, victims or perpetrators, including persons in custody, in the requesting State party. None of the cases consulted for the purposes of this Digest expressly involved requests for mutual legal assistance of this kind.

Mutual legal assistance may also involve the transfer of sentenced persons to another State, for instance, where a person is needed as a witness in another country, or where that country pursues other charges against that person. Cases in this category fall under article 17 of the Organized Crime Convention and are further discussed in this context below.

3.2.3.9. Any other type of assistance that is not contrary to the domestic law of the requested State party

The Organized Crime Convention promotes the widest range of mutual legal assistance. For this reason, the list of purposes for which assistance may be sought under article 18, paragraph 3, is not exhaustive; it

extends to any other type of assistance, as long as the assistance does not contravene the domestic law of the requested country (art. 18, para. 3 (i)).

One other type of mutual legal assistance rendered under the Organized Crime Convention in actual cases is the surveillance of suspects in another country. A request sent by Denmark to Costa Rica, for instance, included, inter alia, the surveillance of persons in Costa Rica (*Costa Rica-5*). Surveillance of persons was also part of a mutual legal assistance request sent by the Netherlands to Costa Rica (*Costa Rica-17*).

In the course of an investigation of an organized criminal group responsible for a migrant smuggling venture from Libya to Italy on 5 May 2017, and possibly others, Italy used article 18 to request mutual legal assistance from Libya in the form of authorizing and carrying out, according to the procedural rules of Libya, the interception of incoming and outgoing telephone calls from certain telephone numbers, carrying out investigations in order to identify the users of those telephone numbers and identifying the subjects of (probable) Libyan nationality who, on 5 May 2017, were on board a boat that followed and accompanied the three boats carrying migrants on board while in Libyan waters (*Italy-11*).

Generally, mutual legal assistance treaties provide for such forms of cooperation. In the rare situation in which a form of cooperation listed in article 18, paragraph 3, is not provided for, in particular in countries in which treaties are considered subordinate to mutual legal assistance laws, the States parties concerned should consider such mutual legal assistance treaties as being automatically supplemented by those forms of cooperation.

3.2.4. Transmission of information without prior request

Article 18, paragraphs 4 and 5, provide a legal basis for a State party to forward to another State party information or evidence it believes is important for combating the offences covered by the Convention in circumstances where the other party has not made a request for assistance and may be completely unaware of the existence of the information or evidence (sometimes referred to as “spontaneous transmission of information”).⁸⁴ There is, however, no obligation to do so in any particular case. Article 18, paragraphs 4 and 5, are complemented by article 27, which enables law enforcement cooperation between States parties.⁸⁵

Several cases reported by Costa Rica make express reference to article 18, paragraph 4, but do not further specify what information or evidence was forwarded to the requesting State beyond the assistance originally requested. For example, in a case involving aggravated corruption and other offences, Costa Rica sought mutual legal assistance from the United Kingdom (*Costa Rica-10*). The request referred to any information United Kingdom authorities could obtain on the offences under investigation, and article 18, paragraph 4, was invoked for the transfer of the evidence gathered by the United Kingdom. Article 18, paragraph 4, was also applied in requests made by Costa Rica to Panama in a money-laundering investigation (*Costa Rica-3*), to Nicaragua in an investigation into trafficking in persons (*Costa Rica-6*), to Mexico in a drug trafficking investigation (*Costa Rica-7*) and in a request received by Costa Rica from Spain in another drug trafficking investigation (*Costa Rica-12*).

⁸⁴ Joutsen, “International cooperation against transnational organized crime”, p. 382.

⁸⁵ UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, para. 570.

3.2.5. Refusal of mutual legal assistance

The Organized Crime Convention allows for States parties to refuse mutual legal assistance under certain conditions (art. 18, para. 21). Requests for mutual legal assistance can be refused if they are not made in conformity with the provisions of article 18 (art. 18, para. 21 (a)) or if the execution of the request would be prejudicial to the essential interests of the requested State (art. 18, para. 21 (b)). Other grounds for refusal foreseen in article 18, paragraph 21, include the prohibition by the domestic law of the requested State party from carrying out the action identified in the mutual legal assistance request, had it been subject to investigation, prosecution or judicial proceedings in the requested State party (art. 18, para. 21 (c)), and contradiction to the legal system of the requested State party if it were to grant the request (art. 18, para. 21 (d)). No cases were found or reported concerning the practical application of article 18, paragraph 21, of the Convention.

Assistance cannot, however, be refused on the ground of bank secrecy (art. 18, para. 8, discussed above) or for offences considered to involve fiscal matters (art. 18, para. 22).

Where a request for mutual legal assistance is refused, reasons must be given. There is an obligation to consult with the requesting State party to consider whether a request may be granted subject to terms and conditions. Otherwise, States must execute requests expeditiously and take into account possible deadlines facing the requesting authorities, for example, the expiration of a statute of limitation.

3.2.6. Miscellaneous

Mutual legal assistance requests were involved (and granted) in a number of other cases consulted for the purpose of this Digest. The available information on these cases does not contain much detail about the type and level of assistance sought.

They include, for instance, a request sent by Ukraine to Turkey in a case involving an organized criminal group composed of Turkish and Ukrainian nationals who were involved in trafficking Ukrainian women for the purpose of prostitution in Turkey (*Ukraine-1*). Assistance was sought on the basis of the Organized Crime Convention, in conjunction with the European Convention on Mutual Assistance in Criminal Matters, in relation to the organizer of the group, a Turkish national later convicted on charges relating to trafficking in persons and prostitution.

In a case reported by Armenia, the Organized Crime Convention and the European Convention on Mutual Assistance in Criminal Matters were used in two requests for mutual legal assistance sent to Latvia and the Russian Federation in a money-laundering investigation (*Armenia-1*).

In a case in which food aid from the United States was diverted and large sums of money were defrauded, United States authorities used article 18 of the Organized Crime Convention to request certain information and material from Liberia (*United States-3*). This case is further outlined below.

Mexican authorities submitted to the author of this Digest a case in which the Organized Crime Convention was used along with a bilateral mutual legal assistance treaty to seek assistance from the United States in a matter involving trafficking in firearms (*Mexico-10*).

3.3. Confiscation: articles 13 and 14 of the Organized Crime Convention

3.3.1. Concept and legal basis

Effective action against transnational organized crime requires measures to deprive perpetrators of the proceeds of the offences they have committed. Such measures can serve as a significant deterrent and contribute to the restoration of justice by removing the incentives for offenders to engage in illegal activities in the first place. The ability of law enforcement agencies to identify, investigate, trace and seize assets derived from these offences sends a message to criminals that such activities are not profitable.

Articles 12 to 14 of the Organized Crime Convention cover domestic and international aspects of identifying, freezing and confiscating the proceeds and instrumentalities of crime. The term “proceeds of crime” is defined in article 2 (e) as “any property derived from or obtained, directly or indirectly, through the commission of an offence”. “Property” encompasses “assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets” (art. 2 (d)).

In the context of the Organized Crime Convention (and this Digest), the terms “freezing” and “seizure” refer to “temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority” (art. 2 (f)).⁸⁶ The term “freezing” generally applies to money held in bank accounts or other intangibles, while “seizure” applies to tangible property such as cars, houses or cash.⁸⁷ In article 2 (g), “confiscation”, which includes forfeiture where applicable, is defined as meaning “the permanent deprivation of property by order of a court or other competent authority”. The definitions of these terms may differ from the way the terms are understood in domestic laws.

Article 12, paragraph 1, requires States parties to adopt measures, to the greatest extent possible within their domestic legal systems, to enable the confiscation of proceeds, property of a value equivalent to such proceeds, and property, equipment, or other instrumentalities used, or destined for use, in offences covered by the Convention.⁸⁸ Article 12 further obligates States parties to adopt measures to enable the identification, tracing, freezing or seizure of items for the purpose of eventual confiscation. In addition, it obligates States parties to empower courts or other competent authorities to order the production of bank records and other evidence for the purposes of facilitating such identification, freezing and confiscation.

3.3.2. International cooperation for purposes of confiscation

Article 13 of the Organized Crime Convention sets forth procedures for international cooperation in confiscation matters. A State party that receives a request from another State party is required by article 13 to take particular measures to identify, trace and freeze or seize proceeds of crime for the purpose of eventual confiscation. Article 13 also describes the manner in which such requests are to be drafted, submitted and executed. It is important to note that these are special procedures aimed at obtaining the proceeds of crime, as opposed to procedures that assist in the search for such proceeds as part of the evidence of the crime (for example, warrants and powers of courts to be exercised over property). In international cooperation, the latter purposes are covered by article 18, relating to mutual legal assistance.

Article 13, paragraph 1, requires States parties that receive a request for confiscation from another State party to take one of two actions, to the greatest extent possible within their domestic legal systems:

- (a) The requested State party must either directly submit for enforcement by its competent authorities an order issued by the requesting State party (art. 13, para. 1 (b)); or
- (b) Submit the request to its competent authorities in order to obtain a domestic order of confiscation, to which the requested State party would be required to give effect if granted (art. 13, para. 1 (a)).⁸⁹

The Organized Crime Convention provides these two alternatives in order to allow flexibility in the way States parties are to give effect to requests for confiscation. For example, some States use a system of confiscation by which specific property is traced as having derived from or having been used to commit an offence. Other States use a value-based system by which the value of the proceeds or instrumentalities is calculated and property up to such value is then confiscated.⁹⁰ Problems may arise when a request from a

⁸⁶ This definition is identical to that under article 1, paragraph 1, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

⁸⁷ Neil Boister, *An Introduction to Transnational Criminal Law*, p. 336.

⁸⁸ See also article 31, paragraph 1, of the Convention against Corruption.

⁸⁹ See also article 55, paragraph 1, of the Convention against Corruption.

⁹⁰ See UNODC, *Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime* (Vienna, 2012), p. 86.

State using one system is directed at a State using the other, unless the domestic law of the requested party has been framed in a sufficiently flexible manner.

Article 13, paragraph 2, requires that the application of the judicial and investigative powers established under article 12 be extended to cases initiated on the basis of a request from another State party. Upon a request made by another State party having jurisdiction over an offence established in accordance with the Convention, the requested State party is required to take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, for the purpose of eventual confiscation to be ordered either by the requesting State party or, pursuant to a request under article 13, paragraph 1, by the requested State party.

Article 13, paragraph 3, provides that the provisions of article 18, on mutual legal assistance, are applicable in order to produce the evidence and information necessary to justify the identification, tracing, freezing or seizure and confiscation pursuant to article 13, and sets out the contents of requests for such assistance. Under article 13, paragraph 7, no obligation to cooperate arises if the offence for which assistance is sought is not an offence covered by the Convention. Moreover, as in article 12, paragraph 8, the international cooperation measures set forth in article 13 should not be construed to prejudice the rights of bona fide third parties (art. 13, para. 8).

The requirements of article 13 of the Convention are also subject to the provisions of any other bilateral or multilateral treaties that apply to the States parties involved (art. 13, para. 4). However, if the requested State party can take measures for the purpose of confiscation only on the basis of a relevant treaty, the lack of such a treaty may not necessarily be grounds for refusal of cooperation. In fact, paragraph 6 provides that such a State party shall consider the Organized Crime Convention as the necessary and sufficient treaty basis. The option of considering the conclusion of bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation under article 13 of the Convention is also foreseen in paragraph 9.⁹¹

Article 14 of the Organized Crime Convention addresses the final stage of the confiscation process: the disposal of confiscated assets. While the disposal is to be carried out in accordance with domestic law, States parties are called upon to give priority to requests from other States parties for the return of such assets for use as compensation to crime victims or restoration to legitimate owners. States parties are also encouraged to consider concluding an agreement or arrangement whereby proceeds may be contributed to the United Nations to fund technical assistance activities under the Organized Crime Convention or be shared with other States parties that have assisted in their confiscation.⁹² The sharing of confiscated proceeds of crime or property is a powerful yet underutilized weapon against organized crime. It can encourage enhanced cooperation among law enforcement authorities in relation to locating, freezing and confiscating proceeds of crime, as the foreign authorities that provide assistance leading to the confiscation may receive a portion of the funds for official use in their further crime-fighting efforts.⁹³

International cooperation could be expanded further to include agreements or arrangements on the sharing of confiscated proceeds of crime or property, taking into particular consideration article 14 of the Organized Crime Convention, but also article 5, paragraph 5, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. In that context, an intergovernmental expert group, convened pursuant to Economic and Social Council resolution 2004/24, met in Vienna from 26 to 28 January 2005 and prepared a draft model bilateral agreement on disposal of confiscated proceeds of crime covered by the above-mentioned conventions, for use by Member States as a framework for the conclusion of pertinent bilateral agreements. The resulting Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property was adopted by the Economic and Social Council in 2005.

⁹¹ [CTOC/COP/WG.3/2016/3](#), para. 15.

⁹² See further, Boister, *An Introduction to Transnational Criminal Law*, pp. 350–351.

⁹³ The return and disposal of assets derived from offences that fall within the scope of application of the Convention against Corruption is regulated in chapter V, on asset recovery, of the Convention and, in particular, its article 57.

3.3.3. Case examples

The Organized Crime Convention has been used on numerous occasions to enable the confiscation or disposal of confiscated proceeds of crime or property in another jurisdiction. As evidenced by the material consulted for the purpose of this Digest, it appears that most cases involved the registration or execution of foreign restraint orders (or freezing orders, as they are called in some jurisdictions). Because of the consequences for the persons whose assets were the object of such orders, it is not surprising that foreign restraint orders transmitted on the basis of the Organized Crime Convention were frequently the subject of complex legal proceedings instigated by those affected.

FEATURED CASE 3: HONG KONG, CHINA-1

One case involving the confiscation or disposal of confiscated proceeds of crime or property in another jurisdiction was decided by a court in Hong Kong, China, in 2014 (*Hong Kong, China-1*). It relates to the activities of multiple persons accused of illegally causing the collapse of a public bank in Indonesia in 2008 in order to enrich themselves and others. Some of the accused persons held assets in Hong Kong, China, that the Indonesian authorities sought to confiscate. For that purpose, the District Court of Central Jakarta issued three separate restraint orders, in October 2009, March 2010 and July 2010, in respect of the four defendants' overseas bank accounts, including accounts held in Hong Kong, China, pending the final decision of the competent court in Indonesia regarding the confiscation of the assets by means of an external confiscation order.

Acting at the request of Indonesia, the Secretary for Justice of Hong Kong, China,^a applied to the Court of First Instance in Hong Kong, China, for an order to restrain the bank accounts. The order was made by the Court on 15 December 2010 pursuant to section 27 and schedule 2, section 7, of the Mutual Legal Assistance in Criminal Matters Ordinance (cap. 525) of Hong Kong, China. The order prohibited 18 named persons, subject to certain exemptions, from disposing of, dealing with, or diminishing the value of any of their property, including several bank accounts, in Hong Kong, China. The restraint order was subsequently extended and modified by various orders of the Court.

Parallel to this, in December 2010, several defendants were tried in absentia and convicted on charges of corruption and money-laundering by the District Court of Central Jakarta. The Court ordered the defendants to pay restitution and, should they fail to do so, to seize their assets to satisfy the order. On 26 December 2012, Indonesian authorities made a further request to Hong Kong, China, for the enforcement of the Court's verdict as an external confiscation order pursuant to section 27 of the Mutual Legal Assistance in Criminal Matters Ordinance and provisions under the Agreement between Hong Kong, China, and Indonesia concerning mutual legal assistance in criminal matters. Acting on behalf of Indonesia, on 31 January 2013, the Secretary for Justice of Hong Kong, China, applied to register the confiscation order by Indonesia as an external confiscation order pursuant to section 28 of the Mutual Legal Assistance in Criminal Matters Ordinance. Additional applications to enforce the external confiscation order and amend the restraint order in relation to certain accounts and names followed in November and October 2013.

In *Rafat Ali Rizvi v. Nomura International Plc* [2014], six defendants applied to discharge the restraint order against property held in their names. Three of them also opposed the application of the Secretary for Justice to register the external confiscation order. The application of the United Nations Convention against Transnational Organized Crime was discussed in this case in the context of the question of what "realizable property" means in relation to the definition provided in schedule 2, section 5, of the Mutual Legal Assistance in Criminal Matters Ordinance. The Court noted that the Mutual Legal Assistance in Criminal Matters (Transnational Organized Crime) Order (Cap. 525X (HKSAR)), incorporating the Organized Crime Convention, and the Mutual Legal

FEATURED CASE 3: HONG KONG, CHINA-1 (CONTINUED)

Assistance in Criminal Matters (Corruption) Order (Cap. 525W (HKSAR)), incorporating the United Nations Convention against Corruption stipulate that the requested jurisdiction should, within its domestic legal system, enforce the confiscation ordered by, or pursuant to the request of, the requesting country. The Mutual Legal Assistance in Criminal Matters (Indonesia) Order (Cap. 525Z (HK)), which incorporates the agreement between Hong Kong, China, and Indonesia concerning mutual legal assistance in criminal matters, provides that the jurisdiction requested to give assistance should, to the extent permitted by its law, give effect to the confiscation order made by the court of the requesting party. The three orders also made provisions for the requested jurisdiction to trace and identify the proceeds of crime but stipulated that it was the requesting jurisdiction that should make the confiscation order.

The Court in this case noted that all of these provisions had served to support the conclusion that Hong Kong, China, should enforce the confiscation according the terms of the external confiscation order but not go beyond it. The Court concluded that, for enforcement of the verdict of Indonesia, the meaning of realizable property was that provided under section 5 (1) (a) of the Mutual Legal Assistance in Criminal Matters Ordinance. Thus, the enforcement of the confiscation order in Hong Kong, China, had to be limited to the property specified in the verdicts of Indonesia.

^a According to information provided by China for the purposes of the UNODC Online Directory of Competent National Authorities, the Secretary for Justice of the Department of Justice of Hong Kong, China, is the designated central authority for Hong Kong, China, in accordance with article 18, paragraph 13, of the Organized Crime Convention.

A foreign restraint order made under the Organized Crime Convention and the Convention against Corruption was the subject of proceedings before the Court of Appeal in London (*United Kingdom-3*). This case concerned a criminal investigation by Kuwaiti authorities into two accused persons who were husband and wife. The first accused person (the husband) had been the Director General of the Public Institution for Social Security, a government agency under the Ministry of Finance of Kuwait, for many years. He had allegedly skimmed “commission payments” from an investment fund that he was responsible for. The payments, which amounted to several hundred million dollars, were deposited into offshore bank accounts in Switzerland, the United Kingdom and other jurisdictions. The second accused person (the wife) had allegedly assisted in the concealment, movement and laundering of the funds. The assets the couple had deposited in Swiss bank accounts were restrained by Kuwaiti authorities following extensive litigation in Swiss courts. The information acquired by Kuwaiti authorities as a result of the litigation led to further investigations, including an investigation into the assets held by the accused in the United Kingdom. The Kuwaiti authorities sent a letter of request for legal assistance pursuant to the Organized Crime Convention and the Convention against Corruption to the United Kingdom on 19 February 2015, followed by a supplementary letter dated 4 March 2015. The letter stated that the accused had been under investigation in Kuwait since 2008 for theft of public funds and money-laundering, and requested the restraint of their assets in the United Kingdom. The decision in *A & A v. The Director of Public Prosecutions*, [2016] EWCA Crim 96, concerned an appeal against a decision of the Crown Court to issue a restraint order against the assets of the accused. The order had been applied for by the Director of Public Prosecutions, acting under the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 of the United Kingdom and pursuant to the letters of request sent by Kuwait. The Court of Appeal refused the appeal and the restraint order was upheld.

FEATURED CASE 4: UNITED STATES-1

International cooperation for the purpose of confiscation was at the heart of a case involving the United States, Hong Kong, China, and New Zealand (*United States-1*). This case related to a copyright violation scheme under operation between 2005 and 2012, dubbed the “mega conspiracy”. The defendants in the case used public websites to facilitate the illegal reproduction and distribution of copyrighted movies, software, television programmes and music. The defendants were charged in the United States with offences relating to criminal copyright infringement and money-laundering. It is estimated that the damage done to copyright holders was well in excess of 500 million dollars and the defendants earned more than 175 million dollars.

As part of the criminal proceedings, the extradition of a fugitive was sought from New Zealand (*New Zealand-1*, discussed elsewhere in this Digest) and a district court in the United States issued restraint orders for assets in Hong Kong, China, and New Zealand. The High Court in Hong Kong, China, responded almost immediately by issuing a restraint order against approximately 60 million dollars in assets. New Zealand first arrested several of the alleged offenders, then released them on bail and then, several months later, registered restraint orders against 15 million dollars in assets. On the basis of the available information, it is difficult to determine what precise role the United Nations Convention against Transnational Organized Crime played in the requests made by the United States and in the restraint orders issued in Hong Kong, China, and New Zealand.

In proceedings before the United States Court of Appeals for the Fourth Circuit, in Richmond, Virginia, in 2016, the claimants appealed a civil forfeiture action against funds deposited in the claimants’ name in Hong Kong, China, and New Zealand: *United States v. Batato et al.*, 833 F 3d 413 (4th Cir. 2016). The claimants appealed that judgment on several grounds, arguing, in particular, that the District Court lacked jurisdiction over the defendants’ property because the property resided in foreign countries, that fugitive disentitlement violated constitutional due process and that disentitlement in the case was improper because the claimants were not fugitives from the law. The claimants argued that the disentitling of New Zealand residents constituted a violation of article 16, paragraph 13, of the Organized Crime Convention, which states that any person regarding whom proceedings are being carried out in connection with any offences to which article 16 applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State party in the territory of which that person is present.

The Court dismissed the appeal, rejecting the contention that a federal statute disentitling a fugitive from defending property claims against government forfeiture actions is a violation of due process rights. The Court held that the exercise of the claimants’ rights in New Zealand might cause disadvantages for them with respect to litigation occurring in the United States and did not mean that they were being treated unfairly or that they were being denied their enjoyment of rights in New Zealand. The Court also rejected the jurisdictional challenges as to the Court’s order on the assets.

Other instances involving international cooperation for the purpose of confiscation under the Organized Crime Convention include a request sent by Spain to Costa Rica in a fraud and money-laundering investigation (*Costa Rica-2*). Among other measures, Spain requested the seizure and confiscation of all movable and immovable assets linked with the offences, along with funds held in bank accounts in Costa Rica. Costa Rica fully complied with the request.

In a case involving charges relating to money-laundering and participation in an organized criminal group, Italy sent a letter of request concerning the execution of an order to seize assets of a company based in an undisclosed State, along with bank accounts registered in the names of persons under investigation in the same State (*Italy-6*). This case concerned a transnational, mafia-like organized criminal group that ran an

illegal bet network. The network consisted of a large number of companies headquartered in offshore tax havens, as well as trust companies, all directly or indirectly linked to the persons under investigation. The criminal group sought to conceal the bets placed in such a manner that they could not be traced, and to launder the proceeds to evade tax payment. The illicit profits made by the network were estimated to exceed 650 million euros. The letter of request was issued by a district anti-Mafia office in Italy, reportedly using as the legal bases both article 12 of the Organized Crime Convention and the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196/45). The letter further requested that all documents relating to the company be secured and that the possible presence of other assets or property registered in the name of the persons under investigation be ascertained. One further outgoing letter of request issued in connection with this case concerned the execution of an order to seize assets of two other companies, allegedly related to the criminal group, based in a third State.

An application for registration of a foreign restraint order made by the United States in relation to funds held by the accused in Antigua and Barbuda was the subject of proceedings before the High Court of Justice of the Eastern Caribbean Supreme Court (Territory of Antigua and Barbuda) in 2010 (*Antigua and Barbuda-2*). The facts of this fraud and money-laundering case, involving a former prime minister, are discussed in more detail later in this Digest. Following the conviction of the accused person in the United States in 2005, a judge in the District Court of Columbia, Washington, D.C., issued an order to restrain the perpetrator's funds located in Antigua and Barbuda so as to facilitate ongoing wider confiscation proceedings. Upon receipt of this request, made on the basis of the Organized Crime Convention and the treaty between Antigua and Barbuda and the United States on mutual assistance in criminal matters, signed on 31 October 1996, the Supervisory Authority established under the Money Laundering (Prevention) Act 1996 of Antigua and Barbuda submitted an application to the High Court pursuant to section 27 of the Mutual Assistance in Criminal Matters Act 1993 of Antigua and Barbuda to register the restraint order: *Supervisory Authority (under the Money Laundering (Prevention) Act 1996) v. Liquidators of Eurofed Bank* (High Court of Justice, Eastern Caribbean Supreme Court (Territory of Antigua and Barbuda), Claim No. ANUHCV 2010/0298, 12 October 2010). Satisfied that the conditions under section 27 had been met, the Court granted the application. In support of its decision, the Court referred to article 18 of the Organized Crime Convention and the bilateral mutual legal assistance treaty between the two States.

3.4. Transfer of sentenced persons: article 17 of the Organized Crime Convention

The transfer of sentenced persons allows for persons convicted and sentenced to a term of imprisonment involving deprivation of liberty in one State (the sentencing State) to serve their sentence in another State (the administering State).⁹⁴ This may be done at the request of the person who has been sentenced so that he or she may be able to serve the sentence in a State to which he or she has social ties, usually by virtue of being a national of that State. A further point of consideration is that rehabilitation and reintegration are generally more likely to occur in a State in which the person has family and friends. The decision to transfer a sentenced person may also be made on the basis of humanitarian or compassionate grounds, including medical or mental health needs or where the conditions in the institution in which the person was convicted and sentenced fall below minimum international standards. In addition, international relations may play a role in cases involving the transfer of sentenced persons.⁹⁵

Specialized legal instruments that enable the transfer of sentenced persons are a relatively recent development. Certain bilateral and regional agreements concluded in the late 1950s and early 1960s were the first instruments permitting countries with similar laws to enforce each other's sentences and to transfer

⁹⁴ See also, Mohamed Abdul-Aziz, "International perspective on transfer of prisoners and execution of foreign penal judgements", in *International Criminal Law*, 3rd ed., vol. 2, M. Cherif Bassiouni, ed. (Leiden, Netherlands, M. Nijhoff Publishers, 2008), pp. 530–536.

⁹⁵ UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, para. 600; see also, UNODC, *Handbook on the International Transfer of Sentenced Persons*, Criminal Justice Handbook Series (Vienna, 2012), pp. 9–15.

sentenced persons, then referred to as prisoners, for the purpose of enforcement. The first multilateral treaty, the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders of 1964,⁹⁶ as its name suggests, does not deal directly with sentenced persons but does provide for the original prison sentence being carried out in the State to which the sentenced person has been transferred.⁹⁷ In 1983, the Council of Europe developed the Convention on the Transfer of Sentenced Persons, which remains the prominent stand-alone treaty on this subject matter to this day.⁹⁸ The Scheme for the Transfer of Convicted Offenders within the Commonwealth largely mirrors the provisions of the European Convention. The Scheme is open to all Commonwealth countries that accept it for use as a basis for the transfer of sentenced persons. The Inter-American Convention on Serving Criminal Sentences Abroad was adopted in 1993 and entered into force on 4 December 1996. Although the Inter-American Convention is not structured in the same way as the European Convention, it provides a similar model for the transfer of sentenced persons.

Article 17 of the Organized Crime Convention encourages States parties to enter into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with the Convention. The Model Agreement on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners, providing simple procedures for the transfer of sentenced persons, was adopted in 1985 by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

The legal requirements, along with the conditions and circumstances of transfers of sentenced persons, differ between States and frequently constitute great obstacles. If two States reach an agreement to transfer a sentenced person, the States will arrange for the physical transfer of that person, which may include arrangements relating to transportation, relevant documentation and arrival at the destination. The sentencing and administering States need to agree in advance as to the costs of the transfer. If the person is to be transferred through a third State, permission from that State may need to be obtained. In accordance with the general principle of the transfer of sentenced persons, the administering State should maintain the sentence that was imposed by the sentencing State. Some exceptions may apply where the sentence is incompatible with the legislation of the administering State. In such cases, the understanding between the States is that the sentence will nevertheless be reasonably similar to the one originally imposed.

In the course of the research conducted for the purposes of this Digest, no information was obtained on agreements or arrangements on the transfer of sentenced persons concluded in accordance with article 17 of the Organized Crime Convention. This is due to the fact that article 17 does not actually provide a legal basis for the transfer of prisoners, but rather calls for States parties to consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by the Convention, so that they may complete their sentence there.

The reasons for adopting bilateral transfer agreements are often similar to the reasons for adopting multilateral agreements. Indeed, bilateral agreements exist and operate contemporaneously with multilateral conventions on the transfer of sentenced persons in many States. Many States begin an international prisoner transfer programme with a bilateral agreement with a neighbouring country and later accede to a multilateral convention. Some such bilateral agreements have specific provisions that may be suitable only for neighbouring States, whereas multilateral conventions tend to be broader and more flexible in nature. Since there may be particular benefits related to transferring prisoners under a particular agreement, some States will opt for one over another.⁹⁹

⁹⁶ Council of Europe, *European Treaty Series*, No. 51. Opened for signature on 30 November 1964, (entry into force on 22 August 1975.

⁹⁷ See also, UNODC, *Handbook on the International Transfer of Sentenced Persons*, p. 17.

⁹⁸ Council of Europe, *European Treaty Series*, No. 112. Opened for signature on 21 March 1983, entry into force on 1 July 1985.

⁹⁹ UNODC, *Handbook on the International Transfer of Sentenced Persons*, p. 21.

3.5. Transfer of criminal proceedings: article 21 of the Organized Crime Convention

The possibility of transferring criminal proceedings from one State to another can increase the likelihood of the success of a prosecution, for instance, when the other State appears to be in a better position to conduct the proceedings. Such transfer can also be used to increase the efficiency and effectiveness of the prosecution in a State that is initiating proceedings in lieu of extradition. Furthermore, it can be a useful method of concentrating the prosecution in one jurisdiction and thereby increasing its efficiency and the likelihood of its success in cases involving several jurisdictions.¹⁰⁰

Article 21 of the Organized Crime Convention encourages the transfer of criminal proceedings for the prosecution of offences covered by the Convention. Based on the framework established under article 8 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, article 21 of the Organized Crime Convention imposes no obligation on States parties to transfer proceedings in any particular case. It does, however, require the parties to consider the possibility of using the cooperative mechanism of transfer of proceedings for the prosecution of offences falling within the scope of the Convention. The relevant criterion is that such transfer would be in the interests of the proper administration of justice. Furthermore, it makes specific mention of cases in which several jurisdictions are involved and there would be an advantage in concentrating the prosecution in one jurisdiction. (The latter element was not included in the wording of article 8 of the 1988 Convention.)¹⁰¹

In order to transfer criminal proceedings, the two States involved first need to evaluate whether the receiving State in which the proceedings are to be held has jurisdiction over the principal issues of the case. Next, from a practical point of view, in order to effectively transfer the prosecution to another State, two further steps may be required. First, the two States may need to share and transfer information and evidence. Article 15, paragraph 5, of the Organized Crime Convention provides that, where two States are involved in the investigation, prosecution or judicial proceedings in respect of the same conduct, they shall, as appropriate, consult one another with a view to coordinating their actions. Secondly, if the matter has already reached the courts in one State, it may be necessary to stay, or suspend, the prosecution, pending resolution in the other State.¹⁰²

In all cases in which a request for the transfer of proceedings is presented, an inquiry will have already been carried out in the requesting State and some or all of the evidence will have been gathered. Such information will usually be necessary in order for a decision to be rendered by the requested State to take over the proceedings; that State may require additional information in order to make such a decision. A good system of mutual legal assistance is therefore indispensable for the transfer of proceedings, and in that connection, the interrelationship between articles 21 and 18 with regard to mutual legal assistance is explicit.¹⁰³

In 1990, the General Assembly adopted the Model Treaty on the Transfer of Proceedings in Criminal Matters to assist States in developing agreements to enable the transfer of criminal proceedings.¹⁰⁴

Among the cases consulted for the purposes of this Digest, one case that makes reference to the transfer of criminal proceedings on the basis of article 21 of the Convention could be identified; it involved two Netherlands nationals accused of drug trafficking (*Poland-1*). Proceedings that had originally been instigated against the two persons by the prosecutor's office in Przemysl, Poland, were later transferred to the competent authorities in the Netherlands. It appears that the Organized Crime Convention was the sole basis for the transfer, as Poland was not a party to the European Convention on the Transfer of Proceedings in Criminal Matters.¹⁰⁵

¹⁰⁰ UNODC, *Criminal Justice Assessment Toolkit: Cross-Cutting Issues*, p. 13.

¹⁰¹ See McClean, *Transnational Organized Crime*, p. 251.

¹⁰² UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, para. 606.

¹⁰³ [CTOC/COP/WG.3/2017/2](#), para. 24.

¹⁰⁴ See Model Treaty on the Transfer of Proceedings in Criminal Matters (General Assembly resolution [45/118](#), annex); see also, McClean, *Transnational Organized Crime*, pp. 250–251.

¹⁰⁵ United Nations, *Treaty Series*, vol. 1137, No. 17825. Opened for signature on 15 May 1972; entry into force on 30 March 1978.

3.6. Joint investigations: article 19 of the Organized Crime Convention

Article 19 of the Organized Crime Convention encourages States parties to conclude bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. Through article 19, the Convention encourages a type of international cooperation that goes beyond traditional measures such as mutual legal assistance and law enforcement cooperation.¹⁰⁶ As has been noted, one of the great advantages of joint investigations is the potential to bypass cumbersome procedures of mutual legal assistance treaties, as members of the investigation team, acting on foreign soil, are enabled to directly request the authorities of their home country to take the needed investigative measures. This is critical because such authorities are then obligated to take the measures requested under the conditions that would apply if they had been asked as part of a domestic investigation.¹⁰⁷

Article 19 requires States parties to consider concluding agreements or arrangements on the establishment of joint investigative bodies in general terms. Technically, the expression “shall consider” makes this requirement quasi-mandatory, which means that States parties are asked to seriously consider adopting the specific measure and to make a genuine effort to determine whether adopting the measure would be compatible with their legal systems.

Article 19 further grants legal authority to conduct joint investigations on a case-by-case basis, even in the absence of a specific agreement or arrangement. This requirement is not mandatory. The domestic laws of most States already permit such joint activities, and, for those few States whose laws do not so permit, this provision will be a sufficient source of legal authority for case-by-case cooperation of this sort.

The general limitation for States parties, contained in the third sentence of article 19, is to ensure that the sovereignty of the State party in whose territory such investigation is to take place is fully respected. Thus, States parties enjoy broad discretion regarding the question of whether a case should be investigated jointly with other States parties; but if they decide to do so, respecting the sovereignty of the host country is mandatory.

Article 19 does not contain a specific reference to the offences falling within its scope, as is the case with articles 16 (extradition), 18 (mutual legal assistance), 21 (transfer of criminal proceedings) and 27 (law enforcement cooperation). However, in the light of article 3, on the scope of application of the Convention, article 19 applies, by analogy, to the offences covered by the Convention as provided for in article 3, namely, offences established in accordance with articles 5, 6, 8 and 23 that are transnational in nature (defined in art. 3, para. 2) and involve an organized criminal group (defined in art. 2 (a)); serious crimes (defined in art. 2 (b)) that are transnational in nature and involve an organized criminal group; and offences established in accordance with any of the three supplementary Protocols to which States are parties (art. 1, para. 2, of each Protocol). The lack of reference to the scope of applicable offences in article 19 may be due to the fact that States concluding a general agreement in accordance with the first sentence of article 19 will normally not limit the scope of such an agreement to Convention offences, but will include other offences linked to them that need to be investigated as elements of the overall criminal case under scrutiny for purposes of the proper administration of justice.

The reference in article 19 to “investigations, prosecutions or judicial proceedings” allows for the consideration of the conduct of joint investigations at any stage of the criminal proceedings at stake and of the competent authority involved in the respective State. However, experience has shown that it is prudent to make a decision to carry out joint investigations at the earliest opportunity so that sufficient evidentiary material can be gathered and shared.¹⁰⁸

The use of joint investigations offers one of the most promising forms of international cooperation, although there are still some unresolved issues in terms of making it fully functional on a broad scale. These involve legal matters, issues of attitude and trust among law enforcement agencies, and procedural questions. There

¹⁰⁶ See also article 49 of the Convention against Corruption and article 9 of the 1988 Convention.

¹⁰⁷ Betti, “New prospects for inter-state co-operation in criminal matters”, pp. 157–158.

¹⁰⁸ [CTOC/COP/WG.3/2020/2](#), paras. 11–15.

are also some practical problems in the organization of joint investigations, including the lack of common standards and accepted practices, issues regarding the supervision of the investigation, and the absence of mechanisms for quickly solving these problems. As has been noted, experience suggests that provisions of national legislative frameworks and the conclusion of bilateral agreements are necessary to enable these arrangements.¹⁰⁹

Two models of joint investigations are commonly used in practice. Either model can be used as a basis for the implementation of article 19.¹¹⁰

The first model consists of parallel, coordinated investigations with a common goal, assisted by a liaison officer network or personal contacts and supplemented by formal mutual legal assistance requests for the purpose of obtaining evidence. The officials involved may be relocated and able to work jointly on the basis of long-standing cooperative practices and/or existing mutual legal assistance legislation, depending on the nature of the legal system or systems involved

The second model consists of integrated joint investigation teams with officers from at least two jurisdictions. These teams can be further divided and characterized either as passive or active. One example of a passively integrated team is a situation in which a foreign law enforcement officer is integrated with officers from the host State in an advisory or consultancy role, or in a support role focused on the provision of technical assistance to the host State. An actively integrated team would include officers from at least two jurisdictions, with the ability to exercise equivalent, or at least some, operational powers under the control of the host State in the territory or jurisdiction where the team is operating.

One example of joint investigations carried out on the basis of article 19 of the Organized Crime Convention involved a collaboration between Brazilian, Portuguese and Spanish authorities in the investigation of an organized criminal group engaged in trafficking cocaine from Brazil through Portugal to Spain (*Portugal-1*). Spanish and Brazilian authorities provided information to facilitate the investigation led by Portugal. Requests to obtain information on the commercial activities of the main suspect and of companies run, directly or indirectly, by him were also sent to China, Italy, Sweden, Switzerland, the United Kingdom and the United States. Furthermore, Portugal sent letters rogatory asking Brazilian, Spanish and United States authorities to conduct searches of private homes and offices, interview suspects and witnesses, record movable and immovable property associated with the main suspect and seize bank account deposits. Joint investigative teams were created under article 19 to intercept telephone conversations, conduct surveillance and searches, and seize assets. The suspect was eventually convicted on charges of aggravated drug trafficking and sentenced to 14 years imprisonment. All seized assets were confiscated. On appeal, the Supreme Court of Justice of Portugal reduced the sentence to 11 years' imprisonment.

A case reported by Italy involved a request by an undisclosed State to set up a joint investigation team in the context of a money-laundering and fraud investigation (*Italy-4*). Further details about the case, such as whether article 19 was used as the legal basis for the request, were not available.

3.7. Special investigative techniques: article 20 of the Organized Crime Convention

Special investigative techniques are methods for gathering information to facilitate the detection and investigation of crimes and suspects. These techniques are especially useful in dealing with sophisticated organized criminal groups because of the dangers and difficulties inherent in gaining access to their operations and gathering information and evidence for use in domestic prosecutions, as well as in providing mutual legal assistance to other States parties. In many cases, less intrusive methods have not proved effective, or could not be carried out without unacceptable risks to those involved. Article 20 of the Organized Crime Convention endorses the use of special investigative techniques such as controlled delivery, electronic surveillance and undercover operations.

¹⁰⁹Boister, "The cooperation provisions of the UN Convention against Transnational Organised Crime", p. 50.

¹¹⁰UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, para. 597; Boister, "The cooperation provisions of the UN Convention against Transnational Organised Crime", p. 50.

Controlled delivery is particularly useful in cases where contraband, such as illicit drugs, is identified or intercepted in transit and then delivered under surveillance in order to identify the intended recipients or to monitor its subsequent distribution throughout a criminal organization. Legislative provisions are often required to permit such a course of action, as the delivery of the contraband by a law enforcement agent or other person may itself be a crime under domestic law.

Surveillance, especially electronic surveillance in the form of listening devices or the interception of communications, performs a similar function and is often preferable where a close-knit group cannot be penetrated by an outsider or where physical infiltration or surveillance would represent an unacceptable risk to the investigation or the safety of investigators. Given its intrusiveness, electronic surveillance is generally subject to strict judicial control and numerous statutory safeguards to prevent abuse.

Undercover operations may be used where it is possible for a law enforcement agent or other person to infiltrate an organized criminal group to gather evidence.

Article 20, paragraph 1, of the Organized Crime Convention promotes the use of special investigative techniques at the national level if they are permitted by the basic principles of the domestic legal system. For this reason, the use of investigative techniques should have a proper basis in national legislation, that is, publicly accessible law or laws with an authorization regime that is judicial or that, at minimum, incorporates judicial oversight. Interference with certain human rights, such as the right to a fair trial and the right to privacy, should be taken into account.

By referring to the conditions prescribed by domestic law, article 20, paragraph 1, calls upon States parties to define in their national legislation the circumstances and conditions under which the competent authorities are empowered to use special investigative techniques. Most special investigative techniques are highly intrusive and may give rise to constitutional difficulties regarding their compatibility with fundamental rights and freedoms. States parties may therefore decide not to allow certain techniques under their domestic legal systems. In addition, the reference to conditions prescribed by domestic law enables States parties to subject the use of special investigative techniques to as many safeguards and guarantees as may be required for the protection of human rights and fundamental freedoms.¹¹¹

Article 20, paragraphs 2 to 4, provide for measures to be taken at the international level. Article 20, paragraph 2, accords priority to international agreements on the use of special investigative techniques and therefore encourages States parties to conclude bilateral or multilateral agreements or arrangements to foster cooperation in this area, with due respect to national sovereignty concerns. Since special investigative techniques require the cooperation and collaboration of multiple law enforcement agencies of different countries, international cooperation is essential to facilitating the smooth conduct of operations involving such techniques. It is important to note that, while some forms of covert investigations may be lawful in some jurisdictions, they may be unacceptable in others.

Article 20, paragraph 3, refers to the practice of using special investigative techniques at the international level in the absence of agreements or arrangements. The provision calls upon States parties to cooperate on a case-by-case basis. For a number of States, this provision will itself be a sufficient source of legal authority for case-by-case cooperation.

In addition to the obvious operational arrangements, two particular factors are identified in article 20, paragraph 3, as potentially needing attention. The first one relates to financial arrangements, which include the cost of using such techniques, bearing in mind not only the resources that need to be deployed but also the needs of each State party, for example, for taking evidence in a particular form. Although there is a link, in some cases, between the use of special investigative techniques at the international level and mutual legal assistance, the costs of such use are not generally treated as ordinary costs for the purposes of article 18, paragraph 28, of the Convention. The complexity of these issues makes it desirable to have in place standing arrangements or memorandums of understanding, as there may be no time for detailed negotiations in certain cases.

¹¹¹ CTOC/COP/WG.3/2020/3, paras. 28–29.

The second factor relates to the exercise of jurisdiction in cases where the evidence collected through special investigative techniques shows that the criminal offences are also linked to other States. For purposes of clarity, this possibility may be taken into account by the competent authorities, time permitting, before any conflicting claims to jurisdiction arise. In any case, consultations may be needed among the States parties concerned to coordinate their actions and resolve jurisdiction conflicts, in line with article 15, paragraph 5, of the Convention.¹¹²

Article 20, paragraph 4, clarifies that the methods of controlled delivery that may be applied at the international level include intercepting goods and allowing them to continue intact or be removed or replaced in whole or in part. The provision leaves the choice of method to the State party concerned.

While none of the cases consulted for the purposes of this Digest make express reference to article 20, at least two cases involved mutual legal assistance requests concerning surveillance. A request sent by Denmark to Costa Rica, for instance, included, *inter alia*, the surveillance of persons in Costa Rica (*Costa Rica-5*). Surveillance of persons was also part of a mutual legal assistance request sent by the Netherlands to Costa Rica (*Costa Rica-17*). Additional information about the nature and extent of the surveillance sought was not available. It is possible that the investigations carried out in other cases discussed in this Digest involved special investigative techniques such as controlled delivery and undercover operations, even though such techniques were not mentioned expressly in the available material.

3.8. Law enforcement cooperation: article 27 of the Organized Crime Convention

Article 27 of the Organized Crime Convention requires that States parties cooperate closely with one another in their law enforcement activities, in pursuit of the common goal of effectively combating offences covered by the Convention. Relevant measures include the establishment or enhancement of adequate channels of communication, cooperation in conducting inquiries, the exchange of information concerning the means and methods used by offenders, facilitating effective coordination, and entering into agreements or arrangements on direct cooperation between law enforcement agencies.

In the absence of such agreements or arrangements, article 27, paragraph 2, of the Convention specifies that States parties may consider the Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by the Convention.

Because of the informal nature of law enforcement cooperation, it was not possible to identify relevant cases involving the Organized Crime Convention as a legal basis for such cooperation in the absence of other agreements or arrangements in this area (see art. 27, paragraph 2). However, attention could be devoted to those forms of cooperation in which elements of law enforcement and judicial cooperation are intermingled, such as the spontaneous transmission of information without prior request, the establishment of joint investigative bodies, and international cooperation involving the use of special investigative techniques. Cases pertaining to such forms of cooperation are discussed in the respective parts of this Digest.

3.9. Observations

Since the Organized Crime Convention entered into force in 2003, it has been used as a legal basis for international cooperation in a considerable number of cases in which one State party sought assistance from another. The largest number of cases consulted for the purposes of this Digest involved requests for mutual legal assistance under article 18. The prevalence of cases in this category may be explained by the broad scope of article 18 and the many types of assistance that may be requested under the article. Furthermore, it is noteworthy that many requests are made at the investigative stage rather than the trial stage of criminal proceedings, which, in turn, explains the greater number of cases in this category. It has been similarly noted that the reason why more requests involve mutual legal assistance than extradition is because mutual

¹¹² *Ibid.*, paras. 48–50.

legal assistance is, in practice, usually a precedent to the extradition, is usually cheaper and is less administratively burdensome or less likely to engage as much judicial supervision.¹¹³

As evidenced by the available information, extradition is the second most common form of international cooperation under the Organized Crime Convention. Because extradition may involve the transfer or prosecution of a person, States generally impose significant procedural and legal requirements on the making and granting of such requests. This may explain the lower number of cases relating to article 16 of the Convention, compared to the number of cases involving mutual legal assistance.

The vast majority of cases identified and analysed for the purposes of this Digest involved cooperation under articles 16 or 18 of the Convention. The authors of the *Digest of Organized Crime Cases: A Compilation of Cases with Commentaries and Lessons Learned*, published by UNODC in 2012, faced a similar situation, noting that almost half of the cases discussed in that digest had involved mutual legal assistance and extradition, and that the relevance of those forms of international cooperation in proceedings for transnational organized crime offences was indisputable.¹¹⁴

Other forms of international cooperation under the Organized Crime Convention appear to be rarely used in practice. The possible reasons for this are manifold and may relate, inter alia, to the fact that some of the measures involve the trial or post-trial stage of criminal proceedings and that some measures are relatively new for many States parties. Some States may, thus, be hesitant to use tools of international cooperation with which they have little or no experience, for which they lack applicable domestic laws, and in situations where they may fear that delays or mistakes in using such cooperation might jeopardize criminal proceedings. Moreover, the different levels of capacity and the limited resources of some central and other competent authorities of States parties involved in international cooperation may be a further reason to prioritize or focus primarily only on requests for more established types of cooperation.

There is little information on cases in which requests for international cooperation were refused and reasons for the refusal were provided. It appears that States parties rarely report such cases. In the small number of cases documented in this Digest in which cooperation was refused, the refusal was due to the fact that the Organized Crime Convention had not been ratified and had not become part of domestic law or that the requested State party had been unable to rely on a multilateral treaty for the provision of assistance.¹¹⁵

¹¹³ See also, Boister, “The cooperation provisions of the UN Convention against Transnational Organised Crime”, p. 61.

¹¹⁴ UNODC, *Digest of Organized Crime Cases*, para. 177.

¹¹⁵ Boister, “The cooperation provisions of the UN Convention against Transnational Organised Crime”, p. 57.

CHAPTER IV.

CASES BY REGION AND COUNTRY



4. CASES BY REGION AND COUNTRY

In collecting cases for the purposes of this Digest, every effort was made to obtain the largest and best possible representation of States parties from around the world. Regrettably, the cases included and analysed in this Digest are not evenly spread throughout the world. This uneven distribution can be attributed to, inter alia, different legal systems and traditions of reporting cases and publishing case reports, the availability of instruments other than the Organized Crime Convention that enable international cooperation in criminal matters, the varying levels of implementation of the Convention and inconsistent practices relating to access to electronic databases and other collections of cases. As a result, some countries and regions are better represented in this Digest than others. A complete list of cases examined in this Digest can be found in the annex. Figure 1 below shows the extent of international cooperation between States parties, as reflected in the cases examined in this Digest. The following sections examine the available cases by regional group.¹¹⁶

Figure 1. Extent of international cooperation under the Organized Crime Convention, as reflected in cases examined in the present Digest



4.1. Africa

The number of cases included in this Digest involving international cooperation under the Organized Crime Convention by States in Africa is particularly low. This is despite the fact that nearly all States in Africa, except for Somalia and South Sudan, are parties to the Convention. At the time of drafting this Digest, the Republic of the Congo had signed the Convention but had not yet ratified it.

Two of the cases involved judicial decisions by Nigeria (*Nigeria-1* and *Nigeria-2*). A third case, which relates to Egypt, was reported to the Conference of the Parties to the Organized Crime Convention in 2010 (*Egypt-1*). In addition, cases reported by Canada, France, Italy, Monaco, the Netherlands, Spain and the United States involved cooperation under the Organized Crime Convention with Cabo Verde, Egypt, Equatorial Guinea, Ghana, Libya and Senegal. Cases examined in this Digest involving States parties in Africa are illustrated in figure 2 below.

¹¹⁶ For a full list of United Nations regional groups of Member States, see www.un.org/dgacm/en/content/regional-groups.

Figure 2. Extent of international cooperation under the Organized Crime Convention involving States in Africa, as reflected in cases examined in the present Digest]



In addition to the cases included in this Digest, Mauritius reported in 2010 that it had received three requests for mutual legal assistance from France and one from Madagascar, but did not provide further details about those requests and the offences and criminal proceedings involved.¹¹⁷ Furthermore, Mauritius reported that it had sent out three requests for mutual legal assistance between 2007 and 2010. A request sent to the United Kingdom and made on the basis of the Organized Crime Convention and other instruments concerned a case involving drug trafficking; the request was granted by the United Kingdom authorities. A request sent to Indonesia on the basis of the Organized Crime Convention concerning fraud, financial crime and money-laundering was still outstanding at the time that it was reported. In another matter involving drug trafficking, a request was sent to Romania using the Organized Crime Convention and other instruments as legal bases. The case was still pending at the time that it was reported.¹¹⁸

In 2010, Botswana reported that it had not used the Organized Crime Convention as a basis for international cooperation and noted that it would be difficult for its national authorities to cooperate with States with which it had no other bilateral or multilateral treaty. It was further noted that extradition would generally only be granted to other member States of the Commonwealth of Nations, that is, those agreeing to the London Scheme for Extradition within the Commonwealth. For this reason, an extradition request received from Montenegro, another State party to the Organized Crime Convention, could not be granted.¹¹⁹ Burkina Faso similarly notified the Conference of the Parties that it had no practical examples demonstrating the use of the Organized Crime Convention in international cooperation matters, as it had used other instruments for cooperation and mutual legal assistance.¹²⁰

4.2. Asia and the Pacific

The number of cases examined in this Digest involving States parties to the Organized Crime Convention in Asia and the Pacific is very small compared to the number of States, and relative to the population, in the region. Bhutan, Papua New Guinea and Solomon Islands are the only States in the Asia-Pacific region that are not parties to the Convention. At the time of writing, the Islamic Republic of Iran had signed but not yet ratified the Convention.

¹¹⁷ *CTOC/COP/2010/CRP.5*, para. 11.

¹¹⁸ *Ibid.*, para. 12.

¹¹⁹ *Ibid.*, para. 5.

¹²⁰ *Ibid.*, para. 6.

The reported cases examined involved China and Hong Kong, China, Indonesia, Japan, Kazakhstan, Kuwait, Turkey and the United Arab Emirates. Nearly all of these cases involved international cooperation with States parties in Europe; one case involved cooperation with the United States, another involved cooperation between two jurisdictions in Asia. Figure 3 below illustrates the extent of international cooperation under the Organized Crime Convention in cases examined in this Digest involving States parties in Asia and the Pacific.

Figure 3. Extent of international cooperation under the Organized Crime Convention involving States parties in Asia and the Pacific, as reflected in cases examined in the present Digest



The Convention has also been used as a legal basis for cooperation in other cases involving countries in the Asia-Pacific region, but further details about the cooperation and the offences involved were not available at the time of writing.

The Philippines, for instance, informed the Conference of the Parties to the Organized Crime Convention in 2010 that it had used article 16 of Convention, together with other bilateral and regional instruments, as the legal basis for extradition. The Philippines had conducted extraditions to Germany, Indonesia, Japan, Saudi Arabia, Sweden and Switzerland. Furthermore, Bahrain, Malaysia and Singapore, as well as Taiwan Province of China, had conducted extraditions to the Philippines.¹²¹

The Philippines further reported that it had used article 18, as well as other bilateral and regional instruments, as the legal bases for mutual legal assistance cooperation with Australia, Brunei Darussalam, Canada, China, Colombia, Ireland, Israel, Italy, Jordan, New Zealand, Norway, the Republic of Korea, Sweden, the United Arab Emirates, the United Kingdom and the United States.¹²²

China made a statement in 2015 noting that between 2003 and 2015 it had dealt with over 50 requests for international cooperation from other parties to the Organized Crime Convention;¹²³ further details about the requesting States and the nature of these requests were not available at the time of writing.

In 2008, Cambodia, China and the Philippines reported that they had used the Organized Crime Convention as the legal basis for extradition, and Cambodia, China, Indonesia, Malaysia, Myanmar, the Philippines and Thailand reported that they had used the Convention as a legal basis for mutual legal assistance.¹²⁴

¹²¹ Ibid., para. 15.

¹²² Ibid., para. 14.

¹²³ Boister, “The cooperation provisions of the UN Convention against Transnational Organised Crime”, p. 85.

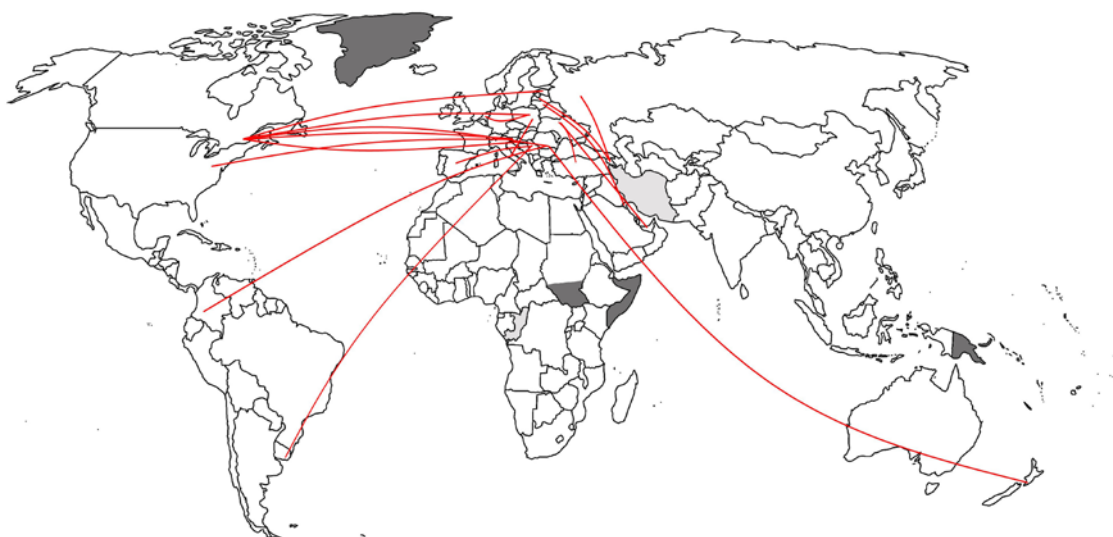
¹²⁴ [CTOC/COP/2008/CRP.7](#).

4.3. Eastern Europe

Nine cases reported by States in the Eastern European region are included in this Digest. This includes cases reported by Estonia, Lithuania, Poland, Romania, Serbia, Slovenia and Ukraine. In addition, Canada and the United States have reported cases involving international cooperation under the Organized Crime Convention with Eastern European States.

Figure 4 below shows that many of these cases involved cooperation between States in Eastern Europe and North America. Two of the cases involved cooperation with States in Latin America, three with States in Asia and one with New Zealand. It is not surprising that only one of the cases involved cooperation with States in Western Europe, since most States in the Eastern European region are parties to conventions relating to international cooperation in criminal matters developed by the Council of Europe, which brings together 47 member States across Europe.

Figure 4. Extent of international cooperation under the Organized Crime Convention involving States parties in Eastern Europe, as reflected in cases examined in the present Digest



Eastern European States reportedly used the Organized Crime Convention as the legal basis for international cooperation in a range of other cases not included in this Digest and the available information about those cases does not provide any detail about the offences, criminal proceedings and cooperation involved.

Belarus, for instance, reported in 2010 that it had made several attempts and had received several requests to use the Organized Crime Convention to request mutual legal assistance from other States parties. In 2009, it submitted a request to the competent authority of Germany, but the request was not executed.¹²⁵ In 2010, Belarus received five requests for legal assistance in connection with the investigation of a single criminal case involving Egypt, Iraq, Jordan, Pakistan, and Sri Lanka, however, no response to the requests has been recorded.¹²⁶ Belarus also reported that it had invoked the Organized Crime Convention as a legal basis for cooperation in cases involving cybercrime and offences involving electronic evidence;¹²⁷ Belarus was not a party to the Council of Europe Convention on Cybercrime at the time of writing.¹²⁸

While Lithuania reported in 2010 that it had not used the Organized Crime Convention as the legal basis in extradition cases, it did note that the Convention had been used as the sole basis in a mutual legal assistance

¹²⁵ *CTOC/COP/2010/CRP.5*, para. 16.

¹²⁶ *Ibid.*, para. 17.

¹²⁷ Council of Europe, Cybercrime Programme Office, “Revised assessment report (2018) on international cooperation on cybercrime in the Eastern Partnership region” (May 2018), p. 9.

¹²⁸ Council of Europe, *European Treaty Series*, No.185. Opened for signature on 23 November 2001; entered into force on 1 July 2004; see also section 6.2.2.4 below.

request sent to Nigeria. The case involved the hijacking of a ship and the taking of hostages. Lithuania was still awaiting a response from Nigeria at the time of reporting.¹²⁹

In addition to an extradition request sent by Romania to Colombia in connection with a tax fraud and money-laundering investigation (*Romania-1*), in 2010, Romania reported that it had sent cooperation requests on the basis of the Organized Crime Convention to Australia, Brazil, Canada, the Dominican Republic, Ecuador, Egypt, Jordan, Malaysia, Mauritius, Morocco, New Zealand, Peru, the Philippines, Saudi Arabia, Singapore, Thailand, Tunisia, Venezuela (Bolivarian Republic of), the United Arab Emirates and the United States.¹³⁰

In 2009, Romania sent a request in a case involving trafficking in persons, seeking extradition from the United Arab Emirates on the basis of the Organized Crime Convention and the Trafficking in Persons Protocol.¹³¹ Romania further reported in 2010 that it had 24 requests pending that had been formulated during the pretrial stage, from 2009 to 2010: 17 of the requests related to cybercrime cases and had been sent to countries such as Australia, Brazil, Jordan, Malaysia, Mexico, New Zealand, Saudi Arabia, Tunisia and the United Arab Emirates; 6 requests had been sent to Latin American countries, and 1 request, relating to a case involving trafficking in persons, had been sent to Morocco.¹³² Romania had also sent requests for mutual legal assistance, which had been formulated during the trial stage, to Argentina, Australia, Brazil, Canada, the Dominican Republic and the Philippines. Most of these cases reportedly involved cybercrime.¹³³

In addition to the case involving Slovenia detailed in this Digest, Slovenia reported in 2010 that it was involved in several extradition requests made on the basis of the Organized Crime Convention. One of the requests, received from Uruguay, concerned a case of drug trafficking and used the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 as a further legal basis.¹³⁴ Slovenia also used the Organized Crime Convention in two money-laundering cases to request mutual legal assistance from Canada and the United States, respectively. Slovenia reportedly also received mutual legal assistance requests from other unnamed States parties.¹³⁵

Ukraine reported that, in 2006, it had received an order from a court in Lebanon on the basis of article 18, paragraphs 1 and 3 (b), of the Organized Crime Convention to serve writs of summons to four witnesses. A writ of summons was subsequently served on one of the witnesses, but the other three were not residing in Ukraine at that time.¹³⁶ In another case, Ukraine requested the extradition of a suspect from Lebanon using article 16 as the legal basis; the request was still pending at the time of reporting.¹³⁷ In 2009, Peru sent a mutual legal assistance request to Ukraine to interview a person. The order was returned without execution because the person did not live in Ukraine at that time.¹³⁸

In 2010, Latvia notified the Conference of the Parties to the Organized Crime Convention that it had not made or received requests related to international cooperation using the Organized Crime Convention as a legal basis.¹³⁹

¹²⁹ [CTOC/COP/2010/CRP.5](#), para. 23.

¹³⁰ *Ibid.*, para. 25.

¹³¹ *Ibid.*, para. 26.

¹³² *Ibid.*, para. 27.

¹³³ *Ibid.*, para. 28.

¹³⁴ *Ibid.*, para. 35.

¹³⁵ *Ibid.*, para. 38.

¹³⁶ *Ibid.*, para. 40.

¹³⁷ *Ibid.*, para. 42.

¹³⁸ *Ibid.*, para. 41.

¹³⁹ *Ibid.*, para. 21.

4.4. Latin America and the Caribbean

A considerable number of cases consulted for this Digest involved States in Latin America and the Caribbean. This is mostly due to the fact that countries such as Brazil and Costa Rica reported a large number of cases involving international cooperation under the Organized Crime Convention to the Conference of the Parties to the Organized Crime Convention in 2008 and 2010. Furthermore, the Mexican authorities submitted a significant number of cases directly to the author of this Digest.

Figure 5. Extent of international cooperation under the Organized Crime Convention involving States parties in Latin America and the Caribbean, as reflected in cases examined in the present Digest



Figure 5 above shows that much of the international cooperation under the Organized Crime Convention involving States parties in Latin America and the Caribbean was carried out with States in Western Europe. In a smaller number of cases, the Convention was also used for international cooperation with the United States or with other States parties in the Latin American and Caribbean region. In these cases, as shown in chapter 6 below, the Organized Crime Convention was usually employed alongside other multilateral or bilateral treaties on international cooperation in criminal matters.

In addition to reporting on the individual cases discussed in this Digest, several Latin American States have made general statements about the use of the Organized Crime Convention for international cooperation.

In 2010, Argentina informed the Conference of the Parties to the Organized Crime Convention that, in the previous two years, the Organized Crime Convention had been increasingly used in connection with requests for international cooperation in criminal matters, both as the sole basis for those requests or in conjunction with instruments of the kind mentioned above. Most of those requests concerned mutual legal assistance and involved the offence of trafficking in persons.¹⁴⁰

In addition to reporting many individual cases in which the Organized Crime Convention had been used as a legal basis for international cooperation, Brazil noted in 2010 that the Convention had also been the basis for several decisions by the judiciary of Brazil granting requests for international cooperation in criminal matters to foreign States in situations where similar requests had in the past been denied.¹⁴¹ Brazil reported that, from 2009 until 16 June 2010, the Office of the Coordinator General for Asset Recovery of the Department for Asset Recovery and International Legal Cooperation of Brazil had handled 62 cases in

¹⁴⁰ Ibid., para. 45.

¹⁴¹ CTOC/COP/2008/CRP.2, para. 7.

which the Organized Crime Convention had been used as the sole legal basis, or in conjunction with bilateral or regional instruments.¹⁴²

While this Digest only includes one case involving international cooperation with Colombia (*Colombia-1*), Colombia informed the Conference of the Parties in 2010 that it had received a total of seven requests for mutual legal assistance from Chile, Costa Rica, Ecuador, Italy, Peru, and Uruguay.¹⁴³ No additional information was available about the offences involved in those cases and whether the requests were executed.

Paraguay, which does not feature elsewhere in this Digest, reported in 2010 that it had used the Organized Crime Convention as the sole legal basis for cases related to trafficking in persons, including in the search for and possible rescue of victims, as well as for the collection of evidence abroad. The Convention had also been used by Paraguay for international cooperation in drug-related cases. At that time, the Convention had been used by Paraguay only for mutual legal assistance and never for extradition or confiscation. In 2008, Paraguay recorded 10 requests for mutual legal assistance: 1 active request and 9 passive requests. In 2009, there were 6 passive requests and 12 active requests. In 2010, there were 3 passive requests and 14 active requests.¹⁴⁴

In 2008, the secretariat of the Conference of the Parties found two cases in which the Supreme Court of the Bolivarian Republic of Venezuela had considered the use of the Organized Crime Convention as a legal basis for extradition. In the first of those cases, Lithuania requested the extradition of a person charged with participating in an organized criminal group. The request was rejected by the court. The second case concerned a request from Austria (on unreported charges) and was granted.¹⁴⁵

4.5. Western European and other States

The Organized Crime Convention has been used extensively by Western European and other States as a legal basis for international cooperation. Figure 6 below shows that the cooperation has involved a very diverse range of States around the world, including in Africa, Asia and the Americas. It has also involved cooperation between States in Western Europe and North America, as well as New Zealand. Owing to the existence and widespread use of multilateral agreements on international cooperation in criminal matters developed by the Council of Europe, the Organized Crime Convention is less commonly used for cooperation between States parties in Europe, although in chapter 6 below it is shown that the Convention has been used alongside Council of Europe instruments in some cases.

¹⁴² [CTOC/COP/2010/CRP.5](#), para. 55.

¹⁴³ *Ibid.*, para. 57.

¹⁴⁴ *Ibid.*, para. 76.

¹⁴⁵ [CTOC/COP/2008/CRP.2](#), para. 30.

Figure 6. Extent of international cooperation under the Organized Crime Convention involving Western European and other States, as reflected in cases examined in the present Digest



In addition to the individual cases reported in this Digest, in 2008, Canada informed the Conference of the Parties to the Organized Crime Convention that it was using the Convention as the legal basis for international cooperation when specific offences, in particular offences under the Protocols supplementing the Convention, were not included in the scope of application of existing bilateral treaties.¹⁴⁶

Spain reported to the Conference of the Parties several more cases in which the Organized Crime Convention had been used as a legal basis for international cooperation. However, owing to a lack of sufficient detail, those cases are not further examined in this Digest. In 2007, for instance, Spain received a request from Brazil, as well as three requests from Ecuador, concerning money-laundering cases. In the same year, Brazil also sent two requests to Spain in connection with fraud cases. Furthermore, Spain sent a request to Lebanon in connection with a terrorism case. In other cases, Brazil sent seven requests for mutual legal assistance to Spain, while Chile and Ecuador each sent one such request to Spain.¹⁴⁷ In 2008, Brazil sent a request for mutual legal assistance to Spain in a case involving falsified documents. Spain also received one request from the United States regarding a robbery case. In the same year, Spain received nine requests from Brazil and one request from Serbia for mutual legal assistance. Spain also sent one request to Costa Rica and two to the Bolivarian Republic of Venezuela.¹⁴⁸ In 2009, Spain received one request for mutual legal assistance from Brazil and one from Ecuador in connection with drug trafficking cases. In the same year, Spain received a request from Brazil and another request from Paraguay. Spain sent one request to Cyprus, one to Ecuador and one to Senegal.¹⁴⁹ In 2010, Spain sent a request for mutual legal assistance to Paraguay and received two requests from Paraguay.¹⁵⁰

Spain further reported that the Organized Crime Convention had been used as a legal basis alongside the 1988 Convention to request extradition from States with which Spain had no extradition treaty or other arrangement.¹⁵¹

Lastly, the Organized Crime Convention was used by Spain as a legal basis to send letters rogatory to several unnamed countries concerning the laundering of proceeds derived from organized criminal activities.¹⁵²

¹⁴⁶ *Ibid.*, para. 28.

¹⁴⁷ *CTOC/COP/2010/CRP.5*, para. 91.

¹⁴⁸ *Ibid.*, para. 92.

¹⁴⁹ *Ibid.*, para. 93.

¹⁵⁰ *Ibid.*, para. 94.

¹⁵¹ *CTOC/COP/2010/CRP.5/Corr.1*, paras. 94 *bis*, 94 quater.

¹⁵² *Ibid.*, para. 94 quinquies.

In 2008, the United States informed the Conference of the Parties that it had made 13 extradition requests and five mutual legal assistance requests on the basis of the Organized Crime Convention. These cases, relating to a range of offences, from large-scale fraud to dealing in illegal arms, involved 10 States parties in Latin America, Eastern Europe and Western Europe. The extradition or assistance was granted in numerous cases and it was reported that no case had been refused on grounds related to the scope of the Convention or any shortcoming linked to the use of the Convention as the legal basis.¹⁵³

Norway reported in 2010 that it had received and granted several requests for mutual legal assistance from Brazil concerning a number of persons residing in Norway who had been implicated in a money-laundering investigation. Norway further noted that it could not provide practical examples of international cooperation related to confiscation using the Organized Crime Convention as a legal basis. It added that extradition requests from other European States were usually submitted or received on the basis of the European Convention on Extradition and that requests received from or sent to non-European States were usually made on the basis of bilateral agreements or, pursuant to the domestic law of Norway, could be made irrespective of a treaty or agreement with the requesting State.¹⁵⁴

Sweden made a similar observation in the same year and further noted that it had no reported cases in which the Organized Crime Convention had been used for international cooperation. This was explained by the fact that the domestic law of Sweden did not require reciprocity for extradition and mutual legal assistance.¹⁵⁵

The same position has been reported by Switzerland, where domestic law allows for mutual legal assistance to be granted to States with which Switzerland does not have international agreements. For these reasons, multilateral treaties specifically addressing crime, such as the Organized Crime Convention, are generally not used for mutual legal assistance.¹⁵⁶ Switzerland had previously used the Organized Crime Convention for mutual legal assistance requests sent to Brazil (see *Brazil-7* and *Brazil-10*), but ceased to do so after signing a bilateral mutual legal assistance agreement with Brazil in 2009.¹⁵⁷

The lack of reported cases from several Western European and other States has also been attributed to the fact that many States do not report or electronically record the legal basis on which international cooperation in criminal matters is sought or provided. In 2010, for instance, Belgium notified the Conference of the Parties that it had no means to find practical examples demonstrating the effective use of the Organized Crime Convention in international cooperation matters.¹⁵⁸ Germany made a similar statement in the same year, adding that it did not have centrally registered data on international cooperation.¹⁵⁹

4.6. Observations

The cases discussed in this Digest, along with other information provided by States parties, demonstrate a good record of using the Organized Crime Convention as a legal basis for international cooperation, although not in a consistent manner across all regions. Further improvements in national reporting mechanisms and processes may also indicate and substantiate an even more significant potential and added value of the Convention as a legal tool for fostering international cooperation in its different forms around the world. It is evident that the Convention could play a vital part in the field of international cooperation beyond the more than 100 cases outlined in this Digest.

Naturally, some States parties use the Organized Crime Convention for international cooperation more than others. This may be a result of domestic law and the implementation of the Convention, the need for international cooperation based on the types and levels of offences, and the availability and scope of other bilateral and multilateral treaties to effect cooperation, which is explored further in chapter 6 of this Digest. As

¹⁵³ [CTOC/COP/2008/CRP.2](#), para. 29.

¹⁵⁴ [CTOC/COP/2010/CRP.5](#), paras. 86–89.

¹⁵⁵ *Ibid.*, para. 95.

¹⁵⁶ *Ibid.*, para. 96.

¹⁵⁷ *Ibid.*, para. 97.

¹⁵⁸ *Ibid.*, para. 77.

¹⁵⁹ *Ibid.*, para. 78.

already mentioned, the availability of, and access to, cases is also a reflection of States parties' different legal traditions, policies, cultures, and even resources, in relation to the publication of court reports and information about investigations and other law enforcement activities, and to access to databases, case files and secondary sources.

It is nevertheless noteworthy that reports and information about the use of the Organized Crime Convention for international cooperation are not evenly available across regions. As evidenced by the available information, it appears that some regions and States employ the Convention for this purpose very rarely or not at all. In other parts of the world, especially Latin America, the Caribbean, Western Europe and North America, States use the Convention much more actively. The lack of cases involving States parties in Africa and Asia is noteworthy. This may be due in part to problems in accessing information that is classified or that only exists in hard copy, although it does appear that, in general, the Convention is used less actively for international cooperation in those regions. In the case of the Pacific island States, it has to be noted that many small island States have only ratified or acceded to the Organized Crime Convention quite recently and may not have had the need or the opportunity to employ the Convention for purposes of international cooperation in actual cases.

It would be therefore desirable to further explore with States parties why and in which circumstances the Organized Crime Convention can or cannot be used as a legal basis for international cooperation, in particular in the African and Asia-Pacific regions, whether States parties favour other relevant bilateral or multilateral treaties over the Organized Crime Convention, what obstacles they may experience in using the Convention and how such obstacles can best be addressed.

CHAPTER V.

OFFENCES INVOLVED



5. OFFENCES INVOLVED

The international cooperation measures under the Organized Crime Convention can be used for a range of offences; they are not limited to the four offences stipulated by the Convention. For ease of reference, it should be reiterated that, under its article 3, the Organized Crime Convention can be invoked for the following offences:

(a) Offences established at the domestic level in accordance with articles 5, 6, 8 and 23, that is, offences relating to participation in an organized criminal group, money-laundering, corruption and obstruction of justice, if they are transnational in nature and involve an organized criminal group (arts. 2 (a) and 3, para. 1 (a));

(b) Serious crimes that are transnational in nature and involve an organized criminal group (art. 3, para. 1 (b)). “Serious crime” is defined in article 2 (b) as any offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. Under article 3, paragraph 1 (b), the Convention can be used for international cooperation in relation to a range of crime types, including new and emerging forms transnational organized crime.¹⁶⁰

Under article 3 (b), an offence is considered transnational in nature if:

- (a) It is committed in more than one State;
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) It is committed in one State but has substantial effects in another State.

The Convention can further be invoked for offences established under any of its Protocols to which States have become parties (art. 1, para. 3, of each of the Protocols).

The cases discussed in this Digest demonstrate that the Organized Crime Convention has been used as a legal basis for international cooperation in connection with a wide range of crime types. These include offences covered by the Convention and its Protocols and various other serious crimes. The following sections outline the available cases in relation to the main crime types, starting with offences covered by the Convention itself (sects. 5.1–5.3) and followed by offences covered by the Protocols (sects. 5.4 and 5.5). Section 5.6 discusses cases involving serious crimes in which the Convention was used, including cases in which no crime type was specified.

5.1. Participation in an organized criminal group

Under article 5 of the Organized Crime Convention, States parties are required to establish as an offence the intentional participation in or contribution to the criminal activities of an organized criminal group. At its core, this offence is aimed at tackling organized crime by criminalizing acts that involve participation in or contributions to an organized criminal group. Under article 5, paragraph 1 (a), States must establish either or both of the offences set forth in its subparagraphs (i) and (ii) as criminal offences in their domestic laws. Both offences are designed to be preventive, by creating liability distinct from the attempt or completion of the criminal activity and by holding criminally liable those who associate for criminal endeavours, even if they have not yet committed an offence.¹⁶¹

The offence established under article 5, paragraph 1 (a), is akin to the common law conspiracy model. The elements of this offence combine the agreement to commit a crime with the purpose of obtaining a financial or other benefit. In essence, liability under article 5, paragraph 1 (a) (i), arises when two or more persons

¹⁶⁰ CTOC/COP/WG.3/2015/3, para. 78.

¹⁶¹ CTOC.COP.WG.2/2012/2, paras. 4–6.

deliberately enter into an agreement to commit a serious crime for the purpose of obtaining some material benefit. Unlike liability for attempt in certain legal traditions, there is no requirement to demonstrate that the accused came close (was “proximate”) to the completion of the substantive offence (or “serious crime”).¹⁶²

Article 5, paragraph 1 (a) (ii), of the Convention offers a second, distinct type of offence that is based on the criminal association laws originally developed in several civil-law countries. It adopts a model that makes participation in an organized criminal group a separate offence. In essence, subparagraph (ii) attaches criminal liability to intentional contributions to organized criminal groups, not to the pursuit of a preconceived plan or agreement.¹⁶³

The following sections show that international cooperation on the basis of the Organized Crime Convention frequently involves cases in which participation in an organized criminal group is one of the offences charged. This also demonstrates that offences based on article 5 have been implemented in different States parties and that the Convention is achieving one of its main goals, that is, to criminalize and combat transnational organized crime and to achieve a level of convergence between relevant domestic offences. The models offer an additional vehicle to ensure that the dual criminality requirement is met, which is a prerequisite for extradition under article 16, paragraph 1, of the Convention. Where dual criminality is lacking, this can also be grounds for refusal of mutual legal assistance requests under article 18, paragraph 9, of the Convention.

In most cases discussed in the present section, participation in an organized criminal group was not the only offence charged. This offence usually appeared in conjunction with other charges, such as, for instance, drug trafficking, the smuggling of migrants, or trafficking in persons. As evidenced by the available information, only in one case examined in this Digest was participation in an organized criminal group the only recorded offence; the accused in that case was associated with a mafia-style organization (*Italy-5*).

5.1.1. Drug trafficking and participation in an organized criminal group

In eight cases discussed in this Digest, the Organized Crime Convention was used in instances involving charges of participating in an organized criminal group and drug trafficking. Seven cases further involved money-laundering. Those seven cases were all reported by Mexico and followed a similar pattern: they all concerned organized criminal groups involved in trafficking illicit drugs to the United States and laundering the proceeds of the crime, often by smuggling money back across the border to Mexico (*Mexico-1 to Mexico-7*) (see also below under sect. 5.2.1).

A case reported by El Salvador, discussed in more detail elsewhere in this Digest, involved an organized criminal group which operated an unregistered freight company that transported large quantities of illicit drugs, as well as money, across several Central American States to Mexico. The vehicles used were registered to “straw men” to conceal the corporate structure of the group (*El Salvador-1*).

5.1.2. Smuggling of migrants, trafficking in persons and participation in an organized criminal group

Three cases discussed in this Digest involved the offence of participation in an organized criminal group, along with offences relating to the smuggling of migrants or trafficking in persons. This included, inter alia, a major prosecution involving the smuggling of migrants, carried out by Italian authorities, which is featured in a later part of this Digest.

In a case reported by Mexico, the defendant was the leader of a smuggling network that brought young women from Mexico to the United States, mainly to New York (*Mexico-8*). Once they arrived at the destination, the women were forced to engage in prostitution and return much of their income to the organized criminal group.

¹⁶² Ibid., paras. 17–29.

¹⁶³ Ibid., paras. 30–38.

An extradition request pursuant to the Organized Crime Convention sent by the Netherlands to Nigeria related to a person accused of recruiting six Nigerian women of about 25 years of age, providing them with accommodation and arranging their transportation to the Netherlands (*Nigeria-1*). The accused person furnished the women with fraudulent documents and instructed them on how to apply for asylum upon arrival in the Netherlands. The accused further liaised with an organized criminal group that would pick up the women from asylum centres and perform voodoo rituals on them in order to compel them to follow the group's demands. In what was referred to as Operation Koolvis, the Netherlands authorities uncovered the activities of the group and the Nigeria-based accused person. Three other participants in the group were later sentenced to terms of imprisonment ranging between 7 and 15 years for offences relating to trafficking in persons, the smuggling of migrants, document fraud, abduction of minors and participation in an organized criminal group.

In 2009, Costa Rica received a request for mutual legal assistance from Mexico on the basis of the Organized Crime Convention in relation to an organized criminal group involved in trafficking in children (*Costa Rica-4*).

5.1.3. Other cases involving participation in an organized criminal group

In several other cases, international cooperation under the Organized Crime Convention involved charges, or allegations, of participation in an organized criminal group, as well as other offences. An extradition request made by Poland to Canada on the basis of article 16 related to a person accused of planning one or more robberies carried out by an organized criminal group in Poland (*Canada-1*). A case reported by Italy concerned an organized criminal group involved in illegal betting and money-laundering through offshore tax havens and trusts (*Italy-6*). Another case reported by Italy involved an organized crime group operating various scams (*Italy-8*).

One case reported by Mexico involved an organized criminal group that ran a website on which users could discuss illegal activities they were engaged in and sell and buy various illicit goods and services (*Mexico-9*). The activities, goods and services included, inter alia, compromised credit card data, stolen and fraudulent identification, the production and use of fraudulent access devices, and bank fraud and electronic fraud. In a case reported in 2010, Lithuanian authorities unsuccessfully sought the extradition from Kuwait of a Lithuanian national accused of participation in an organized criminal group, violation of public order and the involvement of a child in a criminal act (*Lithuania-1*).

In 2010, the Netherlands used the Organized Crime Convention to extradite to the Dominican Republic two persons wanted in connection with an intentional homicide committed by an organized criminal group (*Netherlands-1*). Participation in an organized criminal group, along with charges relating to cybercrime and copyright infringements, were at the centre of the "Megaupload" case featured elsewhere in this Digest (*New Zealand-1* and *United States-1*).

Italian authorities reportedly used the Organized Crime Convention for the very first time in a case involving an organized criminal group that traded in counterfeit artworks by renowned painters such as Marc Chagall, Salvador Dalí, Roy Lichtenstein, Joan Miró, Pablo Picasso and others (*Italy-12*). The group connected persons marketing the artworks with those producing the fraudulent paintings and sold the pieces to and through established galleries in Barcelona, Spain; Chicago and San Francisco, United States; Munich, Germany; and São Paulo, Brazil. The Italian authorities commenced their investigation into the group in 2007 and, with the assistance of their counterparts in other countries and the European Union Agency for Law Enforcement Cooperation (Europol) and the use of undercover operations, were able to identify two principal organizers of the group, an Italian national and a Spanish national. How precisely the Convention had been used in the context of this case, presumably to obtain mutual legal assistance, was not documented in the available source material.

5.2. Money-laundering

Targeting the profits and finances of organized criminal groups reduces their incentive to participate in criminal activities and undermines the profitability of their criminal operations, thus inhibiting the further growth and expansion of such groups. For these reasons, identifying and seizing the proceeds of crime is an important part of the fight against transnational organized crime; the Organized Crime Convention has served as a legal basis for international cooperation in a large number of cases involving money-laundering.

Article 6 of the Organized Crime Convention requires States parties to establish four offences relating to the laundering of proceeds of crime:

(a) Article 6, paragraph (1) (a) (i), makes it an offence to convert or transfer property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(b) Article 6, paragraph 1 (a) (ii), criminalizes the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;¹⁶⁴

(c) Article 6, paragraph 1 (b) (i), criminalizes the acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(d) Article 6, paragraph 1 (b) (ii), criminalizes participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with article 6.

“Proceeds of crime” are defined in article 2 (e) of the Convention as meaning “any property derived from or obtained, directly or indirectly, through the commission of an offence”. “Property” encompasses “assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets” (art. 2 (d)). The definitions of these terms may differ from the way the terms are understood in domestic laws.

FEATURED CASE 5: BRAZIL-1 (OPERATION CURAÇAO)

One particularly prominent money-laundering case in which the United Nations Convention against Transnational Organized Crime was used as the legal basis for international cooperation is an investigation referred to by Brazilian authorities as Operation Curaçao. In 2006, the First Curaçao International Bank (FCIB) was shut down by the Netherlands authorities. The closure was a culmination of investigations into the bank’s involvement in various international money-laundering operations. The secretive offshore bank, operating on paper in Curaçao (an island in the Netherlands Antilles) but in mainland Netherlands in practice, allegedly offered complete anonymity, along with the ability to make instantaneous transfers worldwide, to thousands of customers.

One particular money-laundering operation involved money changers performing currency exchange services through clandestine international banking services, such as FCIB, for customers seeking to launder proceeds of crime. In Brazil, between 2004 and 2006, approximately 56 Brazilian individuals operating as money changers exchanged a sum of about 300 million dollars with the aid of FCIB, money that had originated from crimes ranging from drug trafficking to diversion of public funds.

¹⁶⁴These criminalization requirements are identical to those under article 3, paragraph 1, of the 1988 Convention.

FEATURED CASE 5: BRAZIL-1 (OPERATION CURAÇAO) (CONTINUED)

Initially, clients who sought to convert their Brazilian reais into another currency, usually United States dollars or euros, would transfer their money, by cash, deposit or otherwise, to a money changer's bank account in Brazil. Next, the money changer would debit the corresponding amount (in United States dollars or euros) with a fee charged to the client and deposit it into the money changer's FCIB bank account registered to an offshore shell company, before transferring the amount to the client's account abroad or to a third-party account as indicated by the client. This process also occurred in reverse and even where the money changer acted as an intermediary, meaning none of their bank accounts would be used; instead, the money changer would coordinate a direct exchange of currencies of equal amount between two foreign customers.

These criminal conversion activities evidently extended across multiple countries. The Organized Crime Convention thus proved instrumental in facilitating the investigations by the Netherlands into FCIB. During the investigations, the Netherlands authorities submitted a request to the Office of the Federal Public Prosecutor of Brazil for mutual legal assistance pursuant to article 18 of the Convention (*Brazil-1*). Containing information on the user registration and financial transactions related to the FCIB bank accounts, the request sought further information on the money changers' accounts in Brazil. Conversely, Brazil later asked the Netherlands, on the basis of the Organized Crime Convention, to provide further documentation concerning FCIB account holders. Ultimately, warrants for the search and seizure of evidence of money changing operations were issued and orders for the forfeiture of the suspects' financial assets and the suspension of bank secrecy in relation to the FCIB accounts were made. Prosecutions were subsequently launched against the money changers in Brazil. At the time that this case was reported, the criminal proceedings were still ongoing.

5.2.1. Drug trafficking and money-laundering

The laundering of proceeds of drug trafficking and other drug-related crime led to the use of the Organized Crime Convention in a number of cases consulted for this Digest. This is not surprising, given the large profits generated by, and the frequent involvement of organized criminal groups in, this crime type.

A case reported by Brazil in 2010 related to the laundering of proceeds from drug trafficking and other offences through overseas banks and offshore companies in order to conceal the source and owners of the money (*Brazil-2*). Brazil submitted 13 mutual legal assistance requests under the Organized Crime Convention to a range of countries to obtain banking information, freeze bank accounts and hear witnesses in relation to the case.

The Convention was also used by Brazil as the legal basis for a mutual legal assistance request sent to Mexico in connection with the investigation of a notorious leader of a Mexican cartel involved in drug trafficking and money-laundering (*Brazil-4*). The request also served to determine whether the person under investigation had entered Brazil using fraudulent documents.

In the course of investigating a major transnational organized criminal network involved in trafficking illicit drugs from Latin America to Europe, Peru sought extradition and mutual legal assistance from the Netherlands pursuant to the Organized Crime Convention (*Peru-2*). The Netherlands granted the request to extradite a man wanted on charges relating to drug trafficking and money-laundering and provided additional telecommunications and computer equipment to assist Brazilian authorities with their investigation.

Seven cases reported by Mexico involving international cooperation under the Convention concerned charges of money-laundering and drug trafficking, as well as participation in an organized criminal group. These cases are outlined in more detail above.

5.2.2. Corruption and money-laundering

Corruption-related offences, along with money-laundering, featured in four cases considered for the purposes of this Digest.

One of these cases (*United Kingdom-3*) concerned a criminal investigation by Kuwaiti authorities into two accused persons who were husband and wife. The first accused person (the husband) had been the Director General of the Public Institution for Social Security, a government agency operating under the Ministry of Finance of Kuwait, for many years. He had allegedly skimmed “commission payments” from investment funds that he was responsible for. The payments amounted to several hundred million dollars, which he deposited into offshore accounts and in banks in Switzerland, the United Kingdom and other jurisdictions. The second accused person (the wife) had allegedly assisted in the concealment, movement and laundering of the funds. She, like the first accused person, had massive and unexplained wealth. Assets deposited by the accused in Swiss bank accounts were restrained by Kuwaiti authorities following extensive litigation in Swiss courts. The information gained by Kuwaiti authorities as a result of the litigation led to further investigations, including an investigation into the assets held by the accused in the United Kingdom, which Kuwait sought to restrain with a request for mutual legal assistance and confiscation using the Organized Crime Convention as the legal basis.

Corruption and money-laundering also featured in the Odebrecht case, a complex, transnational corruption scheme outlined in full elsewhere in this Digest. In one related prosecution, mutual legal assistance was sought from Andorra in order to obtain a statement from the general manager of the Uruguay branch of the Andorra Private Bank (*Peru-1*). Accounts held in the bank were used to launder bribery payments from Odebrecht employees to public officials. Peruvian authorities became aware of these transfers following the arrest of the former head of the Supervisory Agency for Investment in Public Transport Infrastructure of Peru. This person reportedly had accepted approximately \$780,000 in payments from Odebrecht in exchange for expediting the issuance of 18 certificates of progress of work relating to the construction of two sections of a major public road infrastructure project in Peru, the South Interoceanic Highway. A further case relating to Odebrecht is featured in section 5.3 of this Digest (*Antigua and Barbuda-1*).

Two other cases featured elsewhere in this Digest, one involving Equatorial Guinea and France (*France-1*) and the other Indonesia and Hong Kong, China (*Hong Kong, China-1*), also involved charges relating to corruption and money-laundering.

5.2.3. Fraud and money-laundering

A considerable number of cases in which the Organized Crime Convention was used for international cooperation involved charges of money-laundering, as well as fraud-related offences such as financial fraud, banking fraud, tax fraud and tax evasion. Several cases further involved the production or use of fraudulent documents.

For example, a high-profile case featured in a later chapter of this Digest concerned a former politician who had used a range of fraudulent activities to embezzle funds and launder them through Antigua and Barbuda and the United States (*Antigua and Barbuda-2*). Several cases reported by Brazil, China and Romania involved money-laundering and tax evasion (*Brazil-9, Brazil-12, China-2, Romania-1*); two Brazilian cases involved charges of money-laundering and fraudulent documents (*Brazil-8, Brazil-10*); a case from Italy involved charges of money-laundering and the counterfeiting of products (*Italy-3*).

The following cases, outlined elsewhere in this Digest, also involved money-laundering and fraud-related offences: *Australia-1, Chile-2, Costa Rica-1, Costa Rica-2, Egypt-1, Kazakhstan-1, Nigeria-2, United States-2* and *United States-3*.

Additional cases involving charges of money-laundering discussed elsewhere in this Digest include *Armenia-1, Costa Rica-3, Costa Rica-8, Costa Rica-12, Costa Rica-14, Costa Rica-18*, and *Italy-4*. Slovenia reported in 2010 that it had used the Organized Crime Convention in two money-laundering cases to request mutual legal assistance from Canada and, separately, from the United States, but did not provide any further details about the facts of the cases and the circumstances and proceedings of the requests.¹⁶⁵

¹⁶⁵ CTOC/COP/2010/CRP.5, para. 38.

5.3. Corruption

Corruption is both a driving force and a product of organized crime. Organized criminal groups frequently make use of corruption in the course of their operations. Bribery and other acts of corruption are used to create or exploit opportunities for criminal operations and to protect the operations from interference by criminal justice systems and other control structures. Corruption reduces risks, increases criminal profits and is less likely to attract the same attention and punishment as attempts to influence public officials through intimidation or actual violence. The effects of corruption extend well beyond the facilitation of serious crime. The fact that public officials become compromised and act against the public interest undermines the stability of governmental systems in general and public confidence in them. When corruption reaches high levels in government, it affects relationships among States and undermines the quality of peoples' lives, as it hampers the economic and social advancement of societies.¹⁶⁶

Article 8 of the Organized Crime Convention requires States parties to criminalize active and passive bribery, along with participation as an accomplice in either of these offences. Article 9 contains further requirements to promote integrity, prevent, detect and punish corruption of public officials, ensure effective action to combat corruption and afford anti-corruption agencies sufficient independence to deter undue influence.

The nexus between transnational organized crime and corruption is reflected in a range of cases in which the Organized Crime Convention was used as a legal basis for international cooperation between States parties. Some of these cases, discussed in section 6.1.2 of this Digest, involved cooperation under the Organized Crime Convention, as well as the Convention against Corruption.

Several countries in Latin America and the Caribbean have reported cases involving international cooperation under the Organized Crime Convention in which corruption was one of the charges. Brazil, for instance, successfully extradited a Brazilian banker from Monaco on the basis of the Convention (*Brazil-3*). The man had fled Brazil and gone into hiding in a hotel in Monaco after being accused of corruption and the fraudulent administration of a financial institution. When his bank suffered major losses in 1999, the man used insider information and bribed officials of the Central Bank of Brazil to arrange a federal bailout of his bank amounting to 1.5 billion reais. In 2000, he was taken into custody, but after 37 days he persuaded a judge to release him while awaiting trial. After fleeing to Monaco, he was tried in September 2005 in absentia and sentenced to imprisonment for 13 years. He was eventually identified in Monaco in September 2007 and was subsequently extradited to Brazil to serve his sentence.

Costa Rica reported a corruption case in 2010 in which it sought mutual legal assistance from the United Kingdom pursuant to article 18, paragraph 4, of the Organized Crime Convention (*Costa Rica-10*). The accused in this case was under investigation for "aggravated corruption" and other offences. United Kingdom authorities executed the request, thus providing Costa Rica with further evidence for the investigation.

FEATURED CASE 6: ANTIGUA AND BARBUDA-1 AND PERU-1 (ODEBRECHT)

The United Nations Convention against Transnational Organized Crime was used as a legal basis for international cooperation on several occasions in what has been labelled one of the biggest corruption cases in history. In March 2014, the Federal Police of Brazil launched Operation Car Wash, a criminal investigation into a money-laundering scheme in which black-market money dealers had been using small businesses, such as car washes, to launder proceeds of crime. Executives at *Petróleo Brasileiro S.A. (Petrobras)*, a semi-public, multinational petroleum corporation, were soon identified as a major source of the proceeds. In exchange for the payment of bribes,

¹⁶⁶UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, paras. 185–186.

Petrobras executives had been awarding public construction, drilling and refinery contracts to various companies at inflated prices. Odebrecht S.A. (Odebrecht), a Brazil-based construction, engineering, chemical and petrochemical conglomerate with global reach, was one particular firm deeply implicated in the scheme. Investigations soon revealed that Odebrecht employees had been paying off multiple political parties and officials of State-owned enterprises throughout Latin America, namely, Brazil, Peru and Ecuador, as well as regions in Africa and Eastern Europe, in order to secure lucrative public works contracts.

To handle the growing bribery operation, in 2006, Odebrecht set up a secret specialized unit, the Division of Structured Operations. Under the Division, Odebrecht subsidiaries abroad systemically transferred large sums, often concealed as fraudulent purchases and embellished project budgets, to a series of offshore companies with bank accounts in countries with beneficial taxation and banking secrecy laws. The funds may have then further travelled through other offshore companies or shell companies before eventually being transferred to the intended recipient through a variety of means. From 2001 to 2016, Odebrecht paid a total of approximately 788 million dollars in bribes in relation to 100 projects in 12 countries, resulting in a return of approximately 3.34 billion dollars.

A strong framework for international cooperation was essential to effectively investigating this global corruption scandal. The Organized Crime Convention constituted one important component of this framework. Pursuant to article 18 of the Organized Crime Convention and article 46 of the United Nations Convention against Corruption, the Central Authority of Brazil submitted a request to the Attorney General of Antigua and Barbuda to have a Brazilian judge's restraint order, made in relation to numerous persons and entities assets identified through investigations of Odebrecht, registered and given full legal effect in Antigua and Barbuda (*Antigua and Barbuda-1*). At first instance, the court accepted the order to be registered, but, on appeal, set aside that decision because of jurisdiction-related concerns: *Creswell Overseas S.A. v. The Supervisory Authority under the Money Laundering (Prevention) Act 1996 and Meind Bank (Antigua) Ltd.* (High Court of Justice, Eastern Caribbean Supreme Court (Territory of Antigua and Barbuda), Claim No. ANUHCv 2016/0372, 21 April 2017). Nonetheless, the Organized Crime Convention was instrumental in enabling initial cooperation between the two States to investigate Odebrecht's elaborate bribery scheme.

In a second case, the Office of the Prosecutor of Peru submitted a mutual legal assistance request to Andorra on the basis of the Organized Crime Convention in order to obtain the testimony of a former manager of the Uruguay branch of the Private Bank of Andorra on the bank's involvement in Odebrecht's bribery operation (*Peru-1*). The statement, along with other evidence provided, was ultimately used by prosecutors to commence proceedings in Peru against a former public official of Peru for trading in influence (art. 18 of the Convention against Corruption) and money-laundering, having used the Private Bank of Andorra branch to launder bribe payments.

Another high-profile corruption case in which the Organized Crime Convention was used, along with the European Convention on Mutual Assistance in Criminal Matters, as the legal basis for requesting mutual legal assistance involved the United Kingdom and Monaco (*United Kingdom-2*). This case, which is examined in some detail elsewhere in this Digest, concerns an investigation into the Monaco-based company Unaoil and its executive. The Serious Fraud Office of the United Kingdom was investigating information that Unaoil had paid, or had conspired to pay, bribes to officials in governments around the world in order to help its clients secure lucrative government contracts.

In another corruption-related case (discussed at length elsewhere in this Digest), the Senegalese authorities sought mutual legal assistance from Monaco on the basis of article 18 of the Organized Crime Convention (*Monaco-1*). The request related to an investigation into illicit enrichment and offshore companies and bank accounts.

A corruption (embezzlement) and money-laundering investigation in Kuwait involved a request for the restraint of assets in the United Kingdom pursuant to the Organized Crime Convention (*United Kingdom-3*). One of the accused persons (the husband) was serving as the Director General of the Public Institution for Social Security of Kuwait when he allegedly skimmed “commission payments” from investment funds that he was responsible for. The payments amounted to hundreds of millions of dollars, which he deposited into accounts in Switzerland, the United Kingdom and elsewhere. A second accused person (the wife of the other accused persons) allegedly assisted in the concealment, movement and laundering of the funds. The assets that the couple had deposited in Swiss bank accounts were restrained by Kuwaiti authorities following extensive litigation in Swiss courts.

A case from France, which went before the International Court of Justice, involved accusations of embezzlement of public funds on a grand scale by a former Vice-President and Minister for Forestry and Agriculture of Equatorial Guinea (*France-1*). In this case, which is featured elsewhere in this Digest, the accused allegedly misappropriated public funds to support his lavish lifestyle. Allegations of money-laundering and corruption against the accused and his family had previously been investigated by the United States Senate, and the cases ended in a settlement with the United States Department of Justice.

Corruption is at the heart of a case heard by courts in Canada between 2009 and 2011 (*Canada-2*). The proceedings followed from an extradition request received by Canada from Slovenia on the basis of article 16 of the Organized Crime Convention concerning a fugitive who, together with others, had abused his official functions by misappropriating government funds and using them as subsidies for corporations in return for kickbacks. The case and the extradition proceedings are further discussed elsewhere in this Digest.

Charges relating to corruption also featured in the following cases, which are discussed in more detail elsewhere in this Digest: *Hong Kong, China-1, Ukraine-2, United Kingdom-1 and United Kingdom-3*.

5.4. Smuggling of migrants

The Protocol against the Smuggling of Migrants by Land, Sea and Air supplements the Organized Crime Convention. The purposes of the Protocol are to prevent and combat the smuggling of migrants and promote cooperation among States parties to that end, while protecting the rights of smuggled migrants (art. 2 of the Protocol). The Protocol provides – for the first time at the international level – a definition of the term “smuggling of migrants” (art. 3 (a) of the Protocol and, based on this definition, the comprehensive criminalization provisions set out in art. 6 of the Protocol).

The provisions of the Organized Crime Convention apply, *mutatis mutandis*, to the Smuggling of Migrants Protocol (art. 1, para. 2, of the Protocol; the offences established under the Protocol, in turn, are regarded as offences established in accordance with the Convention (art. 1, para. 3, of the Convention). Through this relationship, the international cooperation mechanisms under the Convention are also available to States parties to the Smuggling of Migrants Protocol and have been used accordingly in a number of cases.

In 2013, for instance, a person involved in the smuggling of migrants was extradited from the Dominican Republic to Chile on the basis of the Organized Crime Convention and the Convention on Extradition (*Chile-1*). The person was accused of organizing the illegal entry of up to 83 persons into Chile, most of whom were migrants from the Dominican Republic and Colombia. Operating under the façade of a travel agency, the group charged between \$2,000 and \$2,500 for airfares and purported entry visa fees. The migrants paid these expenses believing they would be able to enter Chile legally; the visas, however, were never issued and tickets were purchased to fly to Colombia instead of Chile. As a result, the migrants, many of whom had mortgaged their homes to pay for the journey, had to travel largely by foot towards the Chilean border through Ecuador, Peru and the Plurinational State of Bolivia, often lacking food, water and accommodation. Upon entry into Chile, some of the migrants were apprehended, eventually leading to the alleged ringleader being identified and located in the Dominican Republic. Further details about the extradition and criminal proceedings in this case are featured elsewhere in this Digest.

In another but unrelated case from 2013, the Office of the Attorney General of the Dominican Republic successfully requested the extradition of an alleged migrant smuggler from Italy on the basis of article 16,

paragraph 4, of the Organized Crime Convention (*Dominican Republic-1*). The accused and his associate had steered a boat carrying three smuggled migrants from the Dominican Republic, intending to meet a rendezvous vessel offshore that would then take them to Miami, Florida, United States. Their boat, however, capsized prior to meeting the other vessel and the three migrants drowned while the two crew members were able to swim to shore. The accused was found two days later during a search and rescue mission by naval authorities of the Dominican Republic. He was arrested, fled from custody, was arrested again and then was later released on bail from pretrial custody. He then fled to Italy, where he was arrested in March 2013, after an INTERPOL Red Notice had been issued. The extradition and criminal proceedings that followed are discussed elsewhere in this Digest.

FEATURED CASE 7: UNITED STATES-4

A particularly brutal case of smuggling of migrants resulted in criminal proceedings before courts in Colombia and the United States and in mutual legal assistance between the two countries on the basis of the United Nations Convention against Transnational Organized Crime.

The defendants in this case, along with a third person, worked for the leader of an organized criminal group based in Turbo, Antioquia, Colombia, that was involved in smuggling migrants from late 2014 to September 2016. Among the migrants smuggled by the group were several Cuban nationals who, between 2015 and 2016, were put into contact with the organizer, who then met the potential clients in either the Bolivarian Republic of Venezuela or Ecuador, showed them photos on social media of Cubans previously smuggled successfully and then received \$500 to organize boats to bring the migrants to Panama. In September 2016, he also offered to take two female Cuban nationals in Colombia to Panama across the land border. Family members of the two women, based in Florida, then paid \$1,900 to a designated person to enable the women to travel to the United States. The pair and one other migrant were met by the defendants and the leader of the group and, on 6 September 2016, were placed on a boat, believing they would be taken to the United States. The boat took on water and they had to return to Colombia, where a second boat was sourced. The second boat then travelled towards Panama, but ultimately went into a canal area where, suddenly, one of the defendants threatened the victims with a firearm and a knife. Two of the migrants were tied up and thrown overboard; the third one was raped and murdered. The two migrants that had been thrown overboard were then pulled back into the vessel and one was killed, but the other one was able to escape and, after some time, the defendants ceased searching for him. He was able to swim to shore and, on 8 September 2016, reached a fishing village where he was rescued by the Colombian Navy.

The victim was able to direct Colombian authorities to the scene of the murders, where the bodies of the two other victims were found with their throats and bellies cut open. The surviving victim later recognized the defendants and the organizer of the group in photographs shown to him by the Colombian police. The two defendants were arrested in Turbo on 10 September 2016 and were found in possession of belongings owned by the victims. Police later also found electronic records of communications between other Cuban migrants and the organizer. The two defendants were charged by Colombian prosecutors with rape, murder and robbery on 16 September 2016. The defendants pleaded guilty on 2 August 2017 and were sentenced to 527 months' imprisonment on 21 September 2017.

Family members of the victim in Florida also reported the case to United States authorities, leading to an indictment for smuggling of migrants in the United States District Court, Southern District of Florida, on 16 January 2017. Following their convictions in Colombia, the defendants were extradited to the United States on 28 November 2017 and 18 January 2018, respectively. As part of the trial, the United States authorities used article 18, paragraph 3 (f), of the Organized Crime Convention to obtain government and business records about the defendants and the organized criminal group from Colombia. At trial, the defendants unsuccessfully challenged the admissibility of these documents, which included records of their conviction in Colombia.

In a case reported by Italy, mutual legal assistance was sought from Libya in a migrant smuggling matter (*Italy-11*). The case concerned an organized criminal group that had smuggled migrants from Libya to Italy using rubber dinghies and other vessels that were overcrowded and not suited for the voyage across the Mediterranean Sea. The smugglers intended for their boats to be apprehended by naval or other rescue vessels so that the migrants would be taken to Sicily or ports in other parts of Italy. One such venture took place on 5 May 2017 and several others on earlier dates. Italian authorities were able to uncover the group by intercepting telephone conversations between telephones registered in Libya. With a mutual legal assistance request made on the basis of the Organized Crime Convention, Italy sought to obtain information about the identity of the persons to whom the telephones were registered and to ask Libyan authorities to conduct further interceptions.

FEATURED CASE 8: ITALY-9 (GLAUCO I AND II)

GLAUCO I

The case refers to the name of the operation, Glauco I, which involved the dismantling of a large transnational criminal network involved in the smuggling of migrants from North Africa to Italy. The network operated across 12 countries in Africa and Europe and was responsible for the death of over 300 migrants. Police investigations led by Italy resulted in the identification, arrest and conviction of several high-level migrant smugglers operating from Sudan, Eritrea and Libya. In this landmark case, police and prosecutors made extensive use of the legal tools provided by the United Nations Convention against Transnational Organized Crime and its supplementary Protocol against the Smuggling of Migrants by Land, Sea and Air. According to the United Nations Office on Drugs and Crime, such tools included the use of special investigative techniques, the protection of witnesses and international cooperation to discover and disrupt illicit financial flows.

Operation Glauco, named after Glaucus, the ancient Greek sea god who was said to have come to the rescue of sailors and fishermen, began in 2013, following two incidents involving the rescue of smuggled migrants in the Mediterranean region. On 3 October 2013, an overcrowded fishing boat that had set out from Libya developed engine problems just short of the Italian island of Lampedusa. The boat caught on fire when migrants on board set fire to a blanket to attract the attention of the Coast Guard of Italy. When passengers moved en masse to one side of the vessel it capsized, resulting in the death of 366 migrants, most of them Eritrean and Somali nationals. On 25 October 2013, an additional group of migrants was rescued off the coast of Italy and taken to an immigration reception centre in Lampedusa. Survivors from the first vessel recognized one of the new arrivals as a Somali organizer who had facilitated their disastrous journey. The survivors proceeded to attack the Somali, leading to a criminal investigation of those involved.

Much of the ensuing investigation focused on establishing the *modi operandi* of the smuggling network. Relying extensively on interceptions of telephone conversations, various surveillance techniques, witness protection programmes for informants and interviews of survivors, Italian authorities uncovered a structured and sophisticated migrant smuggling syndicate. The investigation revealed that migrants had been kidnapped and held against their will in Libya. Armed associates of the network had used violence against the migrants to demand ransoms for their release. Relatives of the migrants had paid the ransoms either directly to the armed associates or by means of money transfer services. The migrants had then been taken in groups of 20 to 30 people to “collection camps” in Libya, where up to 600 persons were held. The smugglers demanded 1,600 euros per person for the passage to Lampedusa. After about one month, the migrants were transported to a large boat off the coast of Libya, at which point they were then transported to Italy.

Critical to securing convictions of some of the suspects, the main leader of the smuggling network facilitated the effective cooperation between law enforcement agencies in different countries that enabled the identification of some of the suspects. The involvement and support of the International Criminal Police Organization (INTERPOL) and cooperation between law enforcement agencies of

Italy and Sweden contributed to the gathering of additional data to identify those involved. A major milestone in this case was a request made by Italy to the Sudan for the extradition of one of the suspects, using the Organized Crime Convention as the legal basis. The Sudan accepted and executed the request and the person was subsequently transferred to Italy. A court in Palermo, Italy, later found six persons guilty on charges relating to the smuggling of migrants and participation in an organized criminal group and sentenced them to terms of imprisonment of between two and six years.

GLAUCO II

As in *Glauco I*, *Glauco II* involved the smuggling of migrants to Italy. In Libya, the migrants, most of them nationals of other African States, were assembled and accommodated by their smugglers until the day of their departure. During that time, they were closely monitored by their smugglers, threats and weapons were used to control them, and some migrants were subjected to aggravated violence and kidnapping. Some were also forced to work as payment in kind for their accommodation and passage.

The vessels used to transport the migrants were mostly unseaworthy and unsuitable for the long journey to Italy. The smugglers left the vessels and abandoned the migrants in international waters after making calls to the authorities, which then came to rescue the migrants and take them to Italy. Once in Italy, many of the migrants were contacted by, or themselves contacted, the network, which offered to bring them to other parts of Europe in return for further payment. In some cases, the criminal group provided accommodation and other support.

The investigation and prosecution in *Glauco II* emerged as a follow up to *Glauco I* and targeted some of the same members of the organized criminal group involved in the earlier case. *Glauco II* targeted a total of 24 suspects, 20 of them Eritrean nationals and one person each from Côte d'Ivoire, Ethiopia, Ghana and Guinea. Their roles varied from intermediaries to leaders of the group. *Glauco II* focused on several specific smuggling ventures involving several hundred migrants brought to Italy in 2014 and 2015, as well as on the general operation of the network. It has been reported that the group was responsible for the smuggling of at least 5,377 migrants, most of them Sudanese, Ethiopian, Eritrean or Libyan nationals. The organized criminal group operated in the main source countries (Ethiopia, Eritrea and the Sudan), in Libya (the country of transit and embarkation) and across several disembarkation and destination countries, including Germany, Italy, the Netherlands and the United Kingdom, as well as some Scandinavian countries. Several members of the group were also accused of offences relating to the production and procurement of fraudulent documents and the maltreatment of the migrants.

The extradition (made possible by the European Union-Horn of Africa Migration Route Initiative (Khartoum Process)) of one of the accused in the *Glauco II* proceedings made headlines, as it involved a case of mistaken identity. Prosecutors in Italy sought the extradition from the Sudan of a prime suspect. The Sudanese authorities, however, arrested the wrong person with a similar sounding name and notified INTERPOL that they had arrested the person wanted by Italy. He was then extradited and prosecuted for being one of the leaders of the smuggling network. (The legal basis for his extradition is not documented in the available material.) After the accused and witnesses made statements in the proceedings suggesting that he was not the suspect, several journalists began to research the background and identity of the accused and eventually discovered that he was indeed the wrong person. Three years after his extradition, he was finally cleared of the charges of smuggling of migrants. A judge ordered his immediate release from prison, although he was found guilty on the lesser charge of aiding illegal immigration, as he had helped his cousin to reach Libya. Following his release, he was granted refugee status, which permitted him to remain in the European Union.

Additional cases involving the smuggling of migrants, discussed elsewhere in this Digest, in which Italian authorities used the Organized Crime Convention to request international cooperation include *Italy-1* and *Italy-2*.

5.5. Trafficking in persons

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplements the Organized Crime Convention. The purposes of the Protocol are to prevent and combat trafficking in persons, paying particular attention to women and children; protect and assist victims of such trafficking, with full respect for their human rights; and promote cooperation among States parties to meet those objectives (art. 2). States parties to the Protocol are required to criminalize trafficking in persons (as defined in art. 3 (a)) in their domestic laws, which includes attempting, participating in, and organizing or directing other persons to commit, such an offence (art. 5). Articles 6 to 8 set out various mechanisms to protect victims of trafficking and articles 9 to 13 contain provisions concerning prevention, cooperation and other measures.

The provisions of the Organized Crime Convention apply, *mutatis mutandis*, to the Trafficking in Persons Protocol (art. 1, para. 2, of the Protocol). The offences established under the Protocol, in turn, are regarded as offences established in accordance with the Convention (art. 1, para. 3, of the Convention). Through this relationship, the international cooperation mechanisms under the Convention are also available to States parties to the Trafficking in Persons Protocol and have been used accordingly in a number of cases.

Two cases reported by Ukraine, for instance, involved charges of trafficking in persons. The first of these cases (*Ukraine-1*) related to the activities of a transnational organized criminal group composed of Turkish and Ukrainian nationals that had “sold” Ukrainian women residing in Turkey into situations of sexual slavery and obtained illicit profits from such crime. Using both the Organized Crime Convention and the European Convention on Mutual Assistance in Criminal Matters as the legal bases, Ukraine sought mutual legal assistance from Turkish authorities to help build the case against a Turkish national believed to be one of the organizers of the group. This person was later found guilty of trafficking in persons and offences relating to prostitution. In the second case (*Ukraine-2*), of which few details are known, the Ukrainian authorities sought the extradition of a Ukrainian woman from the United Arab Emirates pursuant to article 16 of the Organized Crime Convention. The woman was accused of offences relating to trafficking in persons, as well as the smuggling of migrants, abuse of office and using fraudulent documents.

Among the many cases reported by Costa Rica were three cases involving trafficking in persons. In one case, a group of victims had been trafficked through Nicaragua, presumably to Costa Rica, and a mutual legal assistance request pursuant to article 18, paragraph 4, was sent to Nicaragua to confirm the cross-border movements of the group (*Costa Rica-6*). Similarly, Ecuador requested information from Costa Rica about a group of trafficked children, their cross-border movements and whereabouts (*Costa Rica-15*). In another case involving trafficking in children, Mexico sought mutual legal assistance from Costa Rica to obtain information about assets held in Costa Rica, the cross-border movements of certain persons, their driver’s licences and their involvement in certain associations (*Costa Rica-4*).

Serbia reported in 2010 that it had used article 18 of the Organized Crime Convention for a mutual legal assistance request sent to Spain in a matter involving trafficking in persons, as well as trafficking and other offences relating to illicit drugs (*Serbia-1*). Further information about the offences committed were not provided. Charges of trafficking in persons, along with other offences, also feature in *Nigeria-1*, a case outlined in more detail elsewhere in this Digest.

In 2009, Romania sent a request in a case involving trafficking in persons, seeking extradition from the United Arab Emirates on the basis of the Organized Crime Convention and the Trafficking in Persons Protocol.¹⁶⁷ Further details about the circumstances of the request and whether it was executed were not available. Similarly, Argentina reported that it had used the Organized Crime Convention alongside other international agreements to request mutual legal assistance in several cases involving trafficking in persons but did not disclose further details about the facts and proceedings involved.¹⁶⁸ Paraguay reported in 2010 that it had used the Organized Crime Convention as the sole legal basis for cases related to trafficking in persons, including in the search for and possible rescue of victims, as well as for the collection of evidence abroad.¹⁶⁹

¹⁶⁷ *CTOC/COP/2010/CRP.5*, para. 26.

¹⁶⁸ *Ibid.*, para. 45.

¹⁶⁹ *Ibid.*, para. 76.

5.6. Other serious crimes

Article 3, paragraph 1 (b), extends the scope of the Organized Crime Convention to serious crime as defined in article 2 of the Convention. According to article 2 (b), “serious crime” means “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”. As has been noted, the concept of serious crime makes it possible to apply provisions of the Organized Crime Convention to other unspecified transnational offences. This gives the Convention the necessary flexibility to respond to the emergence of new, unpredictable forms of crime, often because they are connected with technological change, as in the case of cybercrime, but also to take account of the exploitation by organized criminal groups of the ever-changing opportunities offered by the global economy. However, the notion of serious crime might also serve the political purpose of avoiding delicate balancing exercises for some of the most controversial crimes.¹⁷⁰

As evidenced by the information consulted for the purposes of this Digest, the Organized Crime Convention has been used as a legal basis for international cooperation in connection with a range of offences that are not expressly mentioned in the Convention and its Protocols but that appear to amount to serious crime as defined in article 2 (b). The offences and cases outlined in the following sections only represent cases not already mentioned in connection with other crime types in sections 5.1 to 5.5 of this Digest.

5.6.1. Drug-related offences

A considerable number of reported cases involved offences relating to drug trafficking or other conduct involving illicit drugs.

Poland reported that it had used article 21 of Organized Crime Convention as the legal basis for the transfer of proceedings involving charges of drug trafficking against two Netherlands nationals from the regional prosecution office in Przemysl, Poland, to the competent authorities in the Netherlands (*Poland-1*). Serbia used the Organized Crime Convention along with the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 to request mutual legal assistance from Uruguay in a case involving drug trafficking from Latin America (*Serbia-2*).

Another five cases involving drug trafficking were reported by States in Latin America, but the reports contained little information about the offences committed and other facts of the case. They include the following:

| <i>Case reference</i> | <i>Requesting State</i> | <i>Requested State</i> | <i>Type of cooperation</i> |
|-----------------------|-------------------------|------------------------|----------------------------|
| <i>Brazil-11</i> | France | Brazil | Mutual legal assistance |
| <i>Costa Rica-5</i> | Denmark | Costa Rica | Mutual legal assistance |
| <i>Costa Rica-7</i> | Costa Rica | Mexico | Mutual legal assistance |
| <i>Costa Rica-11</i> | Costa Rica | Spain | Mutual legal assistance |
| <i>Costa Rica-17</i> | Netherlands | Costa Rica | Mutual legal assistance |

Spain has used the Organized Crime Convention, along with the 1988 Convention, in several drug trafficking cases. In *Spain-1*, the extradition of eight Spanish and Ukrainian nationals was sought from Cabo Verde. The persons sought were implicated in, and later convicted for, trafficking 75 tons of illicit drugs intercepted off the coast of Galicia, Spain. In *Spain-2*, Spanish authorities requested the arrest and extradition of a Spanish national residing in Ghana who was subsequently sentenced by a Spanish court to 11 years’ imprisonment for drug trafficking. Similarly, *Spain-3* involved the arrest and extradition of a United Kingdom national accused of trafficking drugs from the United Arab Emirates to Spain. In 2006, Spanish

¹⁷⁰ Stefano Betti, “The European Union and the United Nations Convention against Transnational Organised Crime”, Working Paper, Civil Liberties Series, LIBE 116 (Brussels, European Parliament, 2001), p. 10.

authorities effected the extradition from the United Arab Emirates of a Georgian national who was the head of an organized criminal group involved in drug offences across several successor States of the former Soviet Union.

In a case reported by Portugal, Brazilian, Portuguese and Spanish authorities, on the basis of article 19 of the Organized Crime Convention, cooperated in the joint investigation of an organized criminal group involved in trafficking cocaine from Brazil to Portugal (*Portugal-1*). Once the cocaine arrived in Portugal, a known suspect would then collect the drugs and transport them to Spain for further sale. Portuguese authorities also requested information from counterparts in China, Italy, Sweden, Switzerland, the United Kingdom and the United States to obtain further information about activities, companies and property attributed to the main accused person in the case, who was later sentenced by a court in Portugal to 14 years' imprisonment. The sentence was reduced to 11 years on appeal.

Italy used the Organized Crime Convention along with the European Convention on Mutual Assistance in Criminal Matters to request information from several unspecified States in the context of a drug trafficking investigation (*Italy-7*). In January 2004, New Zealand relied partly on the Organized Crime Convention when it requested mutual legal assistance from Canada in the investigation of a Canadian national suspected of trafficking drugs (*New Zealand-5*).

Paraguay reported in 2010 that it had used the Organized Crime Convention as a basis for international cooperation in drug-related cases but did not disclose any further details about the facts and circumstances of the cases.¹⁷¹

5.6.2. Fraud and related offences

The Organized Crime Convention has been used as a legal basis for international cooperation in a number of cases involving serious fraud (but not involving other charges such as money-laundering). For example, in November 2009, New Zealand received a request for mutual legal assistance from Romania in relation to a fraud investigation (*New Zealand-2*). In August 2006, New Zealand received a request from Canada in the context of an investigation of fraud involving Canadian nationals and companies, one of which was incorporated in New Zealand (*New Zealand-3*). In 2010, Costa Rica reported that it had received a request for mutual legal assistance from the United States in connection with an investigation of fraud, specifically, misrepresentation (*Costa Rica-10*). In a case reported by Slovenia concerning conspiracy to commit credit card fraud, extradition was sought from the United States on the basis of the Organized Crime Convention, the Convention on Cybercrime and a bilateral extradition treaty between the two States (*Slovenia-1*). In a separate case, the United States used the Organized Crime Convention, the Convention on Cybercrime and a bilateral extradition treaty to request the extradition from Estonia of three persons wanted for computer-related fraud (*Estonia-1*). Further details about the offenders, offences committed and other facts of the cases were not available.

FEATURED CASE 9: UNITED STATES-3 (UNITED STATES V. FAHNBULLEH)

The United Nations Convention against Transnational Organized Crime provided the legal basis for the transfer of evidence from Liberia to the United States in connection with a case involving a scheme to defraud hundreds of thousands of dollars of humanitarian assistance from a development aid agency.

In 2005, after the end of the civil war in Liberia, the United States Agency for International Development (USAID) awarded a grant to World Vision, a non-governmental organization, for a two-year humanitarian project involving community reconstruction projects such as road rehabilitation and latrine and water well construction in Liberia. Under the agreement, the defendant in the case was assigned to

¹⁷¹ CTOC/COP/2010/CRP.5, para. 76.

supervise World Vision employees as they assisted local communities with infrastructure projects. He was further tasked with distributing food to the residents of the communities.

In 2008, an internal audit conducted by World Vision revealed that up to 91 per cent of the food had never reached the intended beneficiaries. The defendant, along with a number of other co-conspirators, had sold the food and pocketed the proceeds, and then instructed World Vision employees to falsify the documents used to track food distributions. The defendant further directed USAID employees to divert construction materials intended for numerous community projects for use at his personal residence and concealed those activities by intimidating employees with threats of job loss and by paying some subordinates hush money. In total, USAID was defrauded of approximately 1.9 million dollars.

On 23 January 2009, a diplomatic note was transmitted by the United States embassy in Monrovia to Liberia requesting that certain materials be provided to the United States Department of Justice pursuant to article 18 of the Organized Crime Convention. United States authorities sought to obtain public or official records that they were certain were located in Liberia, including income tax records, property and deed records, and various business documents from numerous entities in Liberia.

The defendant was subsequently charged with 11 counts of fraud, including mail fraud, wire fraud, conspiracy, theft, false statements, interstate transportation of stolen property and tampering with a witness, victim or informant. In November 2010, he was convicted on all counts and sentenced to imprisonment for 11 years and 10 months.

5.6.3. Miscellaneous offences

The Organized Crime Convention has been used as a legal basis for international cooperation in relation to a broad range of other offences not examined elsewhere in this Digest. Nicaragua, for instance, used article 18 of the Convention as the basis for a mutual legal assistance request to Costa Rica in relation to an investigation into the production and reproduction of pornographic material (*Costa Rica-13*). China used article 18 to request assistance from the United Kingdom in relation to an investigation into the smuggling of contraband (*China-1*).

Two cases in which the Organized Crime Convention was used for international cooperation in connection with investigations relating to arms trafficking were reported by New Zealand and Mexico. In the first of these cases, New Zealand received a request for mutual legal assistance from the Netherlands (*New Zealand-4*). The Netherlands authorities were investigating the unlicensed trading of military parts and sought to establish whether such goods had been exported to New Zealand. The second case (*Mexico-10*) concerned an investigation by Mexican authorities into the head of an organized criminal group involved in trafficking firearms from the State of Sonora, Mexico, to the State of Arizona, United States.

The Netherlands further used article 16 of the Convention to successfully request the extradition of a Netherlands national from Brazil who was accused of conspiracy and extortion (*Brazil-6*).

FEATURED CASE 10: UNITED ARAB EMIRATES-1 (PINK PANTHERS)

The United Nations Convention against Transnational Organized Crime was used as the legal basis for extradition in connection with the armed robbery of a jewellery store in Dubai, United Arab Emirates, in April 2007 (*United Arab Emirates-1*), a case associated with one of the world's most notorious organized criminal groups involved in robberies of this kind: a group known as the Pink Panthers. The group, comprising some 800 loosely affiliated members, is believed to be responsible for nearly

FEATURED CASE 10: UNITED ARAB EMIRATES-1 (PINK PANTHERS) (CONTINUED)

300 robberies and thefts of jewellery stores in 35 countries since 1999. The total value of goods stolen by members of the Pink Panthers, said to be the most successful diamond-thieving gang in history,^a is estimated to exceed 350 million euros. Because of the scale and global reach of the group, the International Criminal Police Organization (INTERPOL) set up a designated Pink Panthers operational working group in the autumn of 2007, bringing together more than 80 law enforcement officers from 23 countries to collate and assess intelligence on the Pink Panthers.

The heist in Dubai occurred on 15 April 2007 at about 10 p.m., when eight persons associated with the group drove two stolen vehicles through the glass facade entrance of the Wafi shopping centre. Using hammers and carrying guns (which later turned out to be fake), the offenders destroyed the glass display cabinets in a jewellery store and within less than a minute were able to steal valuables worth around 14.7 million United Arab Emirates dirhams. The cars were then driven to a dark, deserted area and set on fire. In examining the wreckage, local investigators were able to obtain DNA samples from an unopened window of one of the vehicles. With the assistance of INTERPOL, the Dubai police were able to link the DNA to individuals wanted for earlier jewellery heists in Liechtenstein and Switzerland.

Sometime before May 2007, the United Arab Emirates requested the extradition from the Netherlands of a person implicated in the case after he was found returning a rental car that had been used by members of the group. In the absence of any bilateral treaty, the Netherlands authorities refused the request but noted that the Organized Crime Convention could supply the necessary legal basis if the United Arab Emirates was a State party. The United Arab Emirates then ratified the Organized Crime Convention on 7 May 2007 and, pursuant to article 16, submitted a new request for the extradition of the accused. In February 2009, the High Council of the Netherlands granted the extradition request and the suspect was extradited in the same month. In August 2009, the suspect was, however, acquitted and removed from the United Arab Emirates when it was found that he had not been involved in the heist in Dubai.

^a Havana Marking, "The Pink Panthers: hunting the world's best diamond thieves", *The Guardian*, 22 September 2013.

Italy submitted a case to the author of this Digest that involved an organized criminal group suspected of promoting, organizing and participating in the trafficking in and illegal recycling of petroleum products, in particular diesel fuel (*Italy-10*). Some of the fuel had been trafficked directly from Libya; in other instances, it had been transferred between ships off the coast of Malta. Using articles 16 and 18 of the Organized Crime Convention as the legal basis, Italian prosecutors sought the extradition from Libya of a man involved in the group and sought to obtain computers, telephones and access to email communications and other electronic media, as well as to bank accounts, to further investigate the suspect and his associates. It was later revealed that the man had also been charged with similar offences in Libya, and Italy sought mutual legal assistance to obtain further information about the investigation in Libya.

Lithuania reported in 2010 that the Organized Crime Convention had been used as the sole basis for a mutual legal assistance request sent to Nigeria. The case involved the hijacking of a ship and the taking of hostages. A response from Nigeria was still outstanding at the time of reporting.¹⁷²

¹⁷² [CTOC/COP/2010/CRP.5](#), para. 23.

5.7. No crime type specified

Several cases consulted for the purposes of this Digest specified the type and some details of the international cooperation between States parties to the Organized Crime Convention but failed to mention the crime type, offence or criminal charges involved. For these cases, listed in the following table, it was not possible to establish whether they involved offences covered by the Convention or its Protocols, or other forms of serious crime.

| <i>Case reference</i> | <i>Requesting State</i> | <i>Requested State</i> | <i>Type of cooperation</i> |
|-----------------------|-------------------------|----------------------------------|----------------------------|
| <i>Brazil-5</i> | Italy | Brazil | Mutual legal assistance |
| <i>Brazil-7</i> | Switzerland | Brazil | Mutual legal assistance |
| <i>Colombia-1</i> | Colombia | Bolivia (Plurinational State of) | Mutual legal assistance |
| <i>Costa Rica-9</i> | Ecuador | Costa Rica | Mutual legal assistance |

5.8. Observations

The cases examined in chapter 5 of this Digest demonstrate that the Organized Crime Convention has been used to enable international cooperation in relation to a great variety of crime types. States parties have been quite creative in the ways in which they have resorted to the international cooperation provisions of the Organized Crime Convention as bases for requesting mutual legal assistance and extradition in connection with a wide variety of criminal offences.

Considering the types of offences that have given rise to the cases examined in this Digest, it is perhaps not surprising that most of the offences were related to the criminalization requirements under the Organized Crime Convention and its Protocols. This is also an indication that those offences, by and large, have been criminalized in the domestic laws of States parties and used in actual cases; they are neither “dead law” nor do they serve merely symbolic purposes. While it is beyond the scope of this Digest to examine how States parties have implemented the criminalization provisions of the Organized Crime Convention and how consistent or compliant domestic offences are with the requirements of the Convention and its Protocols, it is very promising to see that States parties around the world have implemented and employed in practice a wide range of offences that have generated international cooperation requests under the Convention.

Two offences stand out: participation in an organized criminal group (art. 5 of the Convention) and money-laundering (art. 6 of the Convention). These offences feature with particular frequency in the cases considered in this Digest. One possible reason why these two offences appear so frequently in the available case reports could be that neither of them are criminalized as broadly under any other international agreement. Article 5 sets out an offence that was particularly innovative and novel for most jurisdictions when the Convention was developed, and the offence has not been replicated in any other regional or international agreement (other than directives of the European Union). Similarly, when article 6, concerning the laundering of proceeds of crime, entered into force, it was the first “global” offence criminalizing the laundering of proceeds of crime, other than one linked to drug-related offences, which had been criminalized under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

In the cases discussed in this Digest, both participation in an organized criminal group and money-laundering were mostly charged along with other offences. Cases involving participation in an organized criminal group often involved charges for the specific offences committed by that group and/or its participants, such as drug trafficking or the smuggling of migrants. Indeed, a considerable number of cases appear to have involved organized criminal groups engaged in drug-related offences, which is not surprising given the extent of the global illicit drug trade. Similarly, cases involving money-laundering mostly involved the

predicate offence from which the proceeds of crime derived. Again, the number of drug-related cases, as well as cases involving corruption or fraud, is noticeable.

One offence covered by the Convention that was completely missing from the cases considered in this Digest is obstruction of justice, established under article 23 of the Convention. An analysis of cases reported by States parties that was published in 2016 similarly found nothing with regard to this offence.¹⁷³ The reasons for the lack of cases involving this offence are not documented and not immediately evident. It may be that States parties have established offences relating to the influencing of witnesses, the threatening of prosecutors, perjury and the like which predate the Organized Crime Convention and which States do not consider to be part of the offences covered by the Convention. It may also be that obstruction of justice is rarely reported, investigated and prosecuted domestically and that the number of known cases with international dimensions is very low. It is also possible that some States consider such cases to be too difficult and thus refrain from pursuing them across borders. These observations are, however, merely speculative and it would be desirable to conduct a separate research project into the implementation, interpretation and practical use by States parties of article 23 of the Convention, especially in the context of international cooperation.

It is also promising to see that many of the cases discussed in this Digest involved other serious crime, that is, offences that are not established in accordance with specific criminalization provisions of the Convention or any of its Protocols, but that meet the threshold of being punishable by imprisonment or other deprivation of liberty of four years or more, thus falling within the concept of “serious crime” under article 2 (b) of the Convention. The cases examined in section 5.6 of this Digest demonstrate that the Organized Crime Convention has been used to facilitate international cooperation in cases involving a diverse range of crimes, including fraud, cybercrime, robbery and trafficking in petroleum products. As much as this illustrates the broad range of criminal activities associated with organized crime, it also demonstrates how widely the Organized Crime Convention can be used in practice and the further potential that the international cooperation provisions of the Convention offer to States parties.

¹⁷³ Boister, “The cooperation provisions of the UN Convention against Transnational Organised Crime”, p. 62.

CHAPTER VI.

INTERPLAY WITH OTHER AGREEMENTS



6. INTERPLAY WITH OTHER AGREEMENTS

Depending on the nature of the offence under investigation, international cooperation can potentially fall within the scope of several legal instruments. In many of the cases considered for the purposes of this Digest, the Organized Crime Convention was not the only legal basis on which the relevant request for international cooperation was made. It is not uncommon to use the Organized Crime Convention in conjunction with other international, regional or bilateral agreements or arrangements. In many instances, these agreements or arrangements reiterate or complement the provisions under the Organized Crime Convention, thus strengthening the legal basis of the request.

As evidenced by the available cases, it appears that the Organized Crime Convention is used jointly with other international or regional agreements in one of two circumstances. The first refers to situations where the investigation or other criminal proceedings involves more than one crime type, for example, cases in which an organized criminal group is involved in drug trafficking or money-laundering. The second broadly involves situations in which the Convention and the other agreement provide the same or similar tools for requesting international cooperation and thus offer an additional basis on which to request extradition or mutual legal assistance. None of the cases considered in the present chapter of this Digest involve other types of international cooperation.

This broad categorization is, however, somewhat speculative and based on general observations only. Most of the cases consulted for this Digest contain no information on the reasons why more than one treaty was used for the international cooperation request. It is plausible that several cases mention the application of the Organized Crime Convention but fail to disclose, or refer to, other treaties applied simultaneously. Against this background, it is difficult to make further observations about, and identify patterns of, the practices used by States. It has been suggested that States that would otherwise be wary of using “suppression conventions” such as the Organized Crime Convention as extradition treaties on their own, mainly because of the lack of specific detail and perhaps because of the dramatically increased scope of potential extradition parties, may, however, be willing to use them in combination with extant but ageing bilateral treaties, and rely on the suppression conventions to update the crimes extraditable under those treaties.¹⁷⁴

In the following analysis, the available cases are divided into four sections. The first section explores cases in which the Organized Crime Convention was used in conjunction with other global international agreements. The second section turns to cases in which multilateral regional treaties were used jointly with the Convention. The third section covers cases in which bilateral agreements were used together with the Convention. The fourth section examines cases in which the Convention was the sole basis for international cooperation between the requesting State and the requested State.

In a number of cases, it was not possible to establish whether or not the Organized Crime Convention was the only legal basis for the cooperation. In at least five cases (*Brazil-5*, *Brazil-11*, *Brazil-12*, *Costa Rica-8* and *New Zealand-5*), it was stated that the Convention had been used jointly with another instrument, although that instrument (treaty, agreement or other) was not specified.

6.1. Use of the Organized Crime Convention in conjunction with other international conventions

6.1.1. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

In at least six cases considered for this Digest, the Organized Crime Convention was used together with the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

¹⁷⁴Boister, *An Introduction to Transnational Criminal Law*, pp. 358–359.

for the purpose of international cooperation.¹⁷⁵ The 1988 Convention was developed in the 1980s specifically to combat drug trafficking and to deprive criminal elements of the proceeds of such crime. It complements the regime to criminalize and combat the illicit drug trade established by the Single Convention on Narcotic Drugs of 1961¹⁷⁶ and the Convention on Psychotropic Substances of 1971.¹⁷⁷

Reiterating offences established under the earlier treaties, the 1988 Convention comprehensively criminalizes many illicit activities associated with narcotic drugs and psychotropic substances, ranging from their production to their sale, importation, etc. One main focus of the Convention is the large financial profits and wealth generated by drug trafficking that enables transnational criminal organizations to penetrate, contaminate and corrupt the structure of Government, legitimate commercial and financial business, and society at all levels.¹⁷⁸ Accordingly, an aim of the Convention is to “deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing”.¹⁷⁹ To achieve this, the Convention requires States parties to criminalize money-laundering (art. 3, paras. (1) (b) and (c)) and introduce measures to confiscate proceeds of the offences covered by the Convention (art. 5). The criminalization of money-laundering under article 6 of Organized Crime Convention is strongly influenced by the text of article 3, paragraph 1, of the 1988 Convention. The provisions on confiscation and seizure under articles 12 to 14 of the Organized Crime Convention mirror similar requirements under article 5 of the 1988 Convention.

International cooperation among States parties is an express purpose of the 1988 Convention (art. 2, para. 1). To this end, the Convention contains detailed obligations on extradition (art. 6), mutual legal assistance (art. 7), transfer of proceedings (art. 8) and other forms of cooperation (arts. 9 and 10). Several provisions under the Organized Crime Convention, such as article 16, on extradition, and article 18, on mutual legal assistance, closely reflect – sometimes verbatim – provisions of the earlier Convention. With 191 parties (as at 10 May 2021), the 1988 Convention is nearing universal adherence, similarly to the Organized Crime Convention (190 parties).

Against this background, it is not surprising that both conventions have been used alongside each other in requests for international cooperation between States that are parties to both.

In 2010, Spain, for instance, reported that it would use the Organized Crime Convention together with the 1988 Convention in extradition cases involving States with which Spain had no other treaty or agreement relating to extradition with Spain.¹⁸⁰ At least four cases have been reported in which this practice was used, including:

- (a) A case in which eight persons who were part of larger drug trafficking network were extradited from Cabo Verde to Spain (*Spain-1*);
- (b) A case in which a Spanish national wanted on drug trafficking charges was extradited from Ghana to Spain (*Spain-2*);
- (c) A case in which a British national wanted in Spain on charges of drug trafficking was extradited from the United Arab Emirates to Spain (*Spain-3*);
- (d) A case in which the leader of an organized criminal group involved in drug trafficking, a Georgian national, was extradited to Spain in 2006 (*Spain-4*).

In a case involving charges relating to drug trafficking and participation in an organized criminal group, public prosecutors and police forces from Costa Rica, El Salvador, Guatemala and Nicaragua used the Organized Crime Convention and the 1988 Convention for a range of cooperation measures, including mutual legal

¹⁷⁵ United Nations, *Treaty Series*, vol. 1582, No. 27627. Adopted by the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, concluded at Vienna on 20 December 1988; entered into force on 11 November 1990.

¹⁷⁶ United Nations, *Treaty Series*, vol. 520, No. 7515. Adopted by the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, done at New York on 30 March 1961; entered into force on 13 December 1964.

¹⁷⁷ United Nations, *Treaty Series*, vol. 1019, No. 14956. Adopted by the United Nations Conference for the Adoption of a Protocol on Psychotropic Substances, concluded at Vienna on 21 February 1971; entered into force on 16 August 1976.

¹⁷⁸ 1988 Convention, preamble.

¹⁷⁹ *Ibid.*

¹⁸⁰ [CTOC/COP/2010/CRP.5/Corr.1](#), para. 94bis.

assistance requests under article 18 of the Organized Crime Convention to obtain certified documents, interview witnesses and receive information on the property and whereabouts of suspects (*El Salvador-1*).

Similarly, Serbia used the mutual legal assistance provisions under the Organized Crime Convention and the 1988 Convention to request evidence from an illicit drug seizure made in Uruguay (*Serbia-2*). The evidence obtained was used to commence criminal proceedings against an organized criminal group engaged in trafficking cocaine from Latin America.

Slovenia reported in 2010 that it had received an extradition request from Uruguay in a drug trafficking matter in which the Organized Crime Convention and the 1988 Convention were used as the legal basis.¹⁸¹

6.1.2. United Nations Convention against Corruption

The United Nations Convention against Corruption¹⁸² was developed shortly after the Organized Crime Convention. Many provisions of the Convention against Corruption mirror those of the Organized Crime Convention. One of the purposes of the Convention against Corruption, which, as at 10 May 2021, had 187 parties, is to promote and strengthen measures to prevent and combat corruption more effectively and efficiently (art. 1 (a)). Another purpose is to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery (art. 1 (b)).

To this end, the Convention against Corruption sets out a range of measures geared towards promoting international cooperation, many of which were drafted on the basis of the Organized Crime Convention, although there are also some differences in specific aspects of the implementation of such measures. These measures or modalities of cooperation include extradition (art. 44), transfer of sentenced persons (art. 45), mutual legal assistance (art. 46), transfer of criminal proceedings (art. 47), law enforcement cooperation (art. 48), joint investigations (art. 49) and special investigative techniques (art. 50). Given the history and background of the two conventions, using them jointly for international cooperation between States that are parties to both instruments presents an opportunity in cases involving organized crime and corruption (although consideration should be given to areas of implementation of the two conventions involving different requirements or conditions such as the international cooperation for purposes of confiscation and the disposal of confiscated proceeds of crime or property under the Organized Crime Convention, on the one hand and, on the other, the asset recovery provisions of chapter V of the Convention against Corruption, and, in particular, its provisions on the return and disposal of assets derived from offences covered by the Convention). Three cases could be identified among the cases considered for the purpose of this Digest in which both conventions were used jointly for the purpose of international cooperation.

The first of these cases involved the United Kingdom and an unnamed country (*United Kingdom-1*). In this corruption and fraud investigation, the United Kingdom authorities sent a letter of request to obtain banking and business records from the other country. The letter, in which express mention was made of the Organized Crime Convention and the Convention against Corruption, was later the subject of judicial proceedings, as details of the content were reported in the press. The case is discussed in more detail in an earlier part of this Digest.

The second case involved a mutual legal assistance request pursuant to the Organized Crime Convention and the Convention against Corruption made by Kuwait to the United Kingdom (*United Kingdom-3*). Two letters of request were issued on this basis on 19 February and 4 March 2015, in which United Kingdom authorities were asked to restrain the assets held in the country by an accused person in an embezzlement and money-laundering investigation. An appeal against the registration of the restraint order following the request was rejected: *A & A v. The Director of Public Prosecutions*, [2016] EWCA Crim 96. Further details about the facts of this case are discussed in an earlier part of this Digest.

In the third case (*Antigua and Barbuda-1*), the central authority of Brazil submitted a mutual legal assistance request pursuant to the Organized Crime Convention, the Convention against Corruption and the

¹⁸¹ [CTOC/COP/2010/CRP.5](#), para. 35.

¹⁸² United Nations, *Treaty Series*, vol. 2349, No. 42146. Signed at the High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption, held in Merida, Mexico, from 9 to 11 December 2003; entered into force on 14 December 2005.

Inter-American Convention on Mutual Assistance in Criminal Matters to the Attorney General of Antigua and Barbuda in order to register and give full effect to a Brazilian court order. The order was issued by a court in Curitiba, Brazil, on 22 June 2016 in the context of the investigation into an elaborate corruption, fraud and money-laundering scheme (details of which are outlined in an earlier part of this Digest). It concerned offshore bank accounts that were believed to be used for the transfer of bribery payments. Upon receipt of the request, the supervisory authority established under the Money Laundering (Prevention) Act 1996 of Antigua and Barbuda applied to the Eastern Caribbean Supreme Court to register the order. The Court ordered the registration of the Brazilian court order on the basis of section 27 of the Mutual Assistance in Criminal Matters Act 1993 of Antigua and Barbuda, and Statutory Instrument No. 15 of 2003, ratifying the Inter-American Convention on Mutual Assistance in Criminal Matters. The application to set aside the registration was, however, granted on appeal in 2017.

6.2. Use of the Organized Crime Convention in conjunction with regional agreements

Regional organizations in Africa, the Americas, Asia and Europe have developed a range of agreements and conventions on crime and criminal justice matters. Some of these were concluded specifically to facilitate international cooperation, such as extradition and mutual legal assistance, in criminal matters, across a range of criminal offences. Some treaties focus on specific crime types, such as cybercrime, corruption or trafficking in persons, and provide mechanisms for international cooperation in relation to these types of offences.

The purpose, design and depth of these instruments vary greatly and it is not possible to make general observations about their scope and application. It is worthy of note, however, that the instruments are widely used among the parties to them and among the States members of the relevant organizations. As these regional agreements apply to a smaller number of parties, they sometimes provide for more detailed measures or mechanisms compared with those set out in global conventions such as the Organized Crime Convention. If the agreements are tied to, or developed under the auspices of, a regional organization, they usually bring together countries in close proximity, with shared histories, traditions, legal systems and values and with greater levels of trust and more experience in cooperation. As a result, States sometimes favour international cooperation in criminal matters on the basis of regional agreements with which they are more familiar and which may provide for administrative and other mechanisms to effect cooperation that are not available under global treaties. Statements made by Botswana, Norway and Sweden, discussed further in section 6.5 below, made to the Conference of the Parties to the Organized Crime Convention seem to confirm this.¹⁸³ These observations remain, however, somewhat speculative and a closer analysis of the content and use of these regional agreements is outside the scope of this Digest.

Among the cases considered for the purposes of this Digest, at least 17 were identified in which the Organized Crime Convention was used in conjunction with a regional criminal justice agreement. The following sections discuss these cases in the context of the relevant agreements, organized by region and subject matter.

6.2.1. Inter-American conventions

Several treaties or agreements have been developed to facilitate international cooperation between Member States in the Americas, some of which have found application in cases also involving international cooperation under the Organized Crime Convention. Most of these treaties were developed with the assistance of, or are deposited with or administered by, the Organization of American States (OAS).

¹⁸³ CTOC/COP/2010/CRP.5, paras. 5, 86–89, and 95.

6.2.1.1. *Convention on Extradition and Inter-American Convention on Extradition*

The Convention on Extradition,¹⁸⁴ adopted in Montevideo in 1933, was the first multilateral extradition treaty in the world. It created an obligation for States parties to surrender “to any one of the States which may make the requisition, the persons who may be in their territory and who are accused or under sentence” (art. 1). Pursuant to article 1, paragraph (b), the Convention applies to any offence that is punishable in the requesting and the requested States by a minimum of one year of imprisonment. The Convention has been ratified by 13 States, including countries from Latin America and the Caribbean, as well as the United States. Six further States have signed but not ratified the Convention.

The Inter-American Convention on Extradition,¹⁸⁵ adopted in Caracas in 1981, substituted the Convention on Extradition for those States that became parties to it (this does not include the United States). The Convention was developed under the auspices of OAS and, as at 10 May 2021, had six States parties. This instrument gives priority to multilateral or bilateral treaties concluded previously by the States parties, unless the parties have decided otherwise (art. 33). This could lead, for example, to the applicability of the Convention on Extradition of 1933, which, as mentioned above, was the previous regional initiative on extradition matters.¹⁸⁶

FEATURED CASE 11: CHILE-1

The Convention on Extradition was used by Chile in conjunction with the United Nations Convention against Transnational Organized Crime to request the extradition of a person wanted on charges of smuggling of migrants from the Dominican Republic in 2013 (*Chile-1*). The accused was the alleged leader of an organized criminal group that, on 10 different occasions over a six-month period between 4 February and 2 August 2013, facilitated the illegal entry of between 44 and 83 individuals, most of them nationals of Colombia or the Dominican Republic, into Chile. Operating under the guise of a travel agency, the group charged between \$2,000 and \$2,500 for airfares and purported entry visa fees. The migrants entered Chile believing they would do so legally. Their visas, however, were never issued and the migrants had to make a dangerous journey during which they lacked sufficient food, water, accommodation and other protection. Several migrants were apprehended upon entry into Chile, which eventually led to the alleged ringleader being identified and located in the Dominican Republic.

The Public Prosecutor in Chile then filed a request to have the main suspect and her husband extradited from the Dominican Republic to face charges of smuggling of migrants. On 3 August 2013, a court in Iquique, Chile, forwarded the application for the extradition order to the Court of Appeal, which, on 21 August 2013, granted the application pursuant to the Organized Crime Convention and the Convention on Extradition. The extradition request was transmitted to the authorities of the Dominican Republic, which sought an order from the Supreme Court of Justice in Santo Domingo to extradite the two persons to Chile. Extradition proceedings commenced on 15 November 2013 and the Supreme Court ordered the main suspect to be arrested pending the extradition order. She was arrested on 3 December 2013 and taken into custody in Najayo; her husband, however, remained at large. During the proceedings, the suspect denied knowing of the migrant smuggling venture and further argued that she could not be extradited because she was awaiting trial for charges of

¹⁸⁴ League of Nations, *Treaty Series*, vol. 165, No. 3803. Adopted by the Seventh International Conference of American States. Signed at Montevideo on 16 December 1933; entered into force on 26 December 1934.

¹⁸⁵ United Nations, *Treaty Series*, vol. 1752, No. 30597. Concluded at Caracas on 25 February 1981; entered into force on 28 March 1992.

¹⁸⁶ See Marco Gercke and Raluca Simion, “Practical guide to international cooperation to combat identity-related crime”, as contained in *Handbook on Identity-related Crime* (Vienna, UNODC, 2011), p. 266. For more details with regard to the relevant instruments in the region, see Geoff Gilbert, *Transnational Fugitive Offenders in International Law: Extradition and other Mechanisms* International Studies in Human Rights Series, vol. 55 (The Hague; Boston; London, Martinus Nijhoff Publishers, 1998), pp. 17 ff.

defrauding money in the Dominican Republic. The Court of Appeal rejected those points and, on 9 June 2014, ordered the extradition. She became the first foreigner to be extradited to Chile for smuggling of migrants.

Following her transfer to Chile, criminal proceedings commenced before a criminal court in Iquique. Testimony was given by 26 persons who had believed themselves to be clients of the fake travel agency and the defendant was found guilty on charges of smuggling of migrants and endangering the lives and safety of smuggled migrants. On 11 February 2015, she was sentenced to imprisonment for five years and one day. In March 2015, the defendant appealed against her conviction, arguing that the evidence presented was insufficient to support the verdict. On 30 March 2015, the Court of Appeal dismissed the appeal.

6.2.1.2. *Inter-American Convention on Mutual Assistance in Criminal Matters*

The Inter-American Convention on Mutual Assistance in Criminal Matters,¹⁸⁷ adopted in Nassau in 1992, was developed by OAS and, as at 10 May 2021, had 31 States parties.¹⁸⁸ The Convention creates an obligation for the parties to render to one another mutual assistance in investigations, prosecutions and proceedings that pertain to crimes over which the requesting State has jurisdiction at the time the assistance is requested (art. 2). Under article 7, the assistance that may be sought and provided under the Convention is as follows:

- (a) Notification of rulings and judgments;
- (b) Taking of testimony or statements from persons;
- (c) Summoning of witnesses and expert witnesses to provide testimony;
- (d) Immobilization and sequestration of property, freezing of assets and assistance in procedures related to seizures;
- (e) Searches or seizures;
- (f) Examination of objects and places;
- (g) Service of judicial documents;
- (h) Transmittal of documents, reports, information and evidence;
- (i) Transfer of detained persons for the purpose of the Convention;
- (j) Any other procedure provided there is an agreement between the requesting State and the requested State.

The Convention was used jointly with the Organized Crime Convention and the Convention against Corruption for a mutual legal assistance request sent by Brazil to Antigua and Barbuda (*Antigua and Barbuda-1*). The facts and proceedings relating to the case are discussed in detail in other parts of this Digest.

6.2.1.3. *Agreement to Promote Cooperation and Mutual Legal Assistance among Members of the Ibero-American Association of Public Prosecutors*

The Agreement to Promote Cooperation and Mutual Legal Assistance was developed by the Ibero-American Association of Public Prosecutors and provides a framework for international cooperation in criminal matters between the member prosecution authorities. It was signed in Quito on 4 December 2003.

¹⁸⁷ Organization of American States, *Treaty Series*, No. 75. Opened for signature on 23 May 1992; entered into force on 14 April 1996.

¹⁸⁸ The development and content of this Convention are outlined in Marian Nash, "Contemporary practice of the United States relating to international law", *American Journal of International Law*, vol. 92, No. 2. (April 1998), pp. 48–54.

In 2010, Costa Rica reported that the agreement had been used alongside article 18 of the Organized Crime Convention in two mutual legal assistance requests received from Ecuador. In the first case, involving unspecified charges, Ecuador requested information from Costa Rica about persons, their cross-border movements, involvement in associations and companies, bank account statements, criminal records, assets and financial transactions (*Costa Rica-9*). The second case involved a request for information on the border crossings and location of a group of persons involved in trafficking in children (*Costa Rica-15*).

6.2.2. Council of Europe conventions

The Council of Europe, which has 47 Member States, has a long history of promoting criminal justice cooperation and has developed a plethora of conventions to facilitate international cooperation in criminal matters. Several of these conventions have been ratified, or acceded to, by States that are not members of the Council of Europe. The conventions are used frequently and actively by States parties. Given their relatively long history and established mechanisms, States parties tend to resort to Council of Europe conventions for international cooperation among each other rather than resorting to more recent, global agreements such as the Organized Crime Convention. As a consequence, cases in which the Organized Crime Convention was used in combination with one (or more) Council of Europe conventions have arisen rather infrequently.

6.2.2.1 European Convention on Extradition

One of the earliest criminal justice treaties developed by the Council of Europe was the European Convention on Extradition, which was opened for signature in Paris in 1957.¹⁸⁹ The Convention has 50 States parties: all Council of Europe member States and Israel, the Republic of Korea and South Africa. The Convention creates an obligation for States parties to surrender to each other all persons against whom the competent authorities of the requesting party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order (art. 1). Any offence with a minimum statutory penalty of one-year imprisonment is an extraditable offence for the purpose of this Convention (art. 2, para. 1).

FEATURED CASE 12: KAZAKHSTAN-1

The European Convention on Extradition and the United Nations Convention against Transnational Organized Crime were used (separately) for international criminal justice cooperation in a case that has been referred to as one of the world's biggest financial fraud cases. Between 2005 and early 2009, the accused, a political figure in Kazakhstan, was the chairman and controlling shareholder of BTA Bank, a private bank headquartered in Almaty. In February 2009, BTA Bank was nationalized and multibillion-dollar holes were found in the bank's accounts. The main suspect fled to the United Kingdom of Great Britain and Northern Ireland. Later in 2009, the bank began multiple proceedings against the accused in the United Kingdom and sought to recover some 6 billion dollars, which had been fraudulently misappropriated. BTA Bank alleged that, while acting as chairman, the accused had fraudulently directed the bank to lend money to shell companies controlled by him. Those loans would not be fully paid back. During proceedings aimed at identifying and retrieving assets held in the United Kingdom, documents were produced revealing a large number of undisclosed assets and a network of companies through which the accused had funnelled money to put it out of reach of BTA Bank: *JSC BTA Bank (Respondent) v. Khrapunov (Appellant)*, [2018] UKSC 19.

In early 2012, the accused fled from the United Kingdom to France, where he was arrested in July 2013. By that time, the Russian Federation had sought his extradition on the basis of the European

¹⁸⁹ United Nations, *Treaty Series*, vol. 359, No. 5146. Opened for signature at Paris on 13 December 1957, entered into force on 18 April 1960.

Convention on Extradition. Later in 2013, Ukraine, also requested the extradition of the accused. Both States sought extradition in pursuit of fraud-related charges associated with domestic BTA Bank operations. The accused was placed in detention pending resolution of those two requests. The requests were ruled admissible by lower courts and, in 2015, the then Prime Minister of France signed a decree ordering the accused's extradition to the Russian Federation. In late 2016, however, the Council of State, the highest court for administrative matters, found the extradition order to be inadmissible under article 3 of the European Convention on Extradition, accepting arguments presented by the appellant that extradition was sought for political offences.

In addition to the extradition proceedings, this complex case involved extensive cooperation between a number of countries using a range of regional and international instruments. Some of the details of the cooperation and the legal bases are scarce and it has not been possible to pursue all available avenues of research and validate all of the available information, some of which derives from news media. According to statements made by officials in Kazakhstan and presentations made to the Working Group on International Cooperation of the Conference of the Parties to the Organized Crime Convention, Kazakhstan used the Organized Crime Convention along with other existing treaties as a legal basis to request mutual legal assistance from several other parties.

6.2.2.2. *European Convention on Mutual Assistance in Criminal Matters*

The European Convention on Mutual Assistance in Criminal Matters¹⁹⁰ was adopted by the Council of Europe in 1959 and has 50 States parties, including six non-members of the Council of Europe: Brazil, Chile, Israel, Mongolia, Republic of Korea and South Africa. This Convention has been referred to as the oldest, most widely applied and arguably most influential multilateral mutual legal assistance arrangement.¹⁹¹ Under the Convention, States parties are required to afford each other the widest measure of mutual assistance in criminal proceedings (art. 1).

The Organized Crime Convention was used jointly with the European Convention on Mutual Assistance in Criminal Matters in a case involving charges of trafficking in persons, forced prostitution and participation in an organized criminal group reported by Ukraine in 2010 (*Ukraine-1*). The accused in the case was the leader of an organized criminal group trafficking women from Ukraine to Turkey. The Office of the Prosecutor General of Ukraine sought and obtained legal assistance from Turkish authorities that later resulted in the accused (and possibly other persons) being convicted and the rights of the victims being restored.

In February 2010, Armenian authorities used the Organized Crime Convention in conjunction with the European Convention on Mutual Assistance in Criminal Matters in a money-laundering investigation to make requests for mutual legal assistance to Latvia and to the Russian Federation (*Armenia-1*). At the time the case was reported, the Office of the Prosecutor General of the Russian Federation had commenced executing the request. No response had been received from Latvia at that time.

Italy reported three cases in which article 18 of the Organized Crime Convention was used in combination with the European Convention on Mutual Assistance in Criminal Matters to request assistance. The first of these cases (*Italy-1*) related to a request sent to Turkey concerning a member of an organized criminal group involved in the smuggling of migrants. The second case (*Italy-7*), sent to an undisclosed State, involved charges of drug trafficking. The third case (*Italy-8*), which also used the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, related to the investigation of persons involved in an organized criminal group suspected of committing scams. The requested State has not been disclosed in this case.

¹⁹⁰ United Nations, *Treaty Series*, vol. 472, No. 6841. Opened for signature at Strasbourg on 20 April 1959; entered into force on 12 June 1962.

¹⁹¹ Joutsen, "International cooperation against transnational organized crime", p. 378.

FEATURED CASE 13: UNITED KINGDOM-2

In March 2016, the Serious Fraud Office of the United Kingdom of Great Britain and Northern Ireland started an investigation into the company Unaoil, along with its chairman, chief executive officer and chief operating officer (*United Kingdom-2*). The company is based in Monaco and, at the time, the three persons under investigation resided there. The Serious Fraud Office had received information indicating that Unaoil had paid, or conspired to pay, bribes to government officials in several countries, including Iraq, in order to help its clients secure lucrative government contracts.

In March 2016, the Serious Fraud Office sent a letter to authorities in Monaco, urgently requesting the search of premises, the seizure of business records and the search and arrest of the alleged offenders. The Office also specified the principal questions to be asked during post-arrest interviews. The letter, which made express reference to the European Convention on Mutual Assistance in Criminal Matters and the United Nations Convention against Transnational Organized Crime as the legal basis for the request, stated that:

Our investigation has recently commenced and we hope to charge one or more suspects in the coming months. Three of the main suspects are believed to reside and operate their business from Monaco. The [Serious Fraud Office] has intelligence to suggest that the main allegations will be published on an international news website on the 30th March 2016 and believe that this may prompt the destruction of the relevant evidence being requested [...].

Following receipt of the letter, Monegasque authorities searched premises of the persons under investigation, seized documents, computers and other property, and also arrested the three individuals. Media reports following the arrests confirmed that United Kingdom officials were also present in Monaco during the searches and interviews of the arrested persons. Monegasque authorities confirmed to the media that they had acted in accordance with the European Convention on Mutual Assistance in Criminal Matters and the Organized Crime Convention.

The letter of request later became the subject of proceedings before the High Court of Justice in *R (Unaenergy and others) v. Director of the Serious Fraud Office*, [2017] EWHC 600. The claimants in this case (several alleged offenders) sought the quashing of the letter requesting the mutual legal assistance, the return of materials obtained by the authorities in Monaco and the destruction of any copies of those materials held by the Serious Fraud Office in the United Kingdom. The High Court was asked to decide whether or not the common-law duty of disclosure or candour applied in modified form to letters of request from foreign authorities, pursuant to section 7 of the Crime (International Cooperation) Act 2003 of the United Kingdom. The Director of the Serious Fraud Office argued that the duty of disclosure, as it applied to domestic search warrants, did not apply to such letters. In its decision, the High Court agreed with that position, thus refusing the claimants' application. The High Court noted that article 18, paragraphs 15–17, of the Organized Crime Convention was relevant in the case, together with article 14, paragraphs 1 and 2, of the European Convention on Mutual Assistance in Criminal Matters.

Investigations into Unaoil, its executives and some of its employees were ongoing in multiple countries at the time of writing. In March 2019, two of the accused pleaded guilty in the United States of America to conspiring to facilitate bribes to secure oil and gas contracts in foreign countries.

6.2.2.3. *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*

The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime,¹⁹² concluded in Strasbourg in 1990, is aimed at facilitating international cooperation and mutual assistance in investigating crime and tracking down, seizing and confiscating the proceeds of crime. The Convention was developed in the late 1980s with a view to disrupting the international illicit drug market by freezing and confiscating proceeds from drug trafficking.¹⁹³ The Convention is inspired by the purpose and mechanisms set out in the 1988 Convention, but differs on one important point: it applies to the proceeds of any crime, not just the proceeds of drug trafficking. In 2005, the Convention was further expanded to cover terrorist financing.

Under the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, parties have an obligation to criminalize the laundering of the proceeds of crime (art. 6) and to confiscate instrumentalities and proceeds (or property the value of which corresponds to such proceeds) (art. 2, para. 1). For the purposes of international cooperation, chapter III of the Convention provides for several forms of investigative assistance (for example, assistance in procuring evidence, transfer of information to another State without a request, adoption of common investigative techniques and lifting of bank secrecy), provisional measures such as freezing of bank accounts and seizure of property to prevent its removal and measures to confiscate the proceeds of crime, such as enforcement by the requested State of a confiscation order made abroad and institution by the requested State of domestic proceedings leading to confiscation at the request of another State.

Many of these measures reflect those available, and used, under the Organized Crime Convention. The obligations under the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime exceed those under the Organized Crime Convention on some points, but are limited to cases involving money-laundering and, of course, to parties to that Convention. As at 10 May 2021, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime had 49 States parties, including the following parties that are not States members of the Council of Europe: Australia, Canada, Colombia, Kazakhstan and United States.

In 2018, a court in Catania, Italy, ordered the seizure and confiscation of assets of a person under investigation for participating in an organized criminal group. Some of the assets were held in bank accounts in Switzerland (*Italy-5*). For that reason, a mutual legal assistance request to seize the accounts was made using article 18 of the Organized Crime Convention, along with provisions under the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime as the legal basis. Further open-source information about the facts, proceedings and international cooperation was not available at the time of writing.

In 2019, Italy received a request from another State seeking mutual legal assistance on the basis of the Organized Crime Convention, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the European Convention on Mutual Assistance in Criminal Matters (*Italy-8*). The request was made in the context of an investigation into members of an organized criminal group that was involved in scams and the request concerned copies of documents of parallel proceedings in Italy, identification of the user of an Italian mobile telephone, copies of his criminal record and information about ongoing investigations by Italy in the matter.

6.2.2.4. *Council of Europe Convention on Cybercrime*

The Council of Europe Convention on Cybercrime,¹⁹⁴ adopted in 2001, is the first instrument on cybercrime developed in a regional context but with parties beyond the membership of the Council of Europe (see below). The Convention on Cybercrime is aimed at preventing and combating crimes committed by means of the Internet and other computer networks, dealing particularly with infringements of copyright,

¹⁹² United Nations, *Treaty Series*, vol. 1862, No. 31704. Opened for signature at Strasbourg on 8 November 1990; entered into force on 1 September 1993.

¹⁹³ See, also, Bruce Zagaris and Elizabeth Kingma, “Asset forfeiture international and foreign law: an emerging regime”, *Emory International Law Review*, vol. 5 (1991), pp. 466–468.

¹⁹⁴ Council of Europe, *European Treaty Series*, No. 185. Opened for signature on 23 November 2001; entered into force on 1 July 2004.

computer-related fraud, child pornography and violations of network security.¹⁹⁵ The Convention was developed to address the difficulties associated with investigating and prosecuting computer-related crime, given that data can be easily erased or altered and providers and receivers of data and communication systems may be located in a variety of jurisdictions.¹⁹⁶

The Convention sets out a range of criminal offences and regulates issues related to criminalization (arts. 2–13 and 22), powers and procedures such as the search of computer networks and interception (arts. 14–21) and various mechanisms for international cooperation among States parties, including, extradition, mutual assistance and information exchange, as well as innovative mechanisms of international cooperation, including the expedited preservation of stored computer data (arts. 23–35). In article 23 of the Convention on Cybercrime, it is expressly recognized that, depending on the international cooperation sought, requests may be made under multiple legal mechanisms, noting that:

The Parties shall cooperate with each other, in accordance with the provisions of this chapter, and through the application of relevant international instruments on international cooperation in criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation, and domestic laws, to the widest extent possible for the purposes of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.¹⁹⁷

The Convention has garnered remarkable interest among States that are not members of the Council of Europe and, as at 10 May 2021, had 66 States parties.

Among the material consulted for the purposes of this Digest, two cases could be identified in which the Organized Crime Convention was used in conjunction with the Convention on Cybercrime for international cooperation.

In the first of these cases, Estonia received three requests from the United States, between 2009 and 2010, asking for the extradition of three persons accused of participating in an organized criminal group involved in computer-related bank fraud (*Estonia-1*). All three requests referred to article 16 of the Organized Crime Convention, article 24 of the Convention on Cybercrime and the 2006 extradition treaty between Estonia and the United States. The three persons were subsequently extradited to the United States, where they faced trial.

In the second case, a case involving conspiracy to commit credit card fraud, the United States requested extradition from Slovenia using the Convention on Cybercrime and a 1901 extradition treaty between the Kingdom of Serbia (of which Slovenia was part at that time) and the United States as the legal basis (*Slovenia-1*).

6.2.3. European Union instruments

The European Union has an extensive range of legal and practical mechanisms to facilitate cooperation in criminal matters among its member States. Given the breadth and depth of the European Union framework and the tailor-made and focused content of European Union instruments relating to international cooperation in criminal matters, including Council of the European Union framework decision 2002/584/JHA on the European arrest warrant and the surrender procedures between member States,¹⁹⁸ it is rather unlikely for the Organized Crime Convention to be used jointly with any of the European Union instruments in cases involving cooperation between States members of the European Union.

¹⁹⁵ In a more recent development, the General Assembly, in its resolution [74/247](#), decided to establish an open-ended ad hoc inter-governmental committee of experts, representative of all regions, to elaborate a comprehensive international convention on countering the use of information and communications technologies for criminal purposes.

¹⁹⁶ See also, Shannon L. Hopkins, “Cybercrime Convention: a positive beginning to a long road ahead”, *Journal of High Technology Law*, vol. II, No. 1 (2003), pp. 103–110.

¹⁹⁷ [CTOC/COP/WG.3/2015/3](#), para. 64.

¹⁹⁸ *Official Journal of the European Communities*, L. 190, 18 July 2002.

In 2019, Italy presented a case in which a district anti-Mafia prosecutor had sent a letter requesting the seizure of assets and bank accounts on the basis of article 12 of the Organized Crime Convention and Council of the European Union framework decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence¹⁹⁹ (*Italy-6*). The information on this case is not complete, the foreign State is not specified and it is not possible to independently validate the information. The case involves a transnational organized criminal group that ran an illegal betting network. Several companies and trusts had been set up in tax havens to ensure that the bets placed could not be traced, to launder proceeds and to evade tax payments. The illicit profits reportedly exceeded 650 million euros. Several persons connected to the group and their offshore assets and accounts were investigated for participating in an organized criminal group, money-laundering and offences relating to betting. The letter of request concerned the execution of an order to seize assets of one of the companies based abroad, as well as bank accounts registered in the names of the persons under investigation. The request also concerned company documents and served to locate and identify other assets held by the persons under investigation. A second letter was later sent to a third State requesting the seizure of further company assets connected to the organized criminal group. Given the paucity of information, it may well be possible that the Organized Crime Convention was used for a request sent to a State that was not a member of the European Union rather than being used jointly with framework decision 2003/577/JHA.

6.3. Use of the Organized Crime Convention in conjunction with bilateral agreements

6.3.1. Bilateral extradition treaties

In at least 13 cases examined for the purposes of this Digest, requests for extradition under article 16 of the Organized Crime Convention were made alongside existing bilateral extradition treaties between the requesting and requested States. Extraditable offences under these bilateral treaties, some of them dating back to the early 1900s, generally included the full range of criminal offences, as long as they were criminalized under the domestic laws of both States (dual criminality), were not minor offences or misdemeanours (usually requiring a minimum statutory penalty of one year's imprisonment) and were not political offences.

Compared with the Organized Crime Convention, these treaties generally set out a more detailed system to request extradition and process extradition requests. To some degree, the existence of a bilateral extradition treaty demonstrates a level of trust between the contracting States and mutual recognition of each other's criminal justice system. It may also be the result of a heavy overload of cases between the cooperating States and the recognition that the increasing needs stemming from this overload have to be addressed through a bilateral instrument.

The advantage of bilateral agreements is that they can be tailored to the specific needs of the States in question and can be expanded, amended or (if necessary) terminated relatively easily. They are adaptable to the specific interests of the two States, which is a particular concern if differences between legal systems must be overcome. In actual cases, the presence of a pre-existing extradition treaty may also mean that requests face fewer obstacles, are processed faster and have a higher chance of approval than requests made between States that have no prior history of cooperation. The disadvantages of bilateral treaties, on the other hand, are that they are very resource-intensive to negotiate, especially for smaller or developing States that cannot afford an extensive international negotiating programme, and that their increased number inevitably entails a lack of uniformity.²⁰⁰

The "special relationship" between the Organized Crime Convention and pre-existing extradition treaties is expressly recognized in article 16 of the Convention (and discussed in more detail in section 3.1.4 above). Under article 16, paragraph 3, extraditable offences covered by the Convention are deemed to be included

¹⁹⁹ *Official Journal of the European Union*, L. 196, 2 August 2003.

²⁰⁰ *A/CONF.203/9*, para. 8.

as extraditable offences in any extradition treaty existing between the States parties. Furthermore, article 16, paragraph 7, expressly states that extradition under the Organized Crime Convention:

shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State party may refuse extradition.

Article 16, paragraph 17, of the Organized Crime Convention encourages States parties to conclude new agreements to enhance the effectiveness of extradition, and article 16, paragraph 3, requires States parties to include Organized Crime Convention offences as extraditable offences in any new extradition treaties concluded between them. To promote new extradition treaties and offer guidance in drafting such treaties, the General Assembly adopted the Model Treaty on Extradition in 1990.²⁰¹ It has not been possible to establish whether any extradition treaties concluded since the entry into force of the Organized Crime Convention make specific reference to, or have been concluded because of, the provisions under article 16.

The Mexican authorities submitted information on nine cases that involved extradition requests submitted by Mexico to the United States pursuant to article 16 of the Organized Crime Convention and the relevant provisions of the extradition treaty between the United States and Mexico signed in 1978. Under article 1, paragraph 1, of that treaty, both parties agreed to mutually extradite:

Persons who the competent authorities of the requesting party have charged with an offence or have found guilty of committing an offence, or are wanted by said authorities to complete a judicially pronounced penalty of deprivation of liberty for an offence committed within the territory of the requesting party.

Seven of the cases considered here concerned the extradition of members of organized criminal groups sought by Mexican authorities for drug offences and associated money-laundering activities.

In the case *Mexico-1*, between 2003 and 2012, leaders of the Sinaloa Cartel coordinated the importation of large quantities of cocaine and marijuana from Mexico into El Paso, Texas, United States, intending to distribute the drugs across the United States. To protect and extend their operations and organization, the leaders employed teams of assassins. The accused in this case was facing charges relating to the possession, sale and distribution of illicit drugs, money-laundering, participation in criminal activities of an organized criminal group and homicide. On 4 October 2017, the Sixteenth District Court for Federal Criminal Proceedings in Mexico City considered the question of whether the requirements for a formal extradition request pursuant to the extradition treaty with the United States were satisfied, in particular whether there was sufficient evidence to establish that the accused could have potentially engaged in the alleged criminal conduct. The Court ordered the accused to stand trial and the extradition request was subsequently transmitted to the United States.

The case *Mexico-7* involved another extradition request concerning the Sinaloa Cartel, which related to drug trafficking and money-laundering activities between 2007 and 2012 and also charges relating to the possession of weapons. On 30 July 2019, the Sixteenth District Court for Federal Criminal Proceedings found that the requirements to issue a formal extradition request to the United States had been met.

The case *Mexico-2* concerned another organized criminal group involved in trafficking heroin, methamphetamine and cocaine from Mexico into (and across) the United States between October 2013 and May 2015. The accused in the case was facing charges relating to the possession, sale and distribution of illicit drugs, money-laundering and participation in criminal activities of an organized criminal group. On 9 March 2018, the District Court Specialized in Adversarial Criminal Justice in Mexico City found that the requirements to issue a formal extradition request to the United States had been met.

The cases *Mexico-3*, *Mexico-4* and *Mexico-5* followed the same pattern: in each case, an organized criminal group coordinated the importation of drugs from Mexico, their distribution across the United States and the transportation of cash proceeds back to Mexico sometime in 2015 and 2016. The accused in the cases were

²⁰¹ General Assembly resolution 45/116, annex, and resolution 52/88, annex.

facing charges relating to the possession, sale and distribution of illicit drugs, money-laundering and participation in criminal activities of an organized criminal group. In the case *Mexico-3*, on 14 December 2018, the Eighth District Court for Federal Criminal Proceedings in Mexico City found that the requirements to issue a formal extradition request to the United States had been met. The same conclusion was reached in the cases *Mexico-4*, on 15 August 2018, and *Mexico-5*, on 4 May 2018 by the District Court Specialized in Adversarial Criminal Justice in Mexico City.

A further case, *Mexico-6*, concerned the leader of the Los Zetas Cartel who was wanted by Mexico on charges relating to drug trafficking, money-laundering and participation in criminal activities of an organized criminal group for coordinating the importation of large quantities of marijuana from Mexico to Texas between 2005 and 2012. On 9 March 2018, the Eighteenth District Court for Federal Criminal Proceedings in Mexico City found that the requirements to issue a formal extradition request to the United States had been met.

Another case involving an extradition request from Mexico to the United States on the basis of the Organized Crime Convention and the bilateral extradition treaty between the two States concerned persons wanted by Mexico for the smuggling of migrants, sexual exploitation, participation in an organized criminal group and associated money-laundering activity (*Mexico-8*). Between 2006 and 2017, the accused in this case coordinated the illegal entry of young Mexican women from Mexico to the United States before forcing them to work as prostitutes in New York City and other parts of the United States for monetary gain. On 16 April 2019, the District Court Specialized in Adversarial Criminal Justice in Mexico City found that the requirements to issue a formal extradition request to the United States had been met.

In the ninth case, Mexican authorities submitted a request to the United States to extradite persons involved in the Infracid Organization, an international cybercrime network (*Mexico-9*). Between October 2010 and October 2017, this organized criminal group promoted and operated a website where members could discuss their illegal activities and buy and sell a range of illegal goods and services. Among other activities, the accused in this case had transmitted compromised credit card data and stolen identification on a large scale, produced and used false means of identification and unauthorized and false access devices, and engaged in money-laundering and bank and electronic fraud. On 20 June 2018, the District Court Specialized in Adversarial Criminal Justice in Mexico City found that the requirements to issue a formal extradition request to the United States had been met.

Further details about the facts of these cases, the proceedings, the international cooperation involved and the interplay between the Organized Crime Convention and the bilateral extradition treaty have not been provided.

The relationship between article 16 of the Organized Crime Convention, a bilateral extradition treaty and domestic law was at the heart of a case heard by the Federal High Court of Nigeria in Lagos on 9 January 2012: *Attorney General of the Federation v. Rasheed Abayomi Mustapha (Nigeria-2)*; the facts in this case are set out in an earlier part of this Digest). After one of the accused persons in this fraud and embezzlement case fled to Nigeria, the United States requested his extradition on the basis of Organized Crime Convention and the 1931 extradition treaty between the United States and the United Kingdom, which was made applicable to Nigeria in 1935. In an extradition hearing before the Federal High Court, the accused argued that neither the Organized Crime Convention nor the extradition treaty had domestic application in Nigeria and that, as a result, the Court did not have jurisdiction to effect his extradition. The Government, in response, argued that the treaty had become domestic law through a legal notice and had been gazetted in 1967 and thus formed part of the Extradition Decree 1966 of Nigeria. The Court accepted this position and determined that the Decree was enforceable law in Nigeria and that the Court thus had jurisdiction. The Government further argued that the offences identified in the extradition request were extraditable offences under Nigerian law as well as under the Organized Crime Convention. The Court accepted this position, although it did not comment further on the domestic application of the Convention in Nigeria and on the question of whether the offences were extraditable under the Convention. The case nevertheless reflected the relationship between the Organized Crime Convention and existing extradition treaties and how offences may be deemed to be part of such treaties, as envisaged by article 16, paragraph 3. The Court in this case ordered that the accused be taken into custody pending his extradition to the United States.

The interplay among the Organized Crime Convention, a bilateral extradition treaty and domestic extradition law is also reflected in a case involving the United States and New Zealand (*New Zealand-1*, discussed in more detail above). The United States submitted a request to New Zealand for the extradition of four individuals accused of committing criminal copyright infringement, wire fraud and other offences. On 23 December 2015, the District Court in Auckland, New Zealand, ruled that the men were eligible for extradition under the 1970 extradition treaty between New Zealand and the United States and the Extradition Act 1999 of New Zealand. The accused appealed against the decision, arguing, inter alia, that the offences identified in the United States request were not extradition offences within the meaning of section 4 of the Extradition Act 1999: *Ortmann et al. v. United States of America*, [2017] NZHC 189. Following the ratification by New Zealand of the Organized Crime Convention, section 101B, which sets out certain crimes with transnational aspects to be included in extradition treaties, was inserted into the Extradition Act 1999. The High Court subsequently examined whether the offences in the indictment were extradition offences. One of the main issues concerned whether the offence of copyright infringement by digital online communication of copyright protected works to members of the public was a criminal offence in New Zealand under the Copyright Act. While the District Court found this to be the case, the High Court disagreed. The High Court did, however, find that the United States offence of conspiracy to commit copyright infringement corresponded to the New Zealand offence of conspiracy to defraud, which was an extraditable offence under the bilateral treaty. It further held that other charges against the accused corresponded to several serious offences under the Crimes Act of New Zealand and thus opened the way for extradition to the United States. In a further appeal, the Court of Appeal of New Zealand overruled the High Court, arguing that extradition for the United States copyright infringement offence was permissible, as it was an equivalent offence in New Zealand to possess digital copyrighted works with an intention to disseminate them: *Ortmann et al. v. United States of America*, [2018] NZCA 233. In November 2020, the Supreme Court of New Zealand allowed an appeal against the Court of Appeal's finding that money-laundering was an extraditable offence, but also confirmed that the other offences provided extradition pathways: *Ortmann et al. v. United States of America*, [2020] NZSC 120.

Estonia reported that it had received three separate extradition requests from the United States, in 2009 and 2010, which referred to article 16 of the Organized Crime Convention and the 2006 extradition treaty between the United States and Estonia as the legal basis. The three individuals were subsequently extradited to face trial for their participation in an organized criminal group involved in computer-related bank fraud.

In a case involving charges of conspiracy to commit credit card fraud (*Slovenia-1*), the United States requested the extradition of an individual from Slovenia using the Organized Crime Convention, the Convention on Cybercrime and the extradition treaty between the Kingdom of Serbia and the United States. This bilateral treaty was signed in 1901, when Slovenia was still part of the Kingdom of Serbia (and the Austro-Hungarian Empire).²⁰²

The same bilateral treaty featured in a case involving the extradition of a person from Croatia to the United States, where he was wanted on charges relating to money-laundering (*United States-2*). The accused in the case later argued that the treaty of 1901, which dated back to a time when Croatia was part of the then Kingdom of Serbia, did not cover the offence of money-laundering, a suggestion dismissed by the court, noting that the offence was extraditable under the Organized Crime Convention, to which both States were parties.

6.3.2. Bilateral mutual legal assistance treaties

Five cases examined in this Digest involved mutual legal assistance requests that were made on the basis of the Organized Crime Convention alongside a treaty on bilateral mutual assistance in criminal matters.

The fact that States parties may be bound by multiple bilateral or multilateral treaties raises the possibility that two or more treaties with different conditions on how mutual legal assistance can be provided may be applicable in one case. Generally, such conflicts between treaties can be resolved using the rules of the

²⁰² Signed at Belgrade on 25 October 1901; entered into force on 12 June 1902. Note that Slovenia and the United States signed a new extradition agreement on 17 October 2005 which entered into force on 1 February 2010, after the present case took place. The Treaty between the United States of America and the Kingdom of Serbia for the Mutual Extradition of Fugitives from Justice continues to operate as the extradition between the United States and several other successor States of the then Kingdom of Serbia/the former Yugoslavia.

Vienna Convention on the Law of Treaties, such that, for instance, later treaties replace earlier ones and more specific treaties prevail over more general ones.²⁰³ Mindful that States parties may be bound by other agreements between them, article 18, paragraph 6, of the Organized Crime Convention contains a specific provision to resolve potential conflicts, noting that obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance remain unaffected by the provisions under article 18.

Moreover, the role of article 18 of the Organized Crime Convention in providing a framework for mutual legal assistance is specifically addressed in its paragraph 7, which obliges States parties to directly apply paragraphs 9 to 29 of the article when no bilateral treaty binds the parties, and the States parties are encouraged to apply those provisions in a manner that complements existing mutual legal assistance treaties.²⁰⁴

Article 18, paragraph 30, of the Organized Crime Convention encourages States parties to conclude new agreements to enable or enhance mutual legal assistance. To promote new mutual legal assistance treaties and offer guidance in drafting such treaties, the General Assembly adopted the Model Treaty on Mutual Assistance in Criminal Matters in 1990.²⁰⁵ It has not been possible to establish whether any mutual legal assistance treaties concluded since the entry into force of the Organized Crime Convention make specific reference to, or have been concluded because of, the provision under article 18, paragraph 30.

FEATURED CASE 14: ANTIGUA AND BARBUDA-2

Throughout the 1990s, the perpetrator in this case, a former prominent Ukrainian politician, with the aid of several associates, committed a number of financial crimes. Through a variety of acts of fraud, extortion, bribery, misappropriation and embezzlement, the politician and his associates amassed, and subsequently laundered through an elaborate network of international banks, hundreds of millions of dollars. Their schemes ranged from simply accepting payments in return for acting or omitting to act, to pocketing millions of dollars by using fraudulent contracts to purchase goods for State enterprises at inflated prices or fabricating the purchase of goods. The proceeds of the schemes were frequently transferred in and out of the United States of America or small island States such as Antigua and Barbuda.

On 3 June 2004, a jury in the United States District Court for the Northern District of California convicted the perpetrator on dozens of counts of financial crime, including money-laundering, conspiracy to commit money-laundering, wire fraud and transportation of stolen property. On 8 July 2005, a judge in the United States District Court of Columbia issued an order to restrain a portion of the perpetrator's funds located in Antigua and Barbuda so as to facilitate a wider ongoing civil forfeiture proceeding initiated by the Government of the United States in the District Court of Columbia in May 2004. Through these proceedings, the United States was seeking the forfeiture of over 250 million dollars that had been distributed throughout bank accounts in Antigua and Barbuda, Liechtenstein, Lithuania and Switzerland, as well as in Guernsey, United Kingdom of Great Britain and Northern Ireland. Shortly thereafter, the United States submitted a request, pursuant to article 16 of the Treaty on Mutual Assistance in Criminal Matters between the Government of Antigua and Barbuda and the Government of the United States, to register the restraint order. The order prohibited any withdrawals, transfers or assignments, etc., in respect of all assets in the perpetrator's name and his associate entities, along with a sum of 85.5 million dollars held in the Bank of Nova Scotia in Antigua and Barbuda (which had previously been deposited in accounts at the European Federal Credit Bank (Eurofed) Bank).

²⁰³ Joutsen, "International cooperation against transnational organized crime", pp. 379–380.

²⁰⁴ [A/CONF.222/7](#), para. 19.

²⁰⁵ General Assembly resolution [45/117](#), annex, and resolution [53/112](#), annex I.

FEATURED CASE 14: ANTIGUA AND BARBUDA-2 (CONTINUED)

Upon receipt of the request, the supervisory authority established under the Money Laundering (Prevention) Act 1996 submitted an application pursuant to section 27 of the Mutual Assistance in Criminal Matters Act 1993 of Antigua and Barbuda to the High Court of Justice of the Eastern Caribbean Supreme Court to register the restraint order. Satisfied that the conditions under section 27 had been established, the Court ultimately granted the application. In support of its decision, the court referred to the Treaty on Mutual Assistance in Criminal Matters between the Government of Antigua and Barbuda and the Government of the United States, along with their obligations to assist each other under article 18 of the Organized Crime Convention. The decision was later appealed unsuccessfully by the respondent (the liquidators of the Eurofed Bank).

By way of background, in 1997, the perpetrator had allegedly purchased a controlling interest in Eurofed in a bid to expand and develop his money-laundering operations. In December 1999, the High Court of Antigua placed Eurofed into liquidation, appointing liquidators to collect and distribute its assets to its proven depositors and creditors (including the perpetrator and his associates). The essential argument therefore presented by the liquidators was that they owned the seized funds.

In 2009, the United States sent a request for mutual legal assistance to Egypt using article 18 of the Organized Crime Convention, along with the Treaty on Mutual Legal Assistance in Criminal Matters between the Government of the United States and the Government of Egypt, as the legal basis. The request in this case (*Egypt-1*; outlined in an earlier part of this Digest), which involved computer-related fraud offences and money-laundering, concerned evidence on digital devices in the possession of persons under investigation, records and data from Internet service providers in Egypt and bank and financial transaction records. The Attorney General of Egypt responded to the request on 3 October 2009 and forwarded it to the prosecutor's office at the Court of Appeal in Al Mansurah for execution.

In a case reported by Mexico (*Mexico-10*), a request for mutual legal assistance was sent to the United States using article 18 of the Organized Crime Convention and the 1987 treaty on cooperation between the United States and Mexico for mutual legal assistance as the legal basis. The case involved an organized criminal group engaged in trafficking firearms across the border between Sonora and Arizona. The investigation into the group was launched after an attaché at the United States embassy in Mexico City made a complaint to Mexican authorities about the alleged leader of the organization. The request sent to the United States concerned information about several persons implicated in the case. Little information has been provided about the cooperation and proceedings involved in the case or about the interplay between the Organized Crime Convention and the bilateral treaty. It appears that several persons were later tried and convicted in connection with the case but eventually appealed their convictions successfully. In a decision dated 15 June 2011, the Seventh Unitary Court of the Fifteenth Circuit in Mexicali acquitted two or more persons, though it was not clear what their specific role in the case was.

In July 2018, Chile made a request for mutual legal assistance to Australia, citing the Organized Crime Convention and article XXII of the 1995 treaty on extradition between Australia and Chile (which refers to mutual assistance) as the legal basis (*Australia-1*). The accused in this case was the founder and principal shareholder of Onix Capital SA, a company incorporated in Chile, which the accused had used to capture funds invested by his victims. Referred to as the author of the largest Ponzi scheme in Chile, he defrauded investors through a set of promissory notes, guaranteed by what was in fact another company, Grupo Arcano. The accused manufactured an identity as an award-winning "angel investor", presenting himself as an early Google financier with a business degree from Stanford University, United States. He falsely told investors that their money would be invested in global Silicon Valley companies, such as Uber and Snapchat. In reality, he invested only a small part of the money, using the rest to fund a lavish lifestyle for himself and misappropriating some 85 million of the 100 million dollars that investors had poured into the company since 2010. Onix Capital went into compulsory liquidation in May 2016 after it defaulted on its liabilities to a Chilean creditor. At that time, the company had over 120 million dollars in liabilities to over 1,000 creditors. As part of criminal proceedings in Chile, in July 2018, a criminal court issued a letter of request to Australia

concerning several assets in Sydney associated with the defendant. Civil bankruptcy proceedings in Chile resulted in further requests concerning the liquidation of assets being sent to Australia, though these did not relate to the Organized Crime Convention or other criminal justice instruments. By that time, one of the accused in the case had fled from Chile to Malta; a request to have the person extradited to Chile was denied by a court in Malta. The legal basis for that request was not documented in the available material.

6.4. Stand-alone use of the Organized Crime Convention

6.4.1. Preliminary considerations

Cases in which the Organized Crime Convention was used as the sole basis for international cooperation are of particular significance if such cooperation would otherwise not have occurred or would not have been permissible by the States involved. Such cases demonstrate the important “fall-back” function that the Convention exercises,²⁰⁶ that is to close loopholes for fugitives involved in organized crime and to enable cooperation among jurisdictions around the world, including States parties that may have no prior record of cooperation in criminal justice matters between them and require a treaty to enable such cooperation.

In relation to extradition, article 16, paragraph 4, expressly states that, if a State party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State party with which it has no extradition treaty, it may consider the Convention the legal basis for extradition in respect of any offence to which article 16 applies.²⁰⁷

Pursuant to article 16, paragraph 5, States parties that make extradition conditional on the existence of a treaty are under an obligation to inform the Secretary-General of the United Nations whether they accept the Organized Crime Convention as the legal basis for cooperation on extradition with other States parties.

For States parties affirming that the Organized Crime Convention may provide the legal basis for extradition, it will be possible to use the Convention as the sole basis for extradition. As at 4 October 2016, 31 States parties had declared that they would accept the Organized Crime Convention as the legal basis for extradition (some specifying additional conditions). These are the following: Armenia, Azerbaijan, Bahamas, Belarus, Belize, Bolivia (Plurinational State of), China, Côte d’Ivoire, Cuba, Estonia, Holy See, India, Latvia, Lithuania, Malawi, Malta, Mauritius, Mexico, Monaco, Netherlands, North Macedonia, Panama, Paraguay, Republic of Moldova, Romania, Russian Federation, Slovenia, Saint Vincent and the Grenadines, Ukraine, Uzbekistan and Venezuela (Bolivarian Republic of).²⁰⁸

If parties to the Convention declare that the Organized Crime Convention cannot constitute the legal basis in the absence of another treaty, the stand-alone use of the Convention is, evidently, not possible. As at 4 October 2016, the following 14 States parties had declared that they would not use the Organized Crime Convention as the legal basis or had not expressly declared whether they would or not: Argentina, Botswana, Burkina Faso, Burundi, El Salvador, Lao People’s Democratic Republic, Lesotho, Malaysia, Nepal, Pakistan, Singapore, Saint Lucia, United States and Yemen.²⁰⁹

On the surface, it would appear that, in the majority of cases consulted for purposes of this Digest, the Organized Crime Convention was used as the sole basis for international cooperation. This observation is, however, based merely on the fact that the available material does not mention any other multilateral or bilateral treaty used in the circumstances. As the available information on many cases is not complete and it was not possible to follow up all reported cases with the States involved, it may well be that other treaties were used (or could have been used) alongside the Organized Crime Convention. It is beyond the scope of the research for this Digest to investigate all the legal and practical options for international cooperation in criminal matters between the requesting and requested States in each case. Instead, information recorded in judicial decisions or reported by official and other sources had to be relied upon.

²⁰⁶ Currie and Rikhof, *International and Transnational Criminal Law*, p. 480.

²⁰⁷ See also section 3.1.4.2 above.

²⁰⁸ [CTOC/COP/WG.3/2016/CRP.1](#), para. 5.

²⁰⁹ *Ibid.*, paras. 4–6.

6.4.2. Confirmed cases of stand-alone use of the Organized Crime Convention

The following cases highlight some of the most prominent instances in which it has been established that the Organized Crime Convention was used, or was attempted to be used, as the only legal basis for cooperation between the States parties involved.

The use of the Organized Crime Convention to enable extradition in the absence of any other extradition treaty was at the heart of a 2013 decision by the Supreme Court of British Columbia concerning a case involving Canada and Poland (*Canada-1*). The accused had allegedly assisted in the planning of a robbery carried out by an organized criminal group in Gdansk, Poland, on 5 October 1999. It was also alleged that he had been involved in an earlier heist that led to his association with the group and the 1999 robbery. In December 2009, in the absence of a bilateral extradition treaty, Poland sought his extradition from Canada on the basis of article 16 of the Organized Crime Convention. The Supreme Court of British Columbia approved the accused's extradition. The accused then applied for a stay of proceedings under section 7 of the Canadian Charter of Rights and Freedoms, which protects the right to life, liberty and security of the person. He argued that Poland had misused the Organized Crime Convention as a "back-door" approach to effect his extradition for an offence under domestic Polish law for which no bilateral treaty with Canada existed. The Court dismissed that argument.

On 1 April 2013, the Dominican Republic submitted a request for extradition to Italy, citing article 16, paragraph 4, of the Organized Crime Convention as the legal basis in the absence of any bilateral treaty between the two States (*Dominican Republic-1*). The accused in this case was prosecuted on charges of smuggling of migrants. He absconded to Italy after being released on bail from pretrial detention. Dominican authorities subsequently issued an INTERPOL Red Notice, which led to his arrest in Italy in March 2013. On 8 May 2013, Italian authorities approved the extradition request and returned the accused to the Dominican Republic, where he was tried and convicted.

The Organized Crime Convention constituted the sole legal basis for international cooperation in a drug trafficking prosecution in Peru (*Peru-2*). Pursuant to article 16, the Peruvian authorities requested the extradition of a man from the Netherlands who was believed to be involved in a transnational organized criminal group engaged in drug trafficking. It appears that the man had initially fled to Italy, where he was arrested but released on procedural grounds after two months in custody. He then moved to the Netherlands, where he was arrested in December 2017. A Netherlands court considered and granted the request and he was subsequently extradited to Peru. In a separate request, Peru sought mutual legal assistance from the Netherlands on the basis of the Organized Crime Convention to obtain further information about the group behind the case, known as the Oropeza network, which was believed to be responsible for trafficking cocaine from Latin America to Europe and maintaining ties to the 'Ndrangheta organization in Italy. Through the request, Peru was able to obtain further information that was found on telephone and computer equipment. One of the leaders of the network had been extradited from Ecuador to Peru in September 2015, albeit on a legal basis other than the Organized Crime Convention.

The Organized Crime Convention also enabled the extradition from the Netherlands of two persons wanted in the Dominican Republic in connection with a murder committed by an organized criminal group (*Netherlands-1*). In 2010, the Dominican Republic issued an international arrest warrant through INTERPOL for the two suspects. In the spring of 2010, the Netherlands authorities spotted the two men and informed the Dominican Republic, which then filed an extradition request on the basis of the Convention. On 1 April 2010, the extradition law was amended to allow extradition for any offence carrying a penalty of four years or more when committed transnationally by an organized criminal group. The two suspects were subsequently arrested on 20 April 2010 and extradited to the Dominican Republic on 9 May 2010 after applying for a shortened procedure.

FEATURED CASE 15: FRANCE-1

In 2008, the Vice-President of Equatorial Guinea, who was also the son of the country's President, was accused by French authorities of misappropriating State funds and using them to support a lavish lifestyle. He was accused of embezzlement while he was Minister of Forestry and Agriculture and of taking the proceeds from a tax that he levied on wood sales. His spending included the purchase of a mansion in Malibu, California, United States of America, a private aeroplane, a fleet of 26 luxury cars and eight motorcycles, an assortment of Michael Jackson memorabilia valued at 1 million dollars, a six-storey mansion in an exclusive location in Paris, high-end art, luxury designer goods, hotels and vintage wines. Allegations of money-laundering and corruption against the accused and his family had previously been investigated by the United States Senate, which ended in a settlement of 30 million dollars with the United States Department of Justice.

Following a complaint lodged in 2008 by the French branch of Transparency International, a non-governmental anti-corruption organization, a public prosecutor in Paris launched a criminal investigation into the accused. As part of the investigation, France sought mutual legal assistance from Equatorial Guinea. The request, transmitted as a note verbale dated 13 February 2014, asked for the accused to be questioned in relation to offences of money-laundering under the Penal Code of France. The note specifically stated that: "in the absence of a treaty on mutual legal assistance in criminal matters between France and Equatorial Guinea, this request is made on the basis of the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000 and known as the 'Palermo Convention'". The accused declined to answer questions, stating that he was immune from the jurisdiction of foreign courts.

The investigation was completed in 2016 and resulted in the accused being charged with money-laundering by French prosecutors. In 2017, the accused was convicted in absentia by a French court and sentenced to a suspended term of imprisonment for three years and a suspended fine of 30 million euros. The court also ordered the seizure of the accused's assets in France, including a building at 42 Avenue Foch in Paris.

In 2016, Equatorial Guinea brought a case against France in the International Court of Justice seeking a suspension of the criminal proceedings and preventing France from seizing the building at 42 Avenue Foch, on the basis of diplomatic inviolability. The building had been designated as an embassy of Equatorial Guinea in 2011. In a decision dated 6 June 2018, which followed a preliminary hearing on jurisdiction, the International Court of Justice held that it did not have jurisdiction under the United Nations Convention against Transnational Organized Crime to determine the claims by Equatorial Guinea that the criminal proceedings initiated by France unlawfully interfered with its internal affairs and that the accused was entitled to immunity. The Court stated that the dispute did not concern the implementation by France of its obligations under the Convention. The Court did, however, hold that it had jurisdiction to determine the claim by Equatorial Guinea that the searches and seizure of 42 Avenue Foch were in breach of the Vienna Convention on Diplomatic Relations. The case was still in progress at the time that this Digest was finalized.

One case in which, in the absence of any other treaty, State authorities attempted to use the Organized Crime Convention as a legal basis for international cooperation, but failed, is outlined in detail in an earlier part of this Digest. It involved a request made by the Netherlands on 19 June 2012 for the extradition of an accused person from Nigeria on charges relating to trafficking in persons, smuggling of migrants, document fraud, abduction of minors and participating in an organized criminal group (*Nigeria-1*). The application for extradition was heard in the Federal High Court on 1 July 2014: *Attorney-General v. Edegbe*. In its submission, Nigeria asked the Court to recognize that the Organized Crime Convention had become part of the domestic law of Nigeria and stated that the extradition of the accused was predicated on article 16, paragraph 1, of the Convention. It noted that the offences identified in the extradition request, which had been

committed in the Netherlands, were also criminalized under Nigerian law and thus met the dual criminality requirement. The accused asked the Court to consider whether there was an extradition treaty between the Netherlands and Nigeria, whether the Organized Crime Convention and the Trafficking in Persons and Smuggling of Migrants Protocols were enforceable law in Nigeria and whether the Court had jurisdiction in the matter. The accused argued that there was no enforceable extradition treaty between the Netherlands and Nigeria, as required by the Extradition Act of Nigeria of 2004. Even if the Organized Crime Convention did constitute domestic law, the accused contended that it did not satisfy section 1 of the Extradition Act, which requires an extradition treaty or agreement between Nigeria and the requesting country. Further to his other arguments, the accused contended that, in the absence of a relevant treaty between the two States, the Court could not exercise jurisdiction. Central to the case was the question of whether the Organized Crime Convention should qualify as a treaty for the purpose of extradition. The Court answered the question in the negative. It pointed out that Nigeria had several extradition treaties with other countries and that those treaties had been given effect in domestic law through acts of parliament. The Court stressed that the Organized Crime Convention, unlike several other international conventions to which Nigeria was party, had not been given domestic effect in that way. The Court stated that a treaty could not apply in any proceedings before the courts in the country until it was made enforceable by an Act of the National Assembly. In support of its finding, the Court referenced the case of *Udeozor v. Federal Republic of Nigeria*, (2007) 15 NWLR Part 1058, section 499, in which the Nigerian Court of Appeal held that the right of one State to request of another the extradition of a fugitive accused of a crime, and the duty of the country in which the fugitive finds asylum to surrender the said fugitive, existed only when created by a treaty. The Court further cited the case of *Abacha v. Fawehinmi*, (2005) 51 WRN 29, in which the Supreme Court stated that, before its enactment into law by the National Assembly, an international treaty had no such force of law as to make its provisions justiciable in the courts of Nigeria. In the present case, the Federal Court in Abuja concluded that it had no jurisdiction over the case and refused to consider the request of the Government of the Netherlands for the surrender and extradition of the accused.

In addition to the cases outlined above, the cases set out below contained an express statement confirming that State authorities had resorted to the Organized Crime Convention to request international cooperation from another State party because no other bilateral or multilateral treaty enabling such cooperation was in place at that time.

| <i>Case reference</i> | <i>Requesting State</i> | <i>Requested State</i> | <i>Type of cooperation</i> |
|-------------------------------|-------------------------|----------------------------------|----------------------------|
| <i>Brazil-7</i> | Switzerland | Brazil | Mutual legal assistance |
| <i>Brazil-8</i> | United Kingdom | Brazil | Mutual legal assistance |
| <i>Brazil-9</i> | Finland | Brazil | Confiscation |
| <i>Brazil-10</i> | Switzerland | Brazil | Mutual legal assistance |
| <i>Canada-2</i> | Slovenia | Canada | Extradition |
| <i>Colombia-1</i> | Colombia | Bolivia (Plurinational State of) | Mutual legal assistance |
| <i>Lithuania-1</i> | Lithuania | Kuwait | Extradition |
| <i>Monaco-1</i> | Senegal | Monaco | Mutual legal assistance |
| <i>Peru-1</i> | Peru | Andorra | Mutual legal assistance |
| <i>United Arab Emirates-1</i> | United Arab Emirates | Netherlands | Extradition |

The cases listed below appear to have involved the Organized Crime Convention as the sole legal basis but no insight into how and why the Convention was chosen for the requests and what, if any, legal arguments were presented by official authorities or courts to explain its use were available.

| | | | |
|----------------------|------------------------|------------------------|----------------------|
| <i>Brazil-1</i> | <i>Brazil-4</i> | <i>Brazil-6</i> | <i>China-1</i> |
| <i>China-2</i> | <i>Costa Rica-3</i> | <i>Costa Rica-4</i> | <i>Costa Rica-10</i> |
| <i>Costa Rica-12</i> | <i>Costa Rica-17</i> | <i>Costa Rica-18</i> | <i>Italy-2</i> |
| <i>Italy-3</i> | <i>Italy-10</i> | <i>Italy-11</i> | <i>New Zealand-2</i> |
| <i>New Zealand-3</i> | <i>New Zealand-4</i> | <i>Poland-1</i> | <i>Romania-1</i> |
| <i>Serbia-1</i> | <i>United States-3</i> | <i>United States-4</i> | |

In the remaining cases not mentioned elsewhere in this chapter of the Digest, it could not be conclusively established whether or not the Organized Crime Convention had been used as the sole basis for international cooperation.

6.5. Observations

The international cooperation measures under the Organized Crime Convention are not unique and do not exist in isolation, in the sense that other multilateral and bilateral agreements also offer their States parties various avenues to seek extradition or request mutual legal assistance, transfer proceedings and other forms of international cooperation. The mechanisms included under the Organized Crime Convention were designed to reflect and complement pre-existing agreements, offer additional avenues of cooperation and encourage and shape the development of further bilateral and multilateral arrangements or agreements to enable and facilitate extradition, the transfer of sentenced persons, mutual legal assistance, joint investigations and the use of special investigative techniques (arts. 16, para. 17, 18, para. 30, 19 and 20, para. 2).

It is a welcome development to see that the Organized Crime Convention is often used in combination with other global, regional and bilateral treaties on international cooperation in criminal matters. This strengthens the overall legal basis of the international cooperation request and offers central authorities multiple options for cooperation. Since the adoption and entry into force of the Organized Crime Convention, the corpus of legal instruments enabling international cooperation in criminal matters has grown further. The existing treaties on extradition, mutual legal assistance and other forms of international cooperation and the global and regional instruments containing provisions on international cooperation in criminal matters do not stand in competition; seen in combination, they serve to close existing loopholes and ensure that individual perpetrators and organized criminal groups cannot evade criminal justice. This is in line with the “substitutive” or “supplementary” nature of the Organized Crime Convention.²¹⁰

Of particular significance are the many cases in which the Organized Crime Convention was used as the sole basis for international cooperation. This is where the Organized Crime Convention plays a particularly important role, as it enables cooperation between States where such cooperation would not have been possible otherwise. The present chapter of this Digest demonstrates that the Organized Crime Convention has connected States parties in different parts of the world that have no alternative avenue for cooperation through pre-existing treaties. From this perspective, the Organized Crime Convention accomplishes its stated purpose of promoting cooperation (art. 1) by providing a modern platform for legal assistance for the many States parties that had none.²¹¹

²¹⁰ UNODC, *Digest of Organized Crime Cases*, para. 124.

²¹¹ Boister, “The cooperation provisions of the UN Convention against Transnational Organised Crime”, p. 62.

What is not captured in this Digest are those cases in which have States opted against using the Organized Crime Convention as a legal basis for international cooperation and, instead, have chosen bilateral or regional instruments. It may well be that practitioners still tend to favour domestic laws and bilateral or regional arrangements over international treaties. There are many possible reasons for this: because these laws and arrangements are tailored to respond to precise needs of the countries involved; because they often allow the continued use of a time-honoured *modus operandi*; or because they better correspond to the specificities of the national legal systems and, in particular, satisfy special procedural requirements.²¹²

There is some indication that States that are parties to well-established regional agreements enabling international cooperation, such as those developed by the Council of Europe or the European Union, tend to favour those agreements over international conventions such as the Organized Crime Convention.²¹³

Norway, for instance, reported in 2010 that extradition requests from other European States were usually submitted or received on the basis of the European Convention on Extradition and that requests received from or sent to non-European States would usually be made on the basis of bilateral agreements or, pursuant to Norwegian domestic law, could be made irrespective of a treaty or agreement with the requesting State.²¹⁴ Sweden made a similar observation and further noted that it had no reported cases in which the Organized Crime Convention was used for international cooperation because Swedish domestic law did not require reciprocity for extradition and mutual legal assistance.²¹⁵ The same position has been reported by Switzerland, where domestic law allows mutual legal assistance to be granted to States with which Switzerland does not have international agreements.²¹⁶

The position of Latin American, Asian and Pacific and African States concerning their regional agreements in relation to the Organized Crime Convention is less clear. The Asia-Pacific region is presently lacking comprehensive regional treaties on international cooperation in criminal matters, with the exception of two agreements on mutual legal assistance: one for South Asian nations and one for South-East Asian nations.²¹⁷ In 2010, Botswana noted that extradition would generally only be granted to other States members of the Commonwealth of Nations, namely, parties to the London Scheme for Extradition within the Commonwealth.²¹⁸ There is no information as to whether this position is shared by other States members of the Commonwealth of Nations.

The disadvantage of regional treaties, where they exist, is that, by nature, they can assist only with cooperation with States in that region, although some agreements, like those of the Council of Europe, have been ratified by States outside that region. For States seeking assistance from outside the region, the Organized Crime Convention and the other international agreements developed under the auspices of the United Nations, such as the Convention against Corruption and the 1988 Convention may present the only option for international cooperation.

²¹² UNODC, *Digest of Organized Crime Cases*, para. 124.

²¹³ Boister, "The cooperation provisions of the UN Convention against Transnational Organised Crime", p. 57.

²¹⁴ [CTOC/COP/2010/CRP.5](#), paras. 86–89.

²¹⁵ *Ibid.*, para. 95.

²¹⁶ *Ibid.*, para. 96.

²¹⁷ Association of Southeast Asian Nations (ASEAN) Treaty on Mutual Legal Assistance in Criminal Matters and South Asian Association for Regional Cooperation (SAARC) Convention on Mutual Legal Assistance in Criminal Matters. See also, Tom Obokata, "The value of international law in combating transnational organized crime in the Asia-Pacific", *Asian Journal of International Law*, vol. 7, No. 1 (January 2017), p. 49.

²¹⁸ [CTOC/COP/2010/CRP.5](#), para. 5.

CHAPTER VII.

CONCLUSIONS AND FUTURE DIRECTIONS



7. CONCLUSIONS AND FUTURE DIRECTIONS

This Digest was issued after the twentieth anniversary of the adoption and opening for signature of the Organized Crime Convention. In those 20 years, the number of parties (190) to the Convention has reached almost universal adherence, reaffirming the importance of the Convention as the main global tool available to the international community to prevent and fight all forms and manifestations of transnational organized crime.

This is not to say that the Organized Crime Convention is a panacea or has put an end to the challenges posed by the activities of organized criminal groups or has reduced their activities in a great range of fields. In fact, organized crime has branched into crime types that were little known or inconceivable 20 years ago. This is particularly evident in the context of online fraud, computer-related offences and other forms of cybercrime. Trafficking in illicit drugs and the smuggling of various types of contraband have also risen to new heights and offences such as trafficking in persons and the smuggling of migrants have received more public attention and media coverage than ever before. New organized criminal networks that are based on loose associations of offenders using online platforms or other forms of telecommunication have emerged alongside traditional, more hierarchical, mafia-style syndicates, posing a further challenge to legislators and law enforcement authorities.²¹⁹

Transnational organized crime crosses national boundaries and involves criminal activities and criminal elements of transnational nature that take advantage of differences and discrepancies in national legal systems, law enforcement structures and prosecution practices. It is for these reasons that the Organized Crime Convention offers a plethora of flexible tools to enable international cooperation between States parties. This Digest demonstrates that many States around the world have put these tools to good use and that there is potential for even broader and deeper implementation of the international cooperation provisions of the Convention.

In a 2016 publication evaluating the cooperation provisions under the Organized Crime Convention, the suspicion was expressed that those rules were under-utilized and that, 15 years after its adoption, the Convention's aims of promoting cooperation to prevent and combat transnational organized crime more effectively had not been fully realized.²²⁰ Five years on, and despite the scepticism expressed in another recent publication regarding the progress in the implementation of the Convention,²²¹ a more optimistic conclusion is drawn in the present Digest.

On the basis of the information consulted for the purposes of this Digest, it is evident that the international cooperation provisions of the Organized Crime Convention have been used in a considerable number of cases. Most of the cases discussed in the Digest involve instances in which requests for cooperation were granted; there are some in which cooperation was denied. Given that most instances of international cooperation in criminal matters are documented in sources that are not publicly accessible and open to the sort of research on which this Digest is based, it is quite likely that the Convention has been used, or attempted to be used, for international cooperation in many more cases than the ones presented in this Digest.

It needs to be stressed, in this context, that this Digest does not and cannot aspire to present a complete picture of the use of the Organized Crime Convention as a legal basis for international cooperation in criminal matters. The cases and other material used in this report are by nature selective and incomplete. The author of this Digest and others involved in its realization were, for the most part, restricted to using open-source information, supplemented by documents made available by States parties specifically for the purposes of this Digest. Chapter 2 above outlines the avenues of research employed for this Digest and the selection of cases. Gaps in the available information have been highlighted throughout the text. This Digest presents a mere snapshot of known cases. It would be highly desirable to make this Digest a living document, as research on the use of the Organized Crime Convention in actual cases continues and, more importantly, is being extended to States parties that are not, or not frequently, involved in the cases examined in this Digest.

²¹⁹ [A/CONF.234/11](#).

²²⁰ Boister, "The cooperation provisions of the UN Convention against Transnational Organised Crime", p. 41.

²²¹ See Tennant, "The promise of Palermo", pp. 22–23.

Chapter 3 of the Digest shows that, in the majority of cases for which information was available, the Organized Crime Convention was used to request mutual legal assistance or, in a slightly smaller number of cases, extradition; a handful of cases involve both. The Convention has also been used on numerous occasions to enable international cooperation for purposes of confiscation, including the execution of foreign restraint orders. Other types of international cooperation, such as transfer of sentenced persons, transfer of proceedings and joint investigations are hardly used in practice. As discussed earlier, this may be a reflection of the relative novelty of these mechanisms, the need for more resources or the difficulties often posed by the multiple procedures required. It may also be a reflection of a lack of experience of national authorities of some States parties in using these types of international cooperation.

While chapter 4 of the Digest shows that the Organized Crime Convention has been used as a legal basis for international cooperation by States parties around the world, it also demonstrates that the Convention appears to be far more used by some States than others. The high number of cases reported by Latin American and Caribbean States and by States from the Western European and other States region has been noted, as has the relative paucity of cases from the African and Asia-Pacific regions. It would be highly desirable to, firstly, seek information on additional cases from States parties not presently captured by this Digest and, secondly, investigate the obstacles that may prevent certain States from using the international cooperation measures under the Convention more actively.

This is connected to several observations made in chapter 6 of this Digest, which concerns the use of the Organized Crime Convention in conjunction with other bilateral or multilateral cooperation agreements. It should be stressed, in this context, that the relationship between the Convention and other agreements should be seen as complementary and not as competitive. Indeed, it is a welcome development that the Convention has been used jointly with a range of other treaties in order to give international cooperation, extradition and mutual legal assistance, in particular, a stronger legal basis. It would be interesting to explore further the criteria by which States parties choose their legal basis for cooperation, the circumstances in which they choose one of multiple possible legal bases and the circumstances in which they opt for a combination of them. Furthermore, and returning to a point raised earlier, it would be useful to know whether States parties that have no record or a low record of using the Convention as a legal basis for international cooperation use, instead, regional or bilateral agreements more frequently, or whether they refrain from international cooperation in criminal matters more broadly.

It is fair to add, however, that the Organized Crime Convention, like other agreements such as the Convention against Corruption and the 1988 Convention, has global reach, with States parties around the world. These three conventions enjoy almost universal adherence. This offers one great advantage over regional agreements that have a limited number of States parties: while bilateral treaties may serve to provide quick and less bureaucratic cooperation between two States, they may also reflect political, economic and other issues of bilateral concern, often leading to the adoption of different languages and provisions depending on the States in question. This can result in a fragmented, rather than integrated, approach to combating transnational organized crime, as different measures might be taken.²²²

It has been suggested that pursuing cooperative arrangements with one country at a time by means of extradition treaties and mutual legal assistance treaties will also not adequately fortify the world against the threat of international organized crime. However, those issues can be mitigated if States use a single instrument such as the Organized Crime Convention with the same rules applicable to all parties. Furthermore, the Convention is more useful in bridging diverse legal traditions as it can nurture common understanding (harmonization) and mutual trust (mutual recognition) and saves time for States, particularly those without pre-existing bilateral agreements, as there would be less need to draft numerous agreements.²²³

Perhaps one of the greatest advantages of the Organized Crime Convention emerges in those cases in which the Convention was used as the sole legal basis for international cooperation. The cases featured in section 6.4 of this Digest show that the Convention has provided a legal basis for cooperation between States parties

²²² Obokata, "The value of international law", p. 49.

²²³ *Ibid.*, p. 50.

where no such cooperation would have been possible otherwise. Thus, the Convention was used to close gaps and loopholes and has made a significant contribution to fostering international cooperation in criminal matters.

Chapter 5 of the Digest illustrates the range of offences for which the Organized Crime Convention was used for international cooperation purposes. It is not surprising that three of the offences covered by the Convention (participation in an organized criminal group, money-laundering and corruption) feature prominently here, followed by offences established in accordance with two of the supplementary Protocols: the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol. Research for the purposes of this Digest did not yield results in relation to cases of international cooperation involving obstruction of justice (art. 23 of the Organized Crime Convention) and offences relating to trafficking in firearms, their parts and components and ammunition, although efforts to compile data on those issues continue and a future version of this Digest may benefit from an update in this regard. It is encouraging to see that the Organized Crime Convention has also been used for international cooperation on other serious crime, such as drug trafficking, fraud and trafficking in contraband.

Reflecting solely on the cases examined in this Digest, it becomes clear that the Organized Crime Convention is an international convention that is alive and frequently put to good use in a great range of contexts, including for fostering international cooperation in criminal matters.

However, it is also important to focus on the persisting challenge, namely, the many cases involving the use of the Organized Crime Convention in international cooperation that are not included in this Digest and may involve the following: (a) cases that remain undetected; (b) cases not considered owing to the multilingual nature of the relevant material and the consequent linguistic barriers; (c) cases that were not considered owing to significant disparities observed – both within and across regions – with regard to their availability and accessibility through open sources; and (d) cases in which States failed to use international cooperation as part of their investigation, prosecution or judicial proceedings.

There is no doubt that the mechanisms offered by the Organized Crime Convention and other international agreements on cooperation in criminal matters are underutilized and often overlooked. It would be naive to suggest that the Organized Crime Convention has the inherent ability to change long-standing approaches and perceptions in the day-to-day handling of mutual legal assistance, extradition and other more or less formal channels of cooperation. A very good legal instrument will never make up for the lack of genuine understanding and acceptance on the part of the people to which it is addressed. What the Convention can do is trigger a process of gradual change by relying on its legitimacy as a universally accepted instrument.²²⁴

This Digest demonstrates that the existence of a solid legal basis alone is not sufficient to promote international cooperation on a wider scale. As has been noted in the past, difficulties in international cooperation do not originate from deficiencies in legal systems, but instead from domestic criminal policy and general strategic attitudes, such as: (a) lack of willingness to get involved in a crime that occurred in another country; (b) lack of understanding of local criminal phenomena (e.g., trafficking in precious metals or endangered species); (c) insufficient crime awareness; (d) non-compliance with international legal instruments; and (e) conflicting perceptions of priority issues at the global and regional level.²²⁵

In spite of the considerable progress accomplished at the bilateral, regional and global levels, further efforts are needed to strengthen the efficiency and effectiveness of international cooperation in the investigation and prosecution of transnational organized crime. Obstacles to international cooperation in criminal matters that still exist include varying national requirements or conditions for cooperation, the diversity of law enforcement structures, the absence of enabling legislation, a lack of channels of communication for the exchange of information and divergences in approaches and priorities. These problems are often compounded by difficulties in dealing with the divergent procedural requirements in different jurisdictions, the competitive attitude that often exists between the agencies involved, translation and case management issues and human rights and privacy issues.²²⁶

²²⁴ Betti, ‘New prospects for inter-state co-operation in criminal matters’, pp. 160–161.

²²⁵ UNODC, *Digest of Organized Crime Cases*, para. 121.

²²⁶ UNODC, *Criminal Justice Assessment Toolkit: Cross-Cutting Issues*, p. 2.

One particular factor that may affect international cooperation, which is reflected in some of the cases included in this Digest, relates to the need to respect rule of law and human rights issues. Specifically, some States are reluctant to grant extradition requests or offer assistance if there are substantial grounds for believing that the request may result, for instance, in the prosecution for one of the purposes prohibited under article 16, paragraph 14, or may involve one of the reasons set out in article 18, paragraph 21, of the Organized Crime Convention. The interests of both law enforcement and administration of justice require international cooperation processes to be as efficient as possible, taking into account the need to protect the rights of the person sought or involved. Measures to abide by the rule of law and adherence to international human rights standards are also directly relevant to enhancing international cooperation. In matters of extradition, mutual legal assistance or joint investigations, the agencies and individuals involved retain an obligation to ensure the lawfulness of all actions taken in the name of cooperation.²²⁷

The administrative, human and financial resources associated with international cooperation can pose a particular challenge for developing countries and the least developed countries, which may also explain the lack of reported cases from some States parties. States with economies in transition and those with scarce human and financial resources often experience difficulties in implementing, executing and enforcing the numerous international conventions and bilateral treaties that they are expected to comply with; the basic capacity of their criminal justice systems and law enforcement agencies is often limited. For these States, it is particularly important that they benefit from integrated technical assistance activities that focus on building their overall investigation and prosecution capacities, as well as their ability to cooperate effectively, as envisaged in article 29, paragraphs 3 and 4, of the Organized Crime Convention.²²⁸ What is needed is a modern professional culture of international cooperation devoted to expanding both the analysis and the investigative approach of a case to cover its transnational dimensions and operational resources to coordination with foreign authorities.²²⁹

International cooperation in criminal matters offers advantages but also brings many challenges, some of which are highlighted throughout this Digest. Despite these challenges, international cooperation should be seen as an opportunity rather than an obstacle. Transnational crimes should be perceived as increasingly affecting the substantial, not simply marginal interests, of several States simultaneously. Correspondingly, their investigation and punishment by the authority of one State should be regarded as immediately beneficial to the others. This rationale is embodied in the Organized Crime Convention, in the same way as it is in the 1988 Convention and the Convention against Corruption.²³⁰

If implemented properly, the international cooperation provisions of the Organized Crime Convention enable countries to seek legal assistance, extradition, transfer of proceedings in criminal matters and cooperation for purposes of confiscation of proceeds of crime or property, among other forms of cooperation.²³¹ They open avenues to obtaining additional evidence, accessing information, freezing and confiscating assets and property derived from offences covered by the Convention and arresting and returning fugitives who would otherwise be immune to prosecution.

However, there are still numerous situations in which the Organized Crime Convention, along with other existing legal instruments on international cooperation in criminal matters, may prove to be insufficient in practice. The existing regime of international cooperation in criminal matters is still in need of improvements to avoid legislative loopholes and eliminate safe havens. There are still numerous obstacles to quick and predictable cooperation and many processes at the international and domestic levels remain opaque and in need of streamlining.²³²

In considering measures, strategies and focused action towards improving the effectiveness of international cooperation mechanisms, attention should be devoted to three important factors that will decisively shape the future directions of work to promote the implementation of the international cooperation provisions of the Organized Crime Convention. These factors are presented below as concluding remarks of this Digest.

²²⁷ Ibid.

²²⁸ Ibid.; see also Obokata, "The Value of international law", pp. 50–51.

²²⁹ UNODC, *Digest of Organized Crime Cases*, para. 112.

²³⁰ Betti, "New prospects for inter-state co-operation in criminal matters", p. 160.

²³¹ UNODC, *Criminal Justice Assessment Toolkit: Cross-Cutting Issues*, p. 1.

²³² Ibid., p. 8.

Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto

In its resolution 9/1, the Conference of the Parties to the Organized Crime Convention established the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, adopted the procedures and rules for the functioning of the Mechanism, which are annexed to the resolution, and decided to launch the preparatory phase of the review process in accordance with the thematic clusters and multi-year workplan contained in the appendix to the procedures and rules.

Also in its resolution 10/1, the Conference of the Parties adopted the self-assessment questionnaires for the review of the implementation of the Convention and the Protocols thereto, the guidelines for conducting the country reviews and the blueprints for the list of observations and the summaries, which are expected to be the outcomes of the country reviews within the framework of the Implementation Review Mechanism. Also in the same resolution, the Conference of the Parties decided to launch the first review phase of the review process of the Mechanism in accordance with the thematic clusters and multi-year workplan contained in the appendix to the procedures and rules for the functioning of the Mechanism, contained in Conference resolution 9/1, and with the guidelines for conducting the country reviews.

The thematic cluster on international cooperation, mutual legal assistance and confiscation will be reviewed, together with criminalization issues, in years III–VI of the multi-year workplan for the functioning of the Mechanism. Other issues that touch upon aspects of international cooperation in criminal matters, such as joint investigations, special investigative techniques and law enforcement cooperation, will be examined under the cluster on law enforcement and the judicial system, in years VII–X of the multi-year workplan.

As States parties to the Organized Crime Convention prepare themselves for the review of the implementation of the Convention and its Protocols, the time is right to take a closer look at the way in which States parties have implemented the international cooperation provisions of the Convention, listen to their experiences and concerns, identify obstacles, address concerns and share best practices in order to give full effect to the Convention and prevent and combat transnational organized crime more successfully.

The Implementation Review Mechanism offers an opportunity to address a challenge that has been identified in other studies²³³ and is also acknowledged in this Digest: the difficulty of obtaining enough macro-level information on the use of the Convention as a legal basis for international cooperation. The cumulative knowledge resulting from the country reviews to be conducted within the framework of the Mechanism can be conducive to mapping national approaches to international cooperation and promoting the exchange of information on obstacles to cooperation and on practical means to overcome them. Such knowledge can shed light on the overall implementation efforts of States parties and on more comprehensive and systematically gathered evidence as to whether the Convention has had a tangible impact across different regions on strengthening international cooperation to combat transnational organized crime.

UNODC, as the guardian of implementation of the Convention, supports States parties in their efforts to effectively implement the provisions of the Convention on international cooperation, including through the development of tools such as this Digest, which intends to facilitate the sharing of knowledge on the practical use of the international cooperation provisions of the Convention, as documented in actual cases.

Increasing use of the Organized Crime Convention to promote international cooperation involving electronic evidence

Over the past few years, and in accordance with relevant mandates contained in specific resolutions of the Conference of the Parties to the Convention,²³⁴ UNODC has been working towards mainstreaming the topic of electronic evidence into existing and future tools on international cooperation in criminal matters, as well as undertaking training activities for criminal justice and law enforcement authorities, at the national and

²³³ Boister, “The cooperation provisions of the UN Convention against Transnational Organised Crime”, p. 56; and Tennant, “The promise of Palermo”, p. 23.

²³⁴ *CTOC/COP/2016/15*, chap. I, resolution 8/1, annex I, subpara. (b); *CTOC/COP/2018/13*, chap. I, resolution 9/3, annex I, subpara. (j).

regional levels, on the gathering and sharing of electronic evidence and on international cooperation relating to such evidence, within the framework of the Convention.

In 2015, the Working Group on International Cooperation of the Conference of the Parties discussed the gathering and sharing of electronic evidence as topics for consideration and responses at the national and international levels.²³⁵ Moreover, at its fifth meeting, in 2019, the Expert Group to Conduct a Comprehensive Study on Cybercrime stressed that States should make full use of the Organized Crime Convention and relevant multilateral, regional and bilateral treaties and arrangements on cybercrime to foster international cooperation on judicial assistance and law enforcement in cases involving cybercrime and electronic evidence, while respecting the principles of sovereignty, equality and reciprocity.²³⁶

In the summary by the Chair of the informal expert group meeting on international cooperation in criminal matters held in Vienna from 9 to 11 April 2019, it was noted that the number of requests for mutual legal assistance to obtain or preserve electronic evidence was growing drastically and current methods for dealing with such requests were not sufficiently efficient, both in terms of substance and timeliness, owing to the temporary and volatile nature of electronic data. It was also noted that case management systems were essential for the efficiency and effectiveness of central authorities and that the existence of dedicated structures or units within the central authorities to deal with the increasing volume and complexity of work relating to new and sophisticated forms of crime could be a step towards addressing the growing backlog of cases.

In 2019, UNODC, the Counter-Terrorism Committee Executive Directorate and the International Association of Prosecutors jointly published the *Practical Guide for Requesting Electronic Evidence Across Borders*. Password-protected access to the guide was made available in March 2019 within the Directory of Competent National Authorities in SHERLOC. The guide contains information to help identify the steps to be taken at the national level to gather, preserve and share electronic evidence, with the overall aim of ensuring efficiency in mutual legal assistance practices.

In the light of the above, there is a reasonable expectation that, in the future, the Organized Crime Convention will be increasingly used as a legal basis for international cooperation involving electronic evidence. This Digest contains some initial information relating to this trend and an up-to-date version may well offer an opportunity for a more comprehensive overview of related cases.

Transformations and impact of the coronavirus disease (COVID-19) on international cooperation on criminal matters

The coronavirus disease (COVID-19) has caused the transformation and adaptation of criminal patterns to new realities, with increased opportunities for crimes committed online, among others. Additional challenges relate to the increase of new and emerging forms of crime associated with the heavier infiltration of organized criminal groups into areas such as the health-care sector.

In the field of international cooperation and as reported at the eleventh meeting of the Working Group on International Cooperation of the Conference of the Parties to the Organized Crime Convention, while the pandemic caused difficulties that had an impact on international cooperation, at the same time, it was also an opportunity to realize the potential for versatility, flexibility and adaptability in that field and to adjust future action on the basis of lessons learned, even after the end of the pandemic. In this context, the advantages and added value of the electronic transmission of international cooperation requests, videoconferencing and the need for enhanced international cooperation to obtain electronic evidence located abroad were highlighted.²³⁷

The Organized Crime Convention itself is flexible enough to provide for innovative tools and approaches when dealing with the impact of the pandemic on international cooperation mechanisms. Firstly, from a substantive point of view, the definition of “serious crime” in the Convention allows for the availability of international cooperation responses to new challenges related to COVID-19. Secondly, from a procedural and logistical point of view, videoconferencing is expressly provided for in article 18, paragraph 18, of the

²³⁵ [CTOC/COP/WG.3/2015/2](#).

²³⁶ [UNODC/CCPCJ/EG.4/2019/2](#), para. 44.

²³⁷ [CTOC/COP/WG.3/2020/4](#), paras. 63–70.

Convention, while article 18, paragraph 13, enables the direct transmission of mutual legal assistance requests to the central authorities designated by the States parties, which are to ensure the speedy and proper execution or transmission of the requests received. The Convention also refers to the need for informal consultations between the authorities involved, with a view to finding appropriate solutions to foster cooperation in both the extradition and mutual legal assistance contexts (see art. 16, para. 16, and art. 18, para. 26, in particular).

It will be interesting to explore in future the impact of COVID-19 on the use of the Organized Crime Convention in international cooperation cases, and any potential update of this Digest should take this subject into account.



LIST OF CASES

For the cases contained in the present annex, listed alphabetically by (reporting) State, the following template is used to display the information relevant to international cooperation, the parties involved and the source material consulted for the purposes of the present Digest.

Case template

Case reference for internal use

| <i>Official name/ reference (if available)</i> | Offences/type of offending | Type of international cooperation involved | Further treaty/legal basis of cooperation |
|---|----------------------------|---|--|
| States parties involved in international cooperation | Summary of cooperation | | |
| Source: | Lists all sources used | | |

Antigua and Barbuda-1

| | | | |
|---|---|-------------------------|--|
| <i>Creswell Overseas S.A. v. Supervisory Authority under the Money Laundering (Prevention) Act 1996 and Mehl Bank (Antigua) Limited</i> | Bribery, fraud, money laundering | Mutual legal assistance | United Nations Convention against Corruption |
| Antigua and Barbuda, Brazil | The Central Authority of Brazil submitted a request to the Attorney General of Antigua and Barbuda to have a restraint order registered and given full legal effect in Antigua and Barbuda. At first instance, the Eastern Caribbean Supreme Court (Territory of Antigua and Barbuda) accepted the order to be registered but on appeal set aside that decision over jurisdiction concerns. | | |
| Source: | Eastern Caribbean Supreme Court (Territory of Antigua and Barbuda), High Court of Justice, <i>Creswell Overseas S.A. v. Supervisory Authority under the Money Laundering (Prevention) Act 1996 and Mehl Bank (Antigua) Limited</i> , Claim No. ANUHCV 2016/0372, 21 April 2017 | | |

Antigua and Barbuda-2

| | | | |
|--|------------------|---------------------------------------|---|
| <i>Supervisory Authority (under the Money Laundering (Prevention) Act 1996) v. Liquidators of Eurofed Bank Limited</i> | Money-laundering | Confiscation, mutual legal assistance | Treaty between the Antigua and Barbuda and the United States on mutual assistance in criminal matters of 1996 |
|--|------------------|---------------------------------------|---|

| | | | |
|---|--|-------------------------|--|
| Antigua and Barbuda, United States of America | Following the conviction of the accused in the United States in 2005, a judge in the District Court of Columbia issued an order to restrain the perpetrator's funds located in Antigua and Barbuda so as to facilitate ongoing wider confiscation proceedings. Upon receipt of this request, the Supervisory Authority established under the Money-Laundering (Prevention) Act 1996 submitted an application to the High Court pursuant to section 27 of the Mutual Assistance in Criminal Matters Act 1993 of Antigua and Barbuda to register the restraint order. Satisfied that the conditions under section 27 were met, the Court granted the application. In support of its decision, the Court referred to article 18 of the United Nations Convention against Transnational Organized Crime and the bilateral mutual legal assistance treaty between the two States. | | |
| Source: | Eastern Caribbean Supreme Court (Territory of Antigua and Barbuda), High Court of Justice, <i>Supervisory Authority (under the Money Laundering (Prevention) Act 1996) v. Liquidators of Eurofed Bank Limited</i> , Claim No. ANUHCV 2010/0298, 12 October 2010; Eastern Caribbean Supreme Court (Territory of Antigua and Barbuda), High Court of Justice, <i>Supervisory Authority (under the Money Laundering (Prevention) Act 1996) v. Liquidators of Eurofed Bank Limited</i> , Claim No. HCVAP 2010/051, 21 November 2011; <i>United States v. All Assets Held at Bank Julius Baer & Co., Ltd.</i> , 571 F. Supp. 2d 1 (D.D.C. 2008), Civil Action No. 04-0798, 9 July 2008; <i>United States v. All Assets Held at Bank Julius Baer & Co., Ltd.</i> , 959 F. Supp. 2d 81, (D.D.C. 2013), Civil Action No. 04-0798, 12 August 2013, pp. 84–94; Philip M. Nichols, "United States v. Lazarenko: the trial and conviction of two former Prime Ministers of Ukraine", <i>University of Chicago Legal Forum</i> , vol. 2012, art. No. 6, pp. 41–89 | | |
| Armenia-1 | | | |
| | Money-laundering | Mutual legal assistance | European Convention on Mutual Assistance in Criminal Matters |
| Armenia, Latvia, Russian Federation | Detailed information about these mutual legal assistance requests made in February 2010 are not available. At the time this case was reported in September 2010, the Office of the Prosecutor General of the Russian Federation had commenced executing the request while no response had yet been received from Latvia | | |
| Source: | Conference room paper entitled "Catalogue of examples of cases of extradition, mutual legal assistance and other forms of international legal cooperation on the basis of the United Nations Convention against Transnational Organized Crime" (CTOC/COP/2010/CRP.5, para. 13) | | |
| Australia-1 | | | |
| | Fraud, money-laundering | Mutual legal assistance | Treaty on extradition between Australia and Chile |
| Australia, Chile | As part of criminal proceedings in Chile, in July 2018, a criminal court issued a letter of request to Australia concerning several assets in Sydney associated with the defendant. Civil bankruptcy proceedings in Chile resulted in further requests concerning the liquidation of assets being sent to Australia, although these did not relate to the Organized Crime Convention or other criminal justice instruments. By that time, one of the accused in the case had fled from Chile to Malta; a request to have the accused extradited to Chile was denied by a court in Malta. The legal basis for the request was not documented in the available material. | | |
| Source: | <i>Abate, in the matter of Rajii v. Rajii</i> , [2017] FCA 1583; <i>Abate, in the matter of Chang Rajii v. Chang Rajii (No. 2)</i> , [2018] FCA 241; <i>Abate, in the matter of Chang Rajii v. Chang Rajii (No. 3)</i> , [2019] FCA 577; <i>Abate, in the matter of Chang Rajii v. Chang Rajii (No. 4)</i> , [2019] FCA 1394; Jessica Sier and Jemima Whyte, "Grupo Arcano's fraudulent tale has an Australian chapter", <i>Financial Review</i> (online), 2 May 2016 | | |

Brazil-1

| Operation Curaçao | Money-laundering | Mutual legal assistance |
|---------------------|--|-------------------------|
| Brazil, Netherlands | The Netherlands authorities sought information from Brazil about persons, financial transactions and user registrations in a major money-laundering investigation involving some 56 Brazilian nationals who had transferred proceeds of drug- and corruption-related crime through offshore bank accounts in the Netherlands Antilles. | |
| Source: | The United Nations Office on Drugs and Crime (UNODC) knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC) case law database, case identifier BRAX005 (Operation Curaçao) | |

Brazil-2

| | Money-laundering | Mutual legal assistance |
|---------------------------------------|---|-------------------------|
| Brazil, other countries not specified | Brazil sought mutual legal assistance from as many as 23 other States. Thirteen of the requests were made on the basis of the Organized Crime Convention to other States parties, asking them to hear witnesses, provide banking information and freeze bank accounts. Although some requests were still pending at the time of reporting, the Brazilian authorities stressed that the information thus obtained was vital to enabling the commencement of criminal proceedings against the defendants and could not have been obtained through channels other than the Organized Crime Convention. | |
| Source: | Conference room paper entitled "Catalogue of examples of cases of extradition, mutual legal assistance and other forms of international legal cooperation on the basis of the United Nations Convention against Transnational Organized Crime (CTOC/COP/2008/CRP.2, paras. 9–12) | |

Brazil-3

| | Fraudulent administration of a financial institution, corruption | Extradition |
|----------------|--|-------------|
| Brazil, Monaco | The accused in this case, a banker who bribed a Central Bank official to receive a federal bailout, fled from Brazil to evade prosecution and was later identified and arrested in Monaco. Brazil requested his extradition based on the Organized Crime Convention and relevant domestic laws of Monaco. After several appeals, the person was eventually extradited to Brazil. | |
| Source: | CTOC/COP/2008/CRP.2, paras. 13–15; Agence France Presse, "Albert II autorise l'extradition de Cacciola", <i>Le Figaro</i> , 4 July 2008; Raymond Colitt, "Brazil expects extradition of banker from Monaco", <i>Reuters</i> (online) 5 July 2008 | |

Brazil-4

| | Drug trafficking, money-laundering | Mutual legal assistance |
|----------------|--|-------------------------|
| Brazil, Mexico | Investigations by the police of Brazil established that the leader of a Mexican drug trafficking cartel was living in Brazil. In order to establish his identity and prove that the passport he used to enter Brazil was fraudulent, Brazil submitted a request for mutual legal assistance to Mexico that was based, at least in part, on the Organized Crime Convention. | |
| Source: | CTOC/COP/2008/CRP.2, paras. 16–18 | |

Brazil-5

| | [Not specified] | Mutual legal assistance |
|---------------|---|-------------------------|
| Brazil, Italy | A letter rogatory submitted by Italy to Brazil to obtain bank documents, hear witnesses and freeze property was the subject of proceedings before the Superior Court of Justice of Brazil. The defence filed a petition to deny the request because the letter rogatory had not been issued by a judicial authority (and was thus invalid and could not be executed) and because its execution required the prior summons and manifestations of interested parties. The Court rejected the petition, pointing out that Organized Crime Convention allowed Brazilian authorities to proceed with the measures requested by Italy. The only obstacle identified by the Court was the decision on the proper venue for requesting the lifting of bank secrecy and the freeze property. | |
| Source: | CTOC/COP/2008/CRP.2, paras. 19–21 | |

Brazil-6

| | Conspiracy, extortion | Extradition |
|---------------------|---|-------------|
| Brazil, Netherlands | The Netherlands transmitted an extradition request concerning a Netherlands national to Brazil. In extradition proceedings before the Supreme Court of Brazil, the defence argued that extradition should be denied because of the lack of transnationality of the offence. After considering articles 3 and 5 of the Organized Crime Convention, the Supreme Court rejected the arguments and the extradition request was granted. | |
| Source: | CTOC/COP/2008/CRP.2, paras. 24–25 | |

Brazil-7

| | [Not reported] | Mutual legal assistance |
|---------------------|--|-------------------------|
| Brazil, Switzerland | Swiss prosecutors sought the hearing of a witness residing in Brazil. The Central Authority of Brazil specifically advised Swiss authorities to transmit the request on the basis of the Organized Crime Convention in order to eliminate bureaucratic delays and speed up the process within Brazil. Once received, the request was swiftly forwarded to the public prosecution authority and the request was executed within the time limit stipulated by Switzerland. | |
| Source: | CTOC/COP/2008/CRP.2, paras. 26–27 | |

Brazil-8

| | Money-laundering, fraudulent documents | Mutual legal assistance |
|------------------------|--|-------------------------|
| Brazil, United Kingdom | The United Kingdom employed article 18 to seek assistance from Brazil in order to obtain information and confiscate assets. The request was received by the Office of the Coordinator General for Asset Recovery of the Department for Asset Recovery and International Legal Cooperation of Brazil and forwarded to the Office of the Prosecutor General of Brazil for execution. At the time that this case was reported, the execution was still ongoing. | |
| Source: | CTOC/COP/2010/CRP.5, para. 50 | |

Brazil-9

| | Tax evasion, money-laundering | Mutual legal assistance |
|-----------------|--|-------------------------|
| Brazil, Finland | A request for assistance was sent from Finland to Brazil for the purpose of confiscation of immovable assets in Brazil in the framework of a criminal investigation into tax evasion and money-laundering. The request was received by the Office of the Coordinator General for Asset Recovery of the Department for Asset Recovery and International Legal Cooperation of Brazil and forwarded to the Office of the Prosecutor General of Brazil for execution. At the time that this case was reported, the request had yet to be executed. | |
| Source: | CTOC/COP/2010/CRP.5, para. 51 | |

Brazil-10

| | Drug trafficking, money-laundering | Mutual legal assistance |
|---------------------|---|-------------------------|
| Brazil, Switzerland | Brazil received a request from Switzerland to investigate suspects and provide documents held in Brazil. The first request was received in December 2008 and was executed shortly thereafter, before an additional request was received in May 2009. The execution of the latter request was still outstanding at the time that this case was reported. | |
| Source: | CTOC/COP/2010/CRP.5, para. 52 | |

Brazil-11

| | Drug trafficking | Mutual legal assistance |
|----------------|---|-------------------------|
| Brazil, France | In a request for mutual legal assistance received from France in August 2009, Brazilian authorities were asked to loosen bank secrecy provisions and to obtain witness statements, carry out investigations and apprehend suspects in a drug trafficking investigation in France. The request was duly executed by the Brazilian authorities. | |
| Source: | CTOC/COP/2010/CRP.5, para. 53 | |

Brazil-12

| | Money-laundering, tax evasion | Mutual legal assistance |
|--|---|-------------------------|
| Brazil, Venezuela (Bolivarian Republic of) | In a request for mutual legal assistance received from the Bolivarian Republic of Venezuela in March 2009, Brazilian authorities were asked to loosen bank secrecy provisions and provide company information. The request could only be partially executed, and the Brazilian authorities sought further information from the Bolivarian Republic of Venezuela to fully execute the request. | |
| Source: | CTOC/COP/2010/CRP.5, para. 54 | |

Canada-1

| <i>Republic of Poland v. Grynja</i> | Robbery, participation in an organized criminal group | Extradition |
|-------------------------------------|---|-------------|
| | | |

| | |
|----------------|--|
| Canada, Poland | The accused had allegedly assisted in the planning of a robbery that was carried out by an organized criminal group in Gdansk, Poland, on 5 October 1999. It was also alleged that he had been involved in earlier heist that had led to his association with the group and the robbery in 1999. In December 2009, in the absence of any bilateral extradition treaty, Poland sought his extradition on the basis of article 16 of the Organized Crime Convention. The Supreme Court of British Columbia, Canada, approved the extradition of the accused. The accused then applied for a stay of proceedings, arguing that Poland had misused the Organized Crime Convention as a back-door approach to effect his extradition for an offence under the domestic law of Poland, for which no bilateral treaty with Canada existed. The Court did not find an abuse of process and dismissed the argument. |
| Source: | <i>Republic of Poland v. Grynia</i> , [2013] BCSC 1203; <i>Republic of Poland v. Grynia</i> , [2013] BCSC 1777 |

Canada-2

| | | |
|-------------------------|---|-------------|
| <i>Slovenia v. Sabo</i> | Corruption, abuse of office, forging of official documents | Extradition |
|-------------------------|---|-------------|

| | |
|------------------|---|
| Canada, Slovenia | Slovenia sought the extradition of the accused from Canada to stand trial on charges relating to corruption, abuse of office and forging of official documents. In February 2009, the Superior Court of Justice of Ontario, Canada, gave order to surrender the accused to Slovenia on the basis that the record of the case contained sufficient evidence to justify the committal order on all charges. The appeal of the accused, arguing that the judge had erred in her appreciation of the discrepancies in the record of the case, was dismissed in February 2009. In July 2009, the accused sought judicial review of the Minister of Justice's decision to extradite him to Slovenia, arguing, inter alia, that the Extradition Act 1999 of Canada prohibited extradition to a place where the person faced a mere risk of persecution and that the balance of probabilities would suffice to prove that risk. On 17 February 2011, the Court of Appeal of Ontario held that the judicial system of Slovenia was sufficiently fair and would not give rise to any concerns of the potential for persecution. An application for leave to appeal the decision was rejected by the Supreme Court of Canada in July 2011. |
| Source: | <i>Slovenia v. Soba</i> , [2011] ONCA 137; <i>Slovenia v. Soba</i> , [2011] ONCA 206; <i>Soba v. Slovenia</i> , [2011] SCCA 177; CTOC/COP/2010/CRP.5, para. 36 |

Chile-1

| | | | |
|--|-----------------------|-------------|---|
| | Smuggling of migrants | Extradition | Convention on Extradition (Montevideo, 1933) |
|--|-----------------------|-------------|---|

| | |
|---------------------------|--|
| Chile, Dominican Republic | The defendant in this case was the ringleader of an organized criminal group operating under the guise of a travel agency that smuggled migrants into Chile. She was identified by some of the migrants and subsequently located in the Dominican Republic. A court in Iquique, Chile, granted the application for an extradition order in August 2013, which was then forwarded to the Dominican Republic. The Supreme Court in Santo Domingo commenced extradition hearings, ordered her arrest and eventually granted the extradition. An appeal against that decision was dismissed. The defendant was the first foreign national to be extradited to Chile for the smuggling of migrants. She was later tried and convicted on that charge and sentenced to imprisonment for five years and one day. An appeal against the sentence was unsuccessful. |
| Source: | UNODC SHERLOC case law database, case identifiers CHL007 and DOM008 |

Chile-2

| | | |
|------------------------|--|-------------|
| <i>Police v. Rajii</i> | Financial fraud, money-laundering | Extradition |
| Chile, Malta | The Chilean authorities sought the extradition from Malta of a person wanted on charges of financial fraud and money-laundering in relation to a "Ponzi" scheme that the person had run with his mother in Chile. Using the Organized Crime Convention as the sole legal basis, a court in Malta determined that the extradition request should be refused because the evidence presented did not sufficiently satisfy the Court that the extradition criteria in terms of article 16 of the Organized Crime Convention had been fulfilled in relation to the offences for which the Chilean Authorities had requested the extradition. The Attorney General of Chile subsequently appealed the decision, arguing that evidentiary requirements should be interpreted more broadly, but the appeal was rejected. | |
| Source: | Malta, Court of Magistrates, <i>Police (Inspector Christopher Galea Scannura) v. Alberto S. Chang Rajii</i> , 7 April 2017; Matthew Agius, "Who is Alberto Chang Rajii, the Chilean 'Madoff' who wanted Maltese citizenship?", <i>Malta Today</i> , 14 December 2018; Edwina Brincat, "Multimillionaire accused of Ponzi scheme will not be extradited", <i>Times of Malta</i> , 6 November 2018 <i>Note:</i> The case was also presented at an informal expert group meeting on international cooperation in criminal matters convened by UNODC and held in Vienna from 9 to 11 April 2019. | |

China-1

| | | |
|-----------------------|--|-------------------------|
| | Smuggling of goods | Mutual legal assistance |
| China, United Kingdom | China asked the Home Office of the United Kingdom to provide evidence in a case involving the smuggling of contraband. In 2009, United Kingdom authorities completed the investigation and transferred the evidence to China. The United Kingdom, in turn, requested permission to attend the further proceedings; the request was granted by China. | |
| Source: | Conference room paper entitled "Catalogue of examples of cases of extradition, mutual legal assistance and other forms of international legal cooperation on the basis of the United Nations Convention against Transnational Organized Crime", corrigendum (CTOC/COP/2010/CRP.5/Corr.1, para. 13ter) | |

China-2

| | | |
|-----------------------|--|-------------------------|
| | Tax fraud | Mutual legal assistance |
| China, United Kingdom | Upon receipt of the request for mutual legal assistance from the United Kingdom, the Chinese authorities deemed the request to be in accordance with the Organized Crime Convention and forwarded it to the customs authority for execution. On 15 April 2008, the Chinese authorities compiled the witness statements and, along with related documentation, sent it to their counterparts in the United Kingdom. | |
| Source: | CTOC/COP/2010/CRP.5/Corr.1, para. 13bis; UNODC, <i>Manual on Mutual Legal Assistance and Extradition</i> (Vienna, 2012), p. 38 | |

Colombia-1

| | | |
|--|-----------------|-------------------------|
| | [Not specified] | Mutual legal assistance |
|--|-----------------|-------------------------|

| | |
|---|---|
| Colombia, Bolivia (Plurinational State of) | Using article 18 of the Organized Crime Convention as the basis, the public prosecutor in Villavicencio, Colombia, sought information from the Plurinational State of Bolivia about the certificate of registration and ownership of an aeroplane for the purposes of seizure and confiscation. Other information about this request and the alleged offences have not been reported. |
|---|---|

Source: CTOC/COP/2010/CRP.5, para. 56

Costa Rica-1

| | | |
|---------------------------|-------------------------|-------------------------|
| Case 08-000064-1035-PE | Fraud, money-laundering | Mutual legal assistance |
|---------------------------|-------------------------|-------------------------|

| | |
|---------------------------|---|
| Costa Rica, United States | The United States submitted a request to Costa Rica to search specific premises with the aim of confiscating evidence relevant to a fraud and money-laundering investigation. Costa Rica accepted the request and was able to collect a large volume of documents and electronic data, which were submitted to United States authorities. |
|---------------------------|---|

Source: CTOC/COP/2010/CRP.5, para. 58

Costa Rica-2

| | | |
|-------------------|-------------------------|---------------------------------------|
| 08-000011-1035-PE | Fraud, money-laundering | Confiscation, mutual legal assistance |
|-------------------|-------------------------|---------------------------------------|

| | |
|-------------------|--|
| Costa Rica, Spain | Among other measures, Spain requested the seizure and confiscation of all movable and immovable assets linked to the offences, along with funds held in bank accounts in Costa Rica. Costa Rica fully complied with the request. |
|-------------------|--|

Source: CTOC/COP/2010/CRP.5, para. 59

Costa Rica-3

| | | |
|---------------------------|------------------|-------------------------|
| Case 09-000081-1035-PE | Money-laundering | Mutual legal assistance |
|---------------------------|------------------|-------------------------|

| | |
|--------------------|--|
| Costa Rica, Panama | Costa Rica requested assistance in order to obtain certified documents relating to financial transactions made from Panama. The request was duly executed by Panama. |
|--------------------|--|

Source: CTOC/COP/2010/CRP.5, para. 60

Costa Rica-4

| | | |
|---------------------------|--|-------------------------|
| Case 09-000159-1035-PE | Trafficking in children, organized crime | Mutual legal assistance |
|---------------------------|--|-------------------------|

| | |
|--------------------|---|
| Costa Rica, Mexico | Mexico requested information from Costa Rica about persons under investigation for trafficking in children and organized crime, including information about their assets, cross-border movements, drivers' licences and involvement in associations. Costa Rica complied with the request and provided the information. |
|--------------------|---|

Source: CTOC/COP/2010/CRP.5, para. 61

DIGEST OF CASES

Costa Rica-5

| | | |
|---------------------------|------------------|-------------------------|
| Case 08-000084-1035-PE | Drug trafficking | Mutual legal assistance |
|---------------------------|------------------|-------------------------|

| | |
|------------------------|--|
| Costa Rica, Denmark | Denmark sent a request to Costa Rica for the surveillance of persons in Costa Rica and the provision of information on the persons' telephone records, assets and general socioeconomic status. The request was duly executed by Costa Rica. |
|------------------------|--|

| | |
|---------|-------------------------------|
| Source: | CTOC/COP/2010/CRP.5, para. 62 |
|---------|-------------------------------|

Costa Rica-6

| | | |
|---------------------------|------------------------|-------------------------|
| Case 08-000039-1035-PE | Trafficking in persons | Mutual legal assistance |
|---------------------------|------------------------|-------------------------|

| | |
|--------------------------|--|
| Costa Rica, Nicaragua | Costa Rica requested information from Nicaragua about the cross-border movements of victims of trafficking in persons who had transited through Nicaragua. |
|--------------------------|--|

| | |
|---------|-------------------------------|
| Source: | CTOC/COP/2010/CRP.5, para. 63 |
|---------|-------------------------------|

Costa Rica-7

| | | |
|---------------------------|------------------|-------------------------|
| Case 09-000140-1035-PE | Drug trafficking | Mutual legal assistance |
|---------------------------|------------------|-------------------------|

| | |
|--------------------|---|
| Costa Rica, Mexico | Costa Rica sent a request to Mexico for information about natural and legal persons, along with a request for police reports, forensic and other expert analyses, the certification of documents, photographs and video recordings, and certified copies of witness statements in a drug trafficking investigation. The information and evidence was gathered in Mexico and sent to Costa Rica. |
|--------------------|---|

| | |
|---------|-------------------------------|
| Source: | CTOC/COP/2010/CRP.5, para. 64 |
|---------|-------------------------------|

Costa Rica-8

| | | |
|---------------------------|------------------|-------------------------|
| Case 09-000006-1035-PE | Money-laundering | Mutual legal assistance |
|---------------------------|------------------|-------------------------|

| | |
|--------------------------|--|
| Costa Rica, Guatemala | In its request, Guatemala asked Costa Rica to provide information on several Costa Rican nationals under investigation, including copies of personal identity documents, photographs, information on commercial activities and the registration of movable and immovable assets, bank statements, information on investments in stocks and migratory movements, and criminal records. Costa Rica rendered the assistance sought. |
|--------------------------|--|

| | |
|---------|-------------------------------|
| Source: | CTOC/COP/2010/CRP.5, para. 65 |
|---------|-------------------------------|

Costa Rica-9

| | | | |
|---------------------------|-----------------|-------------------------|--|
| Case 09-000027-1035-PE | [Not specified] | Mutual legal assistance | Agreement to Promote Cooperation and Mutual Legal Assistance among Members of the Ibero-American Association of Public Prosecutors |
|---------------------------|-----------------|-------------------------|--|

Costa Rica, Ecuador Ecuador requested information from Costa Rica about persons, their cross-border movements, involvement in associations and companies, bank account statements, criminal records, assets and financial transactions.

Source: CTOC/COP/2010/CRP.5, para. 66

Costa Rica-10

| | | |
|---------------------------|-------------------|-------------------------|
| Case 09-000049-1035-PE | Corruption, other | Mutual legal assistance |
|---------------------------|-------------------|-------------------------|

Costa Rica, United Kingdom Costa Rica sought mutual legal assistance from the United Kingdom. The request referred to any information that United Kingdom authorities could obtain on the offences under investigation, and article 18, paragraph 4, of the Organized Crime Convention was invoked for the transfer of the evidence gathered by the United Kingdom.

Source: CTOC/COP/2010/CRP.5, para. 67

Costa Rica-11

| | | |
|---------------------------|------------------|-------------------------|
| Case 09-000088-1035-PE | Drug trafficking | Mutual legal assistance |
|---------------------------|------------------|-------------------------|

Costa Rica, Spain Costa Rica asked Spain to provide a certified copy of an application for extradition that had been handled by Spain. The request was duly executed.

Source: CTOC/COP/2010/CRP.5, para. 68

Costa Rica-12

| | | |
|---------------------------|------------------|-------------------------|
| Case 09-000029-1035-PE | Money-laundering | Mutual legal assistance |
|---------------------------|------------------|-------------------------|

Costa Rica, Guatemala Guatemala sought mutual legal assistance from Costa Rica in connection with a money-laundering investigation, requesting information about the persons under investigation, including their cross-border movements, financial transactions, banking details and involvement in associations and companies. The request was duly executed by Costa Rica.

Source: CTOC/COP/2010/CRP.5, para. 69

Costa Rica-13

| | | |
|---------------------------|-------------------------------------|-------------------------|
| Case 09-000190-1035-PE | Production of pornographic material | Mutual legal assistance |
|---------------------------|-------------------------------------|-------------------------|

Costa Rica, Nicaragua Nicaragua requested information from Costa Rica about the criminal records, immigration status, drivers' licences and other details of persons under investigation for the production of pornographic material.

Source: CTOC/COP/2010/CRP.5, para. 70

DIGEST OF CASES

Costa Rica-14

| | | |
|---------------------------|------------------|-------------------------|
| Case 09-000167-1035-PE | Money-laundering | Mutual legal assistance |
|---------------------------|------------------|-------------------------|

| | |
|--------------------------|--|
| Costa Rica, Guatemala | Guatemala requested information from Costa Rica about certain public limited companies, witness statements concerning several persons, bank details and other information relevant to a money-laundering investigation. The request was duly executed by Costa Rica. |
|--------------------------|--|

| | |
|---------|-------------------------------|
| Source: | CTOC/COP/2010/CRP.5, para. 71 |
|---------|-------------------------------|

Costa Rica-15

| | | | |
|---------------------------|-------------------------|-------------------------|--|
| Case 09-000176-1035-PE | Trafficking in children | Mutual legal assistance | Agreement to Promote Cooperation and Mutual Legal Assistance among Members of the Ibero-American Association of Public Prosecutors |
|---------------------------|-------------------------|-------------------------|--|

| | |
|---------------------|--|
| Costa Rica, Ecuador | Ecuador requested Costa Rica to provide information on the movements and location of a group of persons in the territory of Costa Rica. The request was promptly executed by Costa Rica. |
|---------------------|--|

| | |
|---------|-------------------------------|
| Source: | CTOC/COP/2010/CRP.5, para. 72 |
|---------|-------------------------------|

Costa Rica-16

| | | |
|---------------------------|---------------------------|-------------------------|
| Case 08-000063-1035-PE | Misrepresentation (fraud) | Mutual legal assistance |
|---------------------------|---------------------------|-------------------------|

| | |
|--|--|
| Costa Rica, United States, other States | The United States invoked article 18, paragraph 3 (f), of the Organized Crime Convention to request information from banks, Internet service providers and telephone companies in Costa Rica and other States. |
|--|--|

| | |
|---------|-------------------------------|
| Source: | CTOC/COP/2010/CRP.5, para. 73 |
|---------|-------------------------------|

Costa Rica-17

| | | |
|---------------------------|------------------|-------------------------|
| Case 09-000045-1035-PE | Drug trafficking | Mutual legal assistance |
|---------------------------|------------------|-------------------------|

| | |
|----------------------------|---|
| Costa Rica, Netherlands | In connection with a drug trafficking investigation, the Netherlands requested from Costa Rica information about, and the surveillance of, persons under investigation, including their employment, banking details, addresses and registered immovable assets. Costa Rica duly executed the request. |
|----------------------------|---|

| | |
|---------|-------------------------------|
| Source: | CTOC/COP/2010/CRP.5, para. 74 |
|---------|-------------------------------|

Costa Rica-18

| | | |
|---------------------------|------------------|-------------------------|
| Case 09-000155-1035-PE | Money-laundering | Mutual legal assistance |
|---------------------------|------------------|-------------------------|

| | |
|--------------------------|---|
| Costa Rica, Guatemala | Guatemala requested information from Costa Rica about the criminal record of a person under investigation for money-laundering. Costa Rica duly acted on the request. |
|--------------------------|---|

Source: CTOC/COP/2010/CRP.5, para. 75.

Dominican Republic-1

| | Smuggling of migrants | Extradition |
|---------------------------|--|-------------|
| Dominican Republic, Italy | The accused was released on bail from pretrial detention and absconded to Italy. Dominican authorities subsequently issued an International Criminal Police Organization (INTERPOL) Red Notice, which led to his arrest in Italy in March 2013. Following the arrest, the Dominican Republic submitted a request for the fugitive's extradition on 1 April 2013. In the absence of any bilateral extradition treaty between the two countries, article 16, paragraph 4, of the Organized Crime Convention was cited as the legal basis for extradition. Italian authorities approved the request on 8 May 2013 and the accused was returned to the Dominican Republic, where he was tried and convicted. | |

Source: Néstor Medrano, "Extraditan desde Italia a un dominicano, estaba prófugo", *Listín Diario* (Santo Domingo), 18 June 2013;
Adonis Santiago Díaz, "Interpol detiene promotor de viajes ilegales", *Diario Libre* (Santo Domingo), 28 March 2013;
El Nacional, "Someten yolero por desaparición de dos hombres" (Santo Domingo), 12 March 2011;
Listín Diario, "Cinco años de cárcel para un hombre por complicidad con capitán de yola donde murieron tres personas" (Santo Domingo), 24 July 2013;
El Nacional, "Condenan hombre por actuar en complicidad con capitán de yola" (Santo Domingo), 23 July 2013;
UNODC SHERLOC case law database, case identifier, case identifier DOM006

Egypt-1

| | Fraud, online identity theft | Mutual legal assistance | Treaty between the Government of the United States of America and the Government of the Arab Republic of Egypt on Mutual Legal Assistance in Criminal Matters |
|----------------------|---|-------------------------|---|
| Egypt, United States | As part of an investigation into a fraud and online identity theft scheme, the United States authorities requested assistance from Egypt to obtain bank and financial transaction records, evidence on digital devices kept by the persons under investigation, and records and data from Internet service providers in Egypt. The Attorney General of Egypt accepted the request on 3 October 2009 and then ordered its execution. | | |

Source: CTOC/COP/2010/CRP.5, paras. 7–9.

El Salvador-1

| | Drug trafficking, smuggling of goods, participation in an organized criminal group | Mutual legal assistance | United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 |
|--|--|-------------------------|---|
| | | | |

El Salvador-1 (continued)

| | |
|---|--|
| El Salvador, Costa Rica, Guatemala, Nicaragua | Authorities of Costa Rica, El Salvador, Guatemala and Nicaragua cooperated in this major drug trafficking investigation, seeking mutual legal assistance to obtain a range of documents and files, including bank records and witness statements, as well as certified documents. Several of the accused person later faced criminal charges before a court in San Miguel, El Salvador, relating to drug trafficking, conspiracy and criminal association and participation in an organized criminal group, as well as for various customs offences. |
|---|--|

| | |
|---------|--|
| Source: | UNODC SHERLOC case law database, case identifier SLVx001 |
|---------|--|

Estonia-1

| | | |
|-----------------------------|-------------|---|
| Computer-related bank fraud | Extradition | Council of Europe Convention on Cybercrime; Extradition Treaty between the Government of Estonia and the Government of the United States |
|-----------------------------|-------------|---|

| | |
|------------------------|--|
| Estonia, United States | Estonia received three requests from the United States between 2009 and 2010 requesting the extradition of three persons accused of participating in an organized criminal group involved in computer-related bank fraud. The three persons were subsequently extradited to the United States, where they faced trial. |
|------------------------|--|

| | |
|---------|-------------------------------|
| Source: | CTOC/COP/2010/CRP.5, para. 20 |
|---------|-------------------------------|

France-1

| | |
|------------------|-------------------------|
| Money-laundering | Mutual legal assistance |
|------------------|-------------------------|

| | |
|---------------------------|--|
| France, Equatorial Guinea | French authorities sought mutual legal assistance from Equatorial Guinea, requesting that an accused person, who was the Vice-President of Equatorial Guinea, to be questioned in relation to allegations of embezzlement and money-laundering. The accused declined to answer questions, claiming that he had immunity from the jurisdiction of foreign courts. The application of the Organized Crime Convention in this case was also part of subsequent proceedings before the International Court of Justice, which were still ongoing at the time that this Digest was compiled. |
|---------------------------|--|

| | |
|---------|---|
| Source: | Cour de cassation, Chambre criminelle, No. de pourvoi 15-83156 of 15 December 2015, published in Bulletin 2016, No. 841, Crim., No. 631; "Immunities and criminal jurisdiction (Equatorial Guinea v. France): preliminary objections", <i>International Legal Materials</i> , vol. 58, No. 1 (March 2019); <i>Immunities and Criminal Jurisdiction (Equatorial Guinea v. France), Provisional Measures, I.C.J. Reports 2016</i> , Order of 7 December 2016, p. 1148; reprinted in <i>International Legal Materials</i> , vol. 57, No. 2 (May 2018); Anton Moseinenko, "Immunities and criminal proceedings (Equatorial Guinea v. France): request for the indication of provisional measures (I.C.J.)", <i>International Legal Materials</i> , vol. 57, No. 2 (May 2018); Martins Paparinskis, "Introductory note to immunities and criminal jurisdiction (Equatorial Guinea v. France): preliminary objections (I.C.J.)", <i>International Legal Materials</i> , vol. 58, No. 1 (March 2019) |
|---------|---|

Hong Kong, China-1

| | | | |
|--|------------------------------|--|--|
| <i>Rafat Ali Rizvi v. Nomura International Plc</i> | Money-laundering, corruption | International cooperation for purposes of confiscation | Agreement between Hong Kong, China, and Indonesia concerning mutual legal assistance in criminal matters |
|--|------------------------------|--|--|

Hong Kong, China; Indonesia

Several defendants convicted of money-laundering and corruption in connection with the collapse of a public bank in Indonesia held bank accounts in Hong Kong, China, that Indonesian authorities sought to confiscate. Temporary restraint orders issued by a court in Jakarta were accepted by a Hong Kong court as a basis for an order to restrain bank accounts in Hong Kong, China. Following the conviction of several defendants in Indonesia, the verdict was enforced as an external confiscation order in Hong Kong, China. Proceedings before a Hong Kong court in 2014 served to determine the scope of the confiscation that could be ordered under the external confiscation order.

Source: *Rafat Ali Rizvi v. Nomura International Plc* [2014]

Italy-1

| | | | |
|--|---|-------------------------|--|
| | Smuggling of migrants, participation in an organized criminal group | Mutual legal assistance | European Convention on Mutual Assistance in Criminal Matters |
|--|---|-------------------------|--|

Italy, Turkey

Italy sent a request for mutual legal assistance to Turkey in order to secure evidence relating to a suspect believed to be a member of an organized criminal group engaged in the smuggling of migrants.

Source: Official case file provided by the Permanent Mission of Italy to the International Organizations in Vienna

Italy-2

| | | | |
|--|---|-------------------------|--|
| | Smuggling of migrants, participation in an organized criminal group | Mutual legal assistance | |
|--|---|-------------------------|--|

Italy, Egypt

Italy requested mutual legal assistance pursuant to article 18 of the Organized Crime Convention and article 727 of the Code of Criminal Procedure of Egypt in order to secure evidence against two men accused of being part of an organized criminal group engaged in the smuggling of migrants.

Source: Official case file provided by the Permanent Mission of Italy to the International Organizations in Vienna

Italy-3

| | | | |
|--|---|--------------------------------------|--|
| | Smuggling of migrants, participation in an organized criminal group | Extradition, mutual legal assistance | |
|--|---|--------------------------------------|--|

Italy, Egypt

Italy requested the arrest and extradition from Egypt of a person accused of participating in an organized criminal group involved in the smuggling of migrants. Furthermore, Italy requested mutual legal assistance from Egypt to secure further evidence in the case.

Source: Official case file provided by the Permanent Mission of Italy to the International Organizations in Vienna

Italy-4

| | Money-laundering | Mutual legal assistance | [Not reported] |
|--------------------------|--|-------------------------|----------------|
| Italy, undisclosed State | Italy received a request from an undisclosed State for criminal records, information on several companies under investigation and on several businesses, associations and foundations in which some of the suspects had interests. The letter received by Italy further requested the setting up of a joint investigation team. Further details, including whether article 19 of the Organized Crime Convention was used as the legal basis for the request, were not available. | | |
| Source: | Antonio Balsamo, "The use of the United Nations Convention against Transnational Organized Crime as legal basis for international cooperation: challenges and potential in the light of the experience of Italy", presentation to the informal expert group meeting on international cooperation in criminal matters, convened by UNODC, and held in Vienna from 9 to 11 April 2019 | | |

Italy-5

| | Participation in an organized criminal group | Mutual legal assistance | Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime |
|--------------------|---|-------------------------|---|
| Italy, Switzerland | Article 18 of the Organized Crime Convention was invoked alongside the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime to seize and confiscate assets, including the bank accounts, of a person suspected of being a member of an organized criminal group. The requested State was not specified in the available information but it was noted that it was outside the European Union. | | |
| Source: | Balsamo, "The use of the United Nations Convention against Transnational Organized Crime as legal basis for international cooperation" | | |

Italy-6

| | Money-laundering, participation in an organized criminal group | Confiscation, asset recovery | Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, OJ L 196/45 |
|---------------------------------|--|------------------------------|---|
| Italy, other undisclosed States | Italy sent a letter of request concerning the execution of an order to seize the assets held in bank accounts of a company based in an undisclosed State, registered in the names of persons under investigation in the same State. The letter further requested that all documents relating to the company be secured and that the possible presence of other assets or property registered in the name of the persons under investigation be ascertained. One further outgoing letter of request issued in connection with the case concerned the execution of an order to seize assets of two other companies, allegedly related to the criminal association, based in a third State. | | |
| Source: | Balsamo, "The use of the United Nations Convention against Transnational Organized Crime as legal basis for international cooperation" | | |

Italy-7

| | Drug trafficking, tobacco smuggling, money-laundering | Mutual legal assistance | [Not reported] |
|--|---|-------------------------|----------------|
|--|---|-------------------------|----------------|

| | |
|--------------------------|---|
| Italy, undisclosed State | Italy received a letter requesting copies of documents concerning a company and its associates, along with banking and financial information, from an unnamed State in the context of an investigation into drug trafficking, tobacco smuggling and money-laundering. |
|--------------------------|---|

| | |
|---------|--|
| Source: | Balsamo, "The use of the United Nations Convention against Transnational Organized Crime as legal basis for international cooperation" |
|---------|--|

Italy-8

| | | |
|--|-------------------------|--|
| Participation in an organized criminal group | Mutual legal assistance | European Convention on Mutual Assistance in Criminal Matters; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime |
|--|-------------------------|--|

| | |
|--------------------------|---|
| Italy, undisclosed State | Italy received a request concerning the provision of documents in connection with an organized criminal group. The request sought information about the investigation by Italy into the same group, including information about the offences and criminal records of members of the group, as well as about a user for which a mobile telephone number had been registered. |
|--------------------------|---|

| | |
|---------|---|
| Source: | Balsamo, "The use of the United Nations Convention against Transnational Organized Crime as legal basis for international cooperation". |
|---------|---|

Italy-9

| | | |
|-----------------|-----------------------|-------------|
| <i>Glauco I</i> | Smuggling of migrants | Extradition |
|-----------------|-----------------------|-------------|

| | |
|--------------|--|
| Italy, Sudan | In this landmark case, police and prosecutors in Italy reportedly made extensive use of the legal tools provided by the Organized Crime Convention and its supplementary Protocol against the Smuggling of Migrants by Land, Sea and Air. According to UNODC, this included the use of special investigative techniques, the protection of witnesses and international cooperation to discover and disrupt illicit financial flows. The extradition of suspects involved in the case appears to have involved a basis other than the Organized Crime Convention. |
|--------------|--|

| | |
|---------|---|
| Source: | Gery Ferrera, "Tackling the smugglers of migrants: a new approach", presentation to the Council of Europe, European Committee on Crime Prevention, Strasbourg, 3 December 2015; Zed Nelson, "Lampedusa boat tragedy: a survivor's story", <i>The Guardian</i> , 22 March 2014; UNODC, "Statement of UNODC Executive Director Yury Fedotov on Italian criminal investigation known as 'Glauco'", press release, 12 February 2016; Lorenzo Tondo, "Eritrean man released from jail in Italian mistaken identity case", <i>The Guardian</i> , 12 July 2019; UNODC, "Case commentary: Operation GLAUCO", <i>SHERLOC Newsletter</i> , No. 3, 4 May 2017; UNODC SHERLOC case law database, case identifier ITAh013 |
|---------|---|

Italy-10

| | |
|--|--------------------------------------|
| Participation in an organized criminal group; trafficking, illegal transportation and recycling of diesel and other petroleum products | Extradition, mutual legal assistance |
|--|--------------------------------------|

Italy-10 (continued)

Italy, Libya, Malta Using article 16 of the Organized Crime Convention as a basis, Italy sought the extradition of a Libyan national from Libya. This person, along with others, was charged in Italy for promoting, organizing and participating in an organized criminal group engaged in trafficking and illegally recycling diesel fuel directly from Libya or between ships off the coast of Malta. It was later revealed that the same person was also the subject of prosecutions in Libya for offences relating to trafficking in petroleum products. For this reason, Italy further sought mutual legal assistance pursuant to article 18 of the Organized Crime Convention to obtain documents concerning the investigation in Libya. The case also involved international cooperation between Italy and Malta, although that cooperation did not require the use of the Organized Crime Convention.

Source: Official case file provided by the Permanent Mission of Italy to the International Organizations in Vienna

Italy-11

Participation in an organized criminal group, smuggling of migrants Mutual legal assistance

Italy, Libya Pursuant to article 18 of the Organized Crime Convention, Italy sought mutual legal assistance from Libya in the form of authorizing and carrying out the interception of incoming and outgoing telephone conversations between certain telephone numbers, an investigation to identify the users of those telephone numbers and the identification of the subjects involved in a migrant smuggling venture.

Source: Official case file provided by the Permanent Mission of Italy to the International Organizations in Vienna

Italy-12

Participation in an organized criminal group, trafficking in cultural property Mutual legal assistance

Italy, United States The Italian authorities commenced their investigation into an organized criminal group that had traded in counterfeits of artworks by major painters in 2007. With the assistance of their counterparts in other countries and the European Union Agency for Law Enforcement Cooperation (Europol), and through the use of undercover operations, they were able to identify two principal organizers of the group, an Italian and a Spanish national. Just how precisely the Organized Crime Convention was used in the context of this case, presumably to obtain mutual legal assistance, is not documented in the available source material.

Source: UNODC SHERLOC case law database, case identifier ITAx006

Kazakhstan-1

Financial fraud Extradition, mutual legal assistance European Convention on Extradition

Kazakhstan, Russian Federation, Ukraine, other States The European Convention on Extradition and the Organized Crime Convention were used separately as bases for international criminal justice cooperation in this case. The main accused person had initially fled from Kazakhstan to the United Kingdom and later on to France, where he was arrested in July 2013. By that time, the Russian Federation had sought his extradition on the basis of the European Convention on Extradition. Later in 2013, Ukraine also formally requested the extradition of the accused. He was placed in detention pending resolution of the requests by Russia and Ukraine.

The requests were ruled admissible by lower courts and, in 2015, the Prime Minister of France signed a decree ordering the extradition of the accused to the Russian Federation. In late 2016, the Council of State of France found the extradition order to be inadmissible under article 3 of the European Convention on Extradition, accepting arguments presented by the appellant that extradition was being sought for political offences. In addition to the extradition proceedings, this complex case involved extensive cooperation between a number of countries using a range of regional and international instruments. According to statements made by Kazakh officials, Kazakhstan used the Organized Crime Convention, along with other existing treaties, as a legal basis to request mutual legal assistance from several other parties.

Source: Council of State of France, section No. 394399, 9 December 2016;
 Supreme Court of the United Kingdom, *JSC BTA Bank (Appellant) v. Ablyazov (Respondent)*, UKSC 64, Case ID No. 2013/0203, Judgment of 21 October 2013;
 Supreme Court of the United Kingdom, *JSC BTA Bank (Respondent) v. Khrapunov (Appellant)*, UKSC 19, Case ID No. 2017/0043, Judgment of 21 March 2018;
 Guy Dinmore, "Mukhtar Ablyazov faces extradition demand from Ukraine", *Financial Times*, 2 August 2013;
 Charles Forelle, "Billions vanish in Kazakh banking scandal", *The Wall Street Journal*, 1 January 2014;
 Jared Genser, "Mukhtar Ablyazov v. France", in *The UN Working Group on Arbitrary Detention: Commentary and Guide to Practice* (New York, Cambridge University Press, 2019), pp. 531–548;
 Baurzhan Kurmanov, "Extradition and asset recovery: experience of Kazakhstan", presentation to the tenth meeting of the Working Group on International Cooperation, Vienna, 16 October 2018;
 BBC News, "France to extradite Kazakh tycoon Mukhtar Ablyazov", 9 January 2014

Lithuania-1

Participation in organized criminal group, violation of public order, involving a child in a criminal act

Extradition

Lithuania, Kuwait In 2006 and 2008, Lithuania sought the extradition of one of its citizens who was wanted for charges relating to participating in an organized criminal group, violating public order and involving a child in a criminal act. The extradition request to Kuwait was made solely on the basis of the Organized Crime Convention and was rejected because Kuwait, unlike Lithuania, did not accept the Organized Crime Convention as a legal basis.

Source: CTOC/COP/2010/CRP.5, para. 22

Mexico-1

Case No. ASJ/230/331/2012 Drug trafficking, participation in an organized criminal group, money-laundering, homicide

Extradition

Extradition treaty between the United States and Mexico signed in 1978

Mexico, United States On 4 October 2017, the Sixteenth District Court for Federal Criminal Proceedings in Mexico City considered the question of whether the requirements for a formal extradition request pursuant to the extradition treaty between the United States and Mexico had been satisfied, especially whether there was sufficient evidence to establish that the accused could have potentially engaged in the alleged criminal conduct. The Court ordered the accused to stand trial and the extradition request was subsequently transmitted to the United States. Further details about the cooperation and other aspects of the case were not provided.

Source: Case summary provided by the Permanent Mission of Mexico to the International Organizations in Vienna

Mexico-2

| | | | |
|------------------------------|--|-------------|--|
| Case No. ASJ/230/723/2016 | Drug trafficking, participation in an organized criminal group, money-laundering | Extradition | Extradition treaty between the United States and Mexico signed in 1978 |
|------------------------------|--|-------------|--|

| | |
|-----------------------|---|
| Mexico, United States | On 9 March 2018, the District Court Specialized in Adversarial Criminal Justice in Mexico City considered the question of whether the requirements for a formal extradition request pursuant to the extradition treaty between the United States and Mexico had been satisfied, especially whether there was sufficient evidence to establish that the accused could have potentially engaged in the alleged criminal conduct. The Court ordered the accused to stand trial and the extradition request was subsequently transmitted to the United States. Further details about the cooperation and other aspects of the case were not provided. |
|-----------------------|---|

| | |
|---------|---|
| Source: | Case summary provided by the Permanent Mission of Mexico to the International Organizations in Vienna |
|---------|---|

Mexico-3

| | | | |
|------------------------------|--|-------------|--|
| Case No. ASJ/230/761/2015 | Drug trafficking, participation in an organized criminal group, money-laundering | Extradition | Extradition treaty between the United States and Mexico signed in 1978 |
|------------------------------|--|-------------|--|

| | |
|-----------------------|--|
| Mexico, United States | On 14 December 2018, the Sixteenth District Court for Federal Criminal Proceedings in Mexico City considered the question of whether the requirements for a formal extradition request pursuant to the extradition treaty between the United States and Mexico had been satisfied, especially whether there was sufficient evidence to establish that the accused could have potentially engaged in the alleged criminal conduct. The Court ordered the accused to stand trial and the extradition request was subsequently transmitted to the United States. Further details about the cooperation and other aspects of the case were not provided. |
|-----------------------|--|

| | |
|---------|---|
| Source: | Case summary provided by the Permanent Mission of Mexico to the International Organizations in Vienna |
|---------|---|

Mexico-4

| | | | |
|------------------------------|--|-------------|--|
| Case No. ASJ/230/809/2016 | Drug trafficking, participation in an organized criminal group, money-laundering | Extradition | Extradition treaty between the United States and Mexico signed in 1978 |
|------------------------------|--|-------------|--|

| | |
|-----------------------|---|
| Mexico, United States | On 15 August 2018, the District Court Specialized in Adversarial Criminal Justice in Mexico City considered the question of whether the requirements for a formal extradition request pursuant to the extradition treaty between the United States and Mexico had been satisfied, especially whether there was sufficient evidence to establish that the accused could have potentially engaged in the alleged criminal conduct. The Court ordered the accused to stand trial and the extradition request was subsequently transmitted to the United States. Further details about the cooperation and other aspects of the case were not provided. |
|-----------------------|---|

| | |
|---------|---|
| Source: | Case summary provided by the Permanent Mission of Mexico to the International Organizations in Vienna |
|---------|---|

Mexico-5

| | | | |
|------------------------------|--|-------------|--|
| Case No. ASJ/230/836/2016 | Drug trafficking, participation in an organized criminal group, money-laundering | Extradition | Extradition treaty between the United States and Mexico signed in 1978 |
|------------------------------|--|-------------|--|

Mexico, United States

On 4 May 2018, the District Court Specialized in Adversarial Criminal Justice in Mexico City considered the question of whether the requirements for a formal extradition request pursuant to the extradition treaty between the United States and Mexico had been satisfied, especially whether there was sufficient evidence to establish that the accused could have potentially engaged in the alleged criminal conduct. The Court ordered the accused to stand trial and the extradition request was subsequently transmitted to the United States. Further details about the cooperation and other aspects of the case were not provided.

Source: Case summary provided by the Permanent Mission of Mexico to the International Organizations in Vienna

Mexico-6

| | | | |
|--------------------------------|--|-------------|--|
| Case No. ASJ/230/1475/ 2016 | Drug trafficking, participation in an organized criminal group, money-laundering | Extradition | Extradition treaty between the United States and Mexico signed in 1978 |
|--------------------------------|--|-------------|--|

Mexico, United States

On 9 March 2018, the Eighteenth District Court for Federal Criminal Proceedings in Mexico City considered the question of whether the requirements for a formal extradition request pursuant to the extradition treaty between the United States and Mexico had been satisfied, especially whether there was sufficient evidence to establish that the accused could have potentially engaged in the alleged criminal conduct. The Court ordered the accused to stand trial and the extradition request was subsequently transmitted to the United States. Further details about the cooperation and other aspects of the case were not provided.

Source: Case summary provided by the Permanent Mission of Mexico to the International Organizations in Vienna

Mexico-7

| | | | |
|-----------------------------------|---|-------------|--|
| Case No. ASJ/230/1531/ 2014 | Drug trafficking, participation in an organized criminal group, money-laundering, possession of weapons | Extradition | Extradition treaty between the United States and Mexico signed in 1978 |
|-----------------------------------|---|-------------|--|

Mexico, United States

On 30 July 2019, the Sixteenth District Court for Federal Criminal Proceedings in Mexico City considered the question of whether the requirements for a formal extradition request pursuant to the extradition treaty between the United States and Mexico had been satisfied, especially whether there was sufficient evidence to establish that the accused could have potentially engaged in the alleged criminal conduct. The Court ordered the accused to stand trial and the extradition request was subsequently transmitted to the United States. Further details about the cooperation and other aspects of the case were not provided.

Source: Case summary provided by the Permanent Mission of Mexico to the International Organizations in Vienna

Mexico-8

| | | | |
|-----------------------------------|--|-------------|--|
| Case No. ASJ/230/1531/ 2014 | Smuggling of migrants, sexual exploitation, participation in an organized criminal group, money-laundering | Extradition | Extradition treaty between the United States and Mexico signed in 1978 |
|-----------------------------------|--|-------------|--|

Mexico-8 (continued)

Mexico, United States On 16 April 2019, the District Court Specialized in Adversarial Criminal Justice in Mexico City considered the question of whether the requirements for a formal extradition request pursuant to the extradition treaty between the United States and Mexico had been satisfied, especially whether there was sufficient evidence to establish that the accused could have potentially engaged in the alleged criminal conduct. The Court ordered the accused to stand trial and the extradition request was subsequently transmitted to the United States. Further details about the cooperation and other aspects of the case were not provided.

Source: Case summary provided by the Permanent Mission of Mexico to the International Organizations in Vienna

Mexico-9

| | | | |
|-----------------------------------|--|-------------|--|
| Case No. ASJ/230/2617/ 2018 | Cybercrime, participation in an organized criminal group, money-laundering | Extradition | Extradition treaty between the United States and Mexico signed in 1978 |
|-----------------------------------|--|-------------|--|

Mexico, United States On 20 June 2018, the District Court Specialized in Adversarial Criminal Justice in Mexico City considered the question of whether the requirements for a formal extradition request pursuant to the extradition treaty between the United States and Mexico had been satisfied, especially whether there was sufficient evidence to establish that the accused could have potentially engaged in the alleged criminal conduct. The Court ordered the accused to stand trial and the extradition request was subsequently transmitted to the United States. Further details about the cooperation and other aspects of the case were not provided.

Source: Case summary provided by the Permanent Mission of Mexico to the International Organizations in Vienna

Mexico-10

| | | |
|-------------------------|-------------------------|--|
| Trafficking in firearms | Mutual legal assistance | Treaty on cooperation between the United States and Mexico for mutual legal assistance |
|-------------------------|-------------------------|--|

Mexico, United States The investigation into an organized criminal group involved in trafficking firearms ensued after an attaché at the United States embassy in Mexico City made a complaint to Mexican authorities about the alleged leader of the group. The request sent to the United States concerned information about several persons implicated in the case. Little information has been provided about the cooperation and proceedings involved in the case, or about the interplay between the Organized Crime Convention and the bilateral treaty on cooperation between the United States and Mexico for mutual legal assistance. It appears that several persons were later tried and convicted in connection with the case but later successfully appealed their conviction. In a decision dated 15 June 2011, the Seventh Unitary Court of the Fifteenth Circuit in Mexicali, Mexico, acquitted two or more persons, although it is not clear what their specific role was in the case.

Source: Case summary provided by the Permanent Mission of Mexico to the International Organizations in Vienna

Monaco-1

| | | |
|---|-------------------|-------------------------|
| <i>Société Orach Placement S-A et Société Fontabel Trading S.A.</i> | Unjust enrichment | Mutual legal assistance |
|---|-------------------|-------------------------|

| | | | |
|---|--|-------------|---|
| Monaco, Senegal | Senegal requested the freezing of bank accounts in Monaco. The request was granted and executed in mid-2014. Among the affected account holder were two companies that subsequently lodged a complaint against the freezing of their accounts. The complaint was rejected by the Director of Judicial Services, as was a further appeal to the Supreme Court of Monaco. | | |
| Source: | <i>Décision 2015-1: Société Orach Placement S-A et Société Fontabel Trading S.A. c/ Direction des Services Judiciaires;</i> <i>Société Orach Placement S-A et Société Fontabel Trading S.A. c/ Ministère Public</i> , Court of Revision, 3 March 2016 | | |
| <i>Netherlands-1</i> | | | |
| | Murder | Extradition | |
| Netherlands, Dominican Republic | In 2010, the Dominican Republic issued an international arrest warrant through INTERPOL for two suspects in a case involving murder committed by an organized criminal group. In the spring of 2010, the Netherlands spotted two of the suspects in its territory and informed the Dominican Republic, which then filed an extradition request on the basis of the Organized Crime Convention. At that time, the extradition law of the Netherlands did not allow extradition for murder but did allow extradition for the offences covered by Organized Crime Convention. On 1 April 2010, the extradition law was amended to allow extradition for any offence carrying a penalty of four years or more when committed transnationally by an organized criminal group. The two suspects were subsequently arrested on 20 April 2010, then extradited to the Dominican Republic on 9 May 2010 after applying for a shortened procedure. | | |
| Source: | CTOC/COP/2010/CRP.5, para. 80 | | |
| <i>New Zealand-1</i> | | | |
| <i>Ortmann et al. v. United States of America</i> | Copyright infringement, wire fraud, conspiracy to commit racketeering, conspiracy to commit copyright infringement, conspiracy to commit money-laundering | Extradition | Treaty on extradition between New Zealand and the United States |
| New Zealand, United States | The United States requested the extradition of four persons from New Zealand. The four men sought to appeal a decision made by the District Court in Auckland, which had ruled that the men were eligible for extradition, arguing, inter alia, that the offences identified in the United States request were not extradition offences within the meaning of section 4 of the Extradition Act 1999 of New Zealand. Following the ratification by New Zealand of the Organized Crime Convention, section 101B, which deems certain crimes with transnational aspects to be included in extradition treaties, was inserted into the Extradition Act 1999. The High Court of New Zealand, and later on, the Court of Appeal of New Zealand, examined whether the offences in the United States indictment were extradition offences, which was ultimately found to be the case. A further appeal against the decision that the accused were eligible for extradition to the United States and an application for judicial review was heard by the Supreme Court of New Zealand in 2020: <i>Ortmann et al. v. United States of America</i> , [2020] NZSC 120. In a major judgment delivered in November 2020, the Supreme Court revisited the extradition request, the double criminality requirement and the eligibility requirements, and examined in detail the offences covered by the Copyright Act 1994 and the Crimes Act of New Zealand. The Supreme Court allowed the appeals for judicial review and the appeal against the Court of Appeal's finding that money-laundering was an extradition offence, but it confirmed that the other offences provided extradition pathways. | | |
| Source: | <i>Ortmann et al. v. the United States of America</i> , [2017] NZHC 189; <i>Ortmann et al. v. United States of America</i> , [2018] NZCA 233; <i>Ortmann et al. v. United States of America</i> , [2020] NZSC 120; UNODC SHERLOC case law database, case identifier NZLx006 | | |

New Zealand-2

| | Fraud | Mutual legal assistance |
|----------------------|---|-------------------------|
| New Zealand, Romania | In November 2009, Romania sought statements from several victims residing in New Zealand and sought to obtain relevant supporting documentation. New Zealand accepted the request, conducted the relevant inquiries and transmitted the documentation to Romania in April 2009. | |
| Source: | CTOC/COP/2010/CRP.5, para. 82 | |

New Zealand-3

| | Fraud | Mutual legal assistance |
|---------------------|--|-------------------------|
| New Zealand, Canada | In August 2006, Canadian authorities made a request to New Zealand to provide documents and make inquiries into a company incorporated in New Zealand that was under investigation for fraud in Canada. New Zealand transferred the requested documents and evidence in November 2006. | |
| Source: | CTOC/COP/2010/CRP.5, para. 83 | |

New Zealand-4

| | Unlicensed trading in military goods | Mutual legal assistance |
|--------------------------|---|-------------------------|
| New Zealand, Netherlands | In May 2005, New Zealand received a request for mutual assistance from the Netherlands. In the request, the Netherlands asked New Zealand authorities to look for evidence showing that military parts of a particular type had been imported. New Zealand accepted the request on the basis that both States were parties to the Organized Crime Convention. | |
| Source: | CTOC/COP/2010/CRP.5, para. 84 | |

New Zealand-5

| | Drug-related offences | Mutual legal assistance | Additional legal basis (not specified) |
|---------------------|---|-------------------------|--|
| New Zealand, Canada | New Zealand sought statements from a number of witnesses who were Canadian nationals. Relying in part on the fact that both States were parties to the Organized Crime Convention, Canada made the relevant inquiries and transmitted the information to New Zealand in April 2004. | | |
| Source: | CTOC/COP/2010/CRP.5, para. 85 | | |

Nigeria-1

| <i>Attorney General of the Federation v. Edegbe</i> | Trafficking in persons, smuggling of migrants, document fraud, abduction of minors, participating in an organized criminal group | Extradition |
|---|--|-------------|
| | | |

| | |
|-------------------------|---|
| Nigeria, Netherlands | The Netherlands sought the extradition of a man involved in organized criminal group that brought women from Nigeria to the Netherlands using fraudulent documents and other illegal means. The Federal Court in Abuja ultimately rejected the request. Citing earlier precedents by the Court of Appeal and the Supreme Court of Nigeria, it held that although both States were parties to the Organized Crime Convention, they had no other bilateral extradition agreement between them, as required by the Extradition Act of Nigeria, and that the Organized Crime Convention had not become part of the country's domestic law through an act of parliament. |
| Source: | <i>Attorney General of the Federation v. Edegbe</i> , Suit No. FHC/ABJ/CS/907/2012, Judgment of 1 July 2014, Federal Court, Abuja, Lord Justice A. R. Mohammed; UNODC, Country Office in Nigeria, <i>Cases and Materials on Extradition in Nigeria</i> (Abuja, 2016), pp. 50, 476–489; Ben Ezeamalu, "Human trafficking: Judge refuses to extradite alleged Nigerian trafficker to Netherlands", <i>Premium Times</i> (Abuja), 2 July 2014; UNODC SHERLOC case law database, case identifier NGAx004 |

Nigeria-2

| | | | |
|---|---|-------------|---|
| <i>Attorney General of the Federation v. Rasheed Abayomi Mustapha</i> | Mail fraud, conspiracy to commit mail fraud, conspiracy to commit money-laundering, theft from a retirement fund, aggravated identify theft | Extradition | Extradition treaty between the United States and the United Kingdom of 1931 |
| Nigeria, United States | Together with other associates, the accused gained access to retirement accounts in the United States by stealing the account owners' personal information, which he used to take over the accounts and remove over \$750,000. After one of the co-conspirators was arrested in the United States, the accused fled to Nigeria, where he was ultimately arrested. The United States subsequently sought his extradition on the basis of the 1931 extradition treaty between the United States and the United Kingdom, which was made applicable to Nigeria in 1935. Arguments presented by the accused in extradition hearings, claiming that the treaty and Organized Crime Convention were not part of domestic law and that the offences charged were not extradition offences, were rejected by the Federal High Court. | | |
| Source: | <i>Attorney General of the Federation v. Rasheed Abayomi Mustapha</i> , Charge No. FHC/L/218C/2011 (Federal High Court in Lagos, Judge P. I. Ajoku, 9 January 2012); UNODC, <i>Cases and Materials on Extradition in Nigeria</i> , pp. 510–542; "Court approves extradition of Nigerian to U.S. over \$.7m fraud", <i>Premium Times</i> (Abuja) 30 January 2012; UNODC SHERLOC case law database, case identifier NGA006 | | |

Peru-1

| | | |
|---------------|--|-------------------------|
| | Corruption, money-laundering | Mutual legal assistance |
| Peru, Andorra | The Office of the Prosecutor of Peru submitted a mutual legal assistance request to Andorra on the basis of Organized Crime Convention in order to obtain the testimonial statement from a former manager of the Uruguay branch of the Private Bank of Andorra on their involvement in a bribery operation of Odebrecht, a Brazil-based construction, engineering, chemical and petrochemical conglomerate. The statement, along with other evidence provided, was ultimately used by prosecutors to commence proceedings in Peru against a former public official of Peru for trading in influence (art. 18 of the United Nations Convention against Corruption) and money-laundering, having used the branch of the Private Bank of Andorra to launder bribe payments. | |

Peru-1 (continued)

Source: Miguel Gutiérrez R., “Caso Odebrecht: la trama desconocida de los pagos a funcionarios y empresarios peruanos vía Andorra”, *Convoca*, 2 September 2018;
 Víctor Liza, “¿Quién es Juan Carlos Zevallos, el detenido exjefe de Ositrán del segundo gobierno aprista?”, *lamula.pe*, 20 March 2017;
 “Caso Odebrecht: dictan prisión preventiva para Juan Carlos Zevallos”, *América Noticias* (Lima), 23 March 2017;
 “Perú: ordenan prisión preventiva contra exfuncionario de García por caso Odebrecht”, *Nodal* (Lima), 23 March 2017
Note: The case was also presented at an informal expert group meeting on international cooperation in criminal matters convened by UNODC and held in Vienna from 9 to 11 April 2019.

Peru-2

| | Drug trafficking, money-laundering | Extradition, mutual legal assistance |
|-------------------|--|--------------------------------------|
| Peru, Netherlands | Pursuant to article 16 of the Organized Crime Convention, Peruvian authorities requested the extradition of a man from the Netherlands who was believed to be involved in a transnational organized crime group engaged in drug trafficking. A Netherlands court considered and granted the request and the man was subsequently extradited to Peru. In a separate request, Peru sought mutual legal assistance from the Netherlands on the basis of the Organized Crime Convention to obtain further information about the group involved in the case, known as the Oropeza network, which was believed to be responsible for trafficking cocaine from Latin America to Europe and maintaining ties to the ‘Ndrangheta organization in Italy. Through the request, Peru was able to obtain further information that had been found on telephone and computer equipment. | |
| Source: | Michael Lohmuller, “‘Tony Montana’ (of Peru) tied to Italy’s ‘Ndrangheta Mafia’”, <i>InSight Crime</i> , 21 April 2015; BBC News, “Ecuador extradites Peruvian ‘drug lord’ Gerald Oropeza”, 14 September 2015; newsbeezzer.com, “Case Gerald Oropeza: approves the extradition of Brian Camps to Peru”, 27 February 2019 <i>Note:</i> The case was also presented at an informal expert group meeting on international cooperation in criminal matters convened by UNODC and held in Vienna from 9 to 11 April 2019. | |

Poland-1

| | Drug trafficking | Transfer of criminal proceedings |
|---------------------|--|----------------------------------|
| Poland, Netherlands | Proceedings that were originally instigated against two persons accused of drug trafficking by the prosecutor’s office in Przemysl, Poland, were transferred to the competent authorities in the Netherlands on the basis of article 21 of the Organized Crime Convention. | |
| Source: | CTOC/COP/2010/CRP.5, para. 24 | |

Portugal-1

| | Drug trafficking | Joint investigations |
|-------------------------|--|----------------------|
| Portugal, Brazil, Spain | Spanish and Brazilian authorities provided information to facilitate the investigation led by Portugal. Requests to obtain information on commercial activities by the main suspect and by companies run, directly or indirectly, by him were also sent to China, Italy, Sweden, Switzerland, the United Kingdom and the United States. Furthermore, Portugal sent letters of request asking Brazilian, Spanish, and United States authorities to conduct searches of private homes and offices, interview suspects and witnesses, record movable and immovable property associated with the main suspect and seize bank account deposits. Joint investigative teams were created in accordance with article 19 of the Organized Crime Convention to intercept telephone conversations, conduct surveillance and searches, and seize assets. | |
| Source: | UNODC SHERLOC case law database, case identifier PRTx002 | |

Romania-1

| | Tax fraud, money-laundering | Extradition |
|-------------------|---|-------------|
| Romania, Colombia | The accused persons in this case were involved in a tax fraud and money-laundering scheme that resulted in a loss of 870,000 euros by Romania. The scheme involved transactions to, and in, Colombia, where one of the accused persons, a Romanian national, was located. Based on the available information, Romania sought the extradition of the Romanian national from Colombia on the basis of Organized Crime Convention at some time around 2013. At the time that the case was reported, the request was still pending and no more recent information was available at the time of writing. | |
| Source: | UNODC SHERLOC case law database, case identifier ROUx003 | |

Serbia-1

| | Production of illicit drugs, drug trafficking, trafficking in persons, illegal border crossing | Mutual legal assistance |
|---------------|--|-------------------------|
| Serbia, Spain | Article 18, paragraph 1 (c), of the Organized Crime Convention was applied in a request sent to Spain to freeze the property of a Spanish national accused of producing and trafficking illicit drugs, illegal border-crossing, and trafficking in persons | |
| Source: | CTOC/COP/2010/CRP.5, para. 33 | |

Serbia-2

| | Drug trafficking | Mutual legal assistance | United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 |
|-----------------|--|-------------------------|---|
| Serbia, Uruguay | Serbia requested, and received, evidentiary items relating to the seizure of illicit drugs. The evidence later enabled the commencement of criminal proceedings against the organized criminal group involved in the case. | | |
| Source: | CTOC/COP/2010/CRP.5, para. 34 | | |

Slovenia-1

| | | | |
|-------------------------|---|-------------|---|
| | Credit card fraud | Extradition | Council of Europe Convention on Cybercrime; Extradition treaty between the United States and the Kingdom of Serbia of 1901 |
| Slovenia, United States | The United States transmitted a request for extradition to Slovenia. Further information about the facts and proceedings of the case and related international cooperation was not available. | | |
| Source: | CTOC/COP/2010/CRP.5, para. 37 | | |

Spain-1

| | | | |
|-------------------|---|-------------|---|
| | Drug trafficking | Extradition | United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 |
| Spain, Cabo Verde | Eight persons, who were part of a larger drug trafficking network, were located in Cabo Verde. In the absence of an extradition treaty with Cabo Verde, the Organized Crime Convention, along with the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, was used as a basis for requesting their extradition. The persons were then taken into custody in Cabo Verde and extradited to Spain, where they were later convicted for their offences. | | |
| Source: | CTOC/COP/2010/CRP.5/Corr.1, paras. [94bis]–[94ter] | | |

Spain-2

| | | | |
|--------------|---|-------------|---|
| | Drug trafficking | Extradition | United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 |
| Spain, Ghana | A Spanish national wanted in Spain on charges of drug trafficking was arrested in Ghana and subsequently extradited to Spain. The person was later convicted and sentenced to 11 years' imprisonment. | | |
| Source: | CTOC/COP/2010/CRP.5/Corr.1, paras. [94bis]–[94ter] | | |

Spain-3

| | | | |
|-----------------------------|--|-------------|---|
| | Drug trafficking | Extradition | United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 |
| Spain, United Arab Emirates | A United Kingdom national wanted in Spain on charges of drug trafficking was arrested in the United Arab Emirates and extradited to Spain. | | |
| Source: | CTOC/COP/2010/CRP.5/Corr.1, paras. [94bis]–[94ter] | | |

Spain-4

| | | | |
|-----------------------------|---|-------------|---|
| | Drug trafficking | Extradition | United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 |
| Spain, United Arab Emirates | A Georgian national, who was the leader of an organized criminal group operating in several successor States of the former Soviet Union and wanted in Spain on charges of drug trafficking, was arrested in the United Arab Emirates and extradited to Spain in 2006. | | |
| Source: | CTOC/COP/2010/CRP.5/Corr.1, paras. [94bis]–[94ter] | | |

Ukraine-1

| | | | |
|-----------------|---|-------------------------|--|
| | Participation in an organized criminal group | Mutual legal assistance | European Convention on Mutual Assistance in Criminal Matters |
| Ukraine, Turkey | Assistance from Turkey was sought by Ukraine in relation to the organizer of a trafficking ring, a Turkish national who was later convicted on charges relating to trafficking in persons and prostitution. | | |
| Source: | CTOC/COP/2010/CRP.5, para. 43 | | |

Ukraine-2

| | | | |
|-------------------------------|--|-------------|--|
| | Trafficking in persons, smuggling of migrants, abuse of functions, using fraudulent documents | Extradition | |
| Ukraine, United Arab Emirates | The Office of the Prosecutor General of Ukraine sought the extradition of a Ukrainian woman who was residing in the United Arab Emirates. A formal request for extradition using the Organized Crime Convention as the legal basis was transmitted in March 2010. At the time that the case was reported, a response to the request was still pending. | | |
| Source: | CTOC/COP/2010/CRP.5, para. 44 | | |

United Arab Emirates-1

| | | | |
|-----------------------------------|---|-------------|--|
| | Robbery | Extradition | |
| United Arab Emirates, Netherlands | Following the robbery of a jewellery store in Dubai, United Arab Emirates, in April 2007, the United Arab Emirates requested the extradition of the accused from the Netherlands. In the absence of any legal basis, the request was initially rejected. Subsequently, on 7 May 2007, the United Arab Emirates ratified the Organized Crime Convention and resubmitted its extradition request to the Netherlands. In turn, the High Court in The Hague granted the request on the basis of the Convention and the accused was extradited in February 2009. | | |
| Source: | CTOC/COP/2010/CRP.5, para. 79; UNODC, <i>Manual on Mutual Legal Assistance and Extradition</i> (Vienna, 2012), p. 28. Noorhan Barakat, "'Pink Panther' heist: fourth suspect to go on trial, Dubai Police reveals", <i>Gulf News</i> , 19 October 2015; Havana Marking, "The Pink Panthers: hunting the world's best diamond thieves", <i>The Guardian</i> , 22 September 2013 | | |

United Kingdom-1

| | | | |
|-----------------------------|--|-------------------------|--|
| <i>ZXC v. Bloomberg L P</i> | Corruption, bribery, money-laundering, fraud, conspiracy | Mutual legal assistance | United Nations Convention against Corruption |
| United Kingdom, other | A United Kingdom law enforcement agency requested mutual legal assistance from an undisclosed jurisdiction, seeking banking and business records of a company implicated in a case involving corruption, fraud, money-laundering and other offences. The letter of request was used by a media company as the basis for an article about the investigation. An individual named in the article subsequently instigated proceedings before the High Court, applying for an injunction to have the article retracted and damages awarded for misuse of private information. The application was ultimately successful. | | |
| Source: | High Court of England and Wales, <i>ZXC v. Bloomberg L.P.</i> , [2017] EWHC 328, 23 February 2017; <i>ZXC v. Bloomberg L P</i> , [2019] EWHC 970, 17 April 2019; Nathan Capone, "Publication of investigation into businessman ruled as misuse of private information", Fieldfisher, 31 May 2019; Fieldfisher, "High Court upholds Bloomberg publication of criminal investigation", 9 March 2017 | | |

United Kingdom-2

| | | | |
|--|--|-------------------------|--|
| <i>R (Unaenergy and others) v. Director of the SFO</i> | Corruption, bribery | Mutual legal assistance | European Convention on Mutual Assistance in Criminal Matters |
| United Kingdom, Monaco | At the request of the Serious Fraud Office of the United Kingdom, Monegasque authorities searched premises and seized documents, computers and other property, and also arrested three persons accused of bribery and corrupt practices. The letter requesting mutual legal assistance was the subject of the proceedings before the High Court. The claimants in the case (several alleged offenders) sought the quashing of the letter of request, the return of materials obtained by the authorities in Monaco and the destruction of any copies of those materials held by the Serious Fraud Office. The High Court was asked to decide whether or not the common law duty of disclosure of evidence applied to letters of request from foreign authorities. The Director of the Serious Fraud Office argued that the duty of disclosure, as it applied to domestic search warrants, did not apply to such letters. The High Court agreed with that position. | | |
| Source: | <i>R (Unaenergy Group Holding and others) v. the Director of the Serious Fraud Office</i> , [2017] EWHC 600; Kevin Rawlinson, "Authorities in Monaco raid oil firm HQ in corruption investigation", <i>The Guardian</i> , 1 April 2016 | | |

United Kingdom-3

| | | | |
|---|--|--------------|--|
| <i>A & A v. The Director of Public Prosecutions</i> | Theft of public funds, money-laundering | Confiscation | United Nations Convention against Corruption |
| United Kingdom, Kuwait | After restraining assets of the two accused persons, husband and wife, held in bank accounts in Switzerland, Kuwaiti authorities sent two letters requesting legal assistance from the United Kingdom in early 2015. The letters stated that the accused had been under investigation in Kuwait since 2008 for theft of public funds and money-laundering, and requested restraint of the assets of the accused persons in the United Kingdom. The accused persons later appealed against a decision of the Crown Court to issue a restraint order against their assets. The order had been applied for by the Director of Public Prosecutions, acting under the Proceedings of Crime Act 2002 (External Requests and Orders) Order 2005 of the United Kingdom and pursuant to the letters of request sent by Kuwait. The Court of Appeal refused the appeal and the restraint order was upheld. | | |
| Source: | Court of Appeal of England and Wales, <i>A & A v. The Director of Public Prosecutions</i> , [2016] EWCA Crim 96, Case No. 201503919 B4, Judgment of 23 March 2016 | | |

United States-1

| | | | |
|--|---|--------------|-----------------|
| <i>United States v. Batato</i> | Criminal copyright infringement | Confiscation | [Not specified] |
| United States; Hong Kong, China; New Zealand | A district court in the United States issued restraint orders for assets in Hong Kong, China, and in New Zealand. The High Court in Hong Kong, China, responded by issuing a restraint order against approximately 60 million dollars in assets. New Zealand first arrested several of the alleged offenders, then released them on bail, and then, several months later, registered restraint orders against 15 million dollars in assets. It difficult to determine the precise role that the Organized Crime Convention played in these restraint orders. In proceedings before the United States Court of Appeals for the Fourth Circuit in Richmond, Virginia, in 2016, the claimants unsuccessfully appealed against the District Court's restraint orders. | | |
| Source: | <i>United States v. Dotcom</i> (unreported, United States District Court for the Eastern District of Virginia, Alexandria Division, 5 October 2012); <i>United States v. All Assets Listed in Attachment A</i> , 89 F Supp 3d 813 (2015); <i>United States v. Batato and others</i> , 833 F.3d 413 (4th Cir. 2016); Neil Boister, <i>An Introduction to Transnational Criminal Law</i> , 2nd ed. (Oxford, Oxford University Press, 2018), p. 350; UNODC SHERLOC case law database, case identifier USAx077 | | |

United States-2

| | | | |
|--------------------------------------|--|-------------|--|
| <i>United States v. Condo et al.</i> | Money-laundering | Extradition | Treaty between the United States of America and the Kingdom of Serbia for the Mutual Extradition of Fugitives from Justice |
| United States, Croatia | The accused in this case was arrested in Croatia in 2012 and extradited to the United States in 2013. In criminal proceedings against him in 2014, he argued that the extradition had been improper because the "rule of speciality" warranted that the offence he was being tried for was deemed to be an extraditable offence by the requesting State and the requested State, and that the existing extradition agreement between the United States and Croatia did not cover the offence. The Court dismissed the defendant's motion, noting, inter alia, that money-laundering was an extraditable offence under the Organized Crime Convention and that, for that reason, it would not matter that the extradition agreement between the two States did not expressly cover the offence. | | |
| Source: | Nathaniel M. Gorton, <i>United States v. Condo et al.</i> , Criminal Action No. 11-cr-30017-NMG, United States District Court, District of Massachusetts, Judgment of 7 March 2014; UNODC SHERLOC case law database, case identifier USAx071 | | |

United States-3

| | | | |
|------------------------------------|--|-------------------------|--|
| <i>United States v. Fahnbulleh</i> | Fraud | Mutual legal assistance | |
| United States, Liberia | The United States authorities used the Organized Crime Convention to request mutual legal assistance from Liberia in a case in which large sums of money intended to help provide food aid were defrauded and diverted from a non-governmental organization operating in Liberia and funded by the United States Agency for International Development. | | |
| Source: | United States District Court, District of Columbia, <i>United States v. Morris B. Fahnbulleh</i> , 674 F. Supp 2d 214, Criminal Action No. 09-0293, Judgment of 16 December 2009; <i>United States v. Morris B. Fahnbulleh</i> , 742 F. Supp 2d 137, Criminal Action No. 09-359, Judgment of 7 October 2010; <i>United States v. Morris B. Fahnbulleh</i> , 752 F. Supp 3d 470, Criminal Action Nos. 11-3045 and 11-3047, Judgment of 13 June 2013; UNODC SHERLOC case law database, case identifier USAx076 | | |

United States-4

United States v. Palacios & Asprilla

Smuggling of migrants, murder, rape, robbery

Mutual legal assistance

United States, Colombia

After the defendants were convicted for murder, rape and robbery in Colombia, they were extradited to the United States to faces charges relating to the smuggling of migrants and endangering the lives of smuggled migrants. The admissibility of documents requested by the United States from Colombia pursuant to the Organized Crime Convention was later unsuccessfully challenged by the defendants.

Source:

United States District Court, Southern District Florida, *United States of America v. Palacios & Asprilla*



BIBLIOGRAPHY

BIBLIOGRAPHY

- Abdul-Aziz, Mohamed. International perspective on transfer of prisoners and execution of foreign penal judgements. In *International Criminal Law*, 3rd ed., vol. 2, M. Cherif Bassiouni, ed. Leiden, Netherlands: M. Nijhoff Publishers, 2008.
- Betti, Stefano. New prospects for inter-state co-operation in criminal matters: the Palermo Convention. *International Criminal Law Review*, vol. 3, No. 2 (January 2003).
- _____. The European Union and the United Nations Convention against Transnational Organised Crime. Working Paper. Civil Liberties Series, No. LIBE 116. Brussels: European Parliament, 2001.
- Boister, Neil. *An Introduction to Transnational Criminal Law*, 2nd ed. Oxford: Oxford University Press, 2018.
- _____. *The cooperation provisions of the UN Convention against Transnational Organised Crime: a “Toolbox” rarely used?*, vol. 16, No. 1 (February 2016).
- Council of Europe. Cybercrime Programme Office. Revised assessment report (2018) on international cooperation on cybercrime in the Eastern Partnership region. Strasbourg: May 2018.
- Currie, Robert J. and Joseph Rikhof. *International and Transnational Criminal Law, 2nd ed. Toronto, Canada: Irwin Law, 2014.*
- Donigan Guymon, CarrieLyn. International legal mechanisms for combating transnational organized crime: The need for a multilateral convention. *Berkeley Journal of International Law* 53, vol. 18, No. 1 (July 2000).
- Gercke, Marco and Raluca Simion. Practical guide to international cooperation to combat identityrelated crime. In *Handbook on Identity-related Crime*. Vienna: United Nations Office on Drugs and Crime, 2011.
- Gilbert, Geoff. *Transnational Fugitive Offenders in International Law: Extradition and Other Mechanisms*. International Studies in Human Rights Series, vol. 55. The Hague; Boston; London: Martinus Nijhoff Publishers, 1998.
- Havana Marking. The Pink Panthers: hunting the world’s best diamond thieves. *The Guardian*, 22 September 2013.
- Hopkins, Shannon L. Cybercrime Convention: a positive beginning to a long road ahead. *Journal of High Technology Law*, vol. II, No. 1 (2003).
- Joutsen, Matti. International cooperation against transnational organized crime: extradition and mutual legal assistance in criminal matters. In *Resource Material Series No. 59*. Tokyo: Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, 2003.
- Kemp, Gerhard. The United Nations Convention against Transnational Organized Crime: a milestone in international criminal law. *South African Journal of Criminal Justice*, vol. 14, No. 2 (2001).
- McClellan, David. *Transnational Organized Crime: A Commentary on the UN Convention and its Protocols*. Oxford: Oxford University Press, 2007.
- Nash, Marian. Contemporary practice of the United States relating to international law. *American Journal of International Law*, vol. 92, No. 2 (April 1998).
- Obokata, Tom. The value of international law in combating transnational organized crime in the Asia-Pacific. *Asian Journal of International Law*, vol. 7, No. 1 (January 2017).
- Orlova, Alexandra V. and James W. Moore. “Umbrellas” or “building blocks”: defining international terrorism and transnational organised crime in international law. *Houston Journal of International Law*, vol. 27, No. 2 (2005).
- Rose, Cecily. The creation of a Review Mechanism for the UN Convention against Transnational Organized Crime and its Protocols. *The American Society of International Law*, vol. 114, No. 1 (January 2020).

- Tennant, Ian. *The promise of Palermo: a political history of the UN Convention against Transnational Organized Crime*. Geneva: Global Initiative against Transnational Organized Crime, 2020.
- United Nations Office on Drugs and Crime. *Criminal Justice Assessment Toolkit*. Vienna, 2006.
- _____. *Digest of Organized Crime Cases: A Compilation of Cases with Commentaries and Lessons Learned*. Vienna, 2012.
- _____. *Handbook on the International Transfer of Sentenced Persons*. Criminal Justice Handbook Series. Vienna, 2012.
- _____. *In-depth Training Manual on Investigating and Prosecuting Smuggling of Migrants*. Vienna, 2011.
- _____. *International Framework for Action to Implement the Smuggling of Migrants Protocol*. Vienna, 2012.
- _____. *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, 2nd ed. Vienna, 2016.
- _____. *Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime*. Vienna, 2012.
- _____. *Manual on Mutual Legal Assistance and Extradition*. Vienna, 2012.
- United Nations. *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*. 2006.
- Vlassis, Dimitri. The United Nations Convention against Transnational Organized Crime and its Protocols: a new era in international cooperation. In *The Changing Face of International Criminal Law*. Daniel Préfontaine, QC, ed. Vancouver, Canada: International Centre for Criminal Law Reform and Criminal Justice, 2002.
- Zagaris, Bruce and Elizabeth Kingma. Asset forfeiture international and foreign law: an emerging regime. *Emory International Law Journal*, vol. 5 (1991).

United Nations documents

General Assembly

- International cooperation in criminal matters (General Assembly resolution [52/88](#)).
- Model Treaty on Extradition (General Assembly resolution [45/116](#), annex).
- Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution [45/117](#), annex).
- Model Treaty on the Transfer of Proceedings in Criminal Matters (General Assembly resolution [45/118](#), annex).

United Nations Congress on Crime Prevention and Criminal Justice

- Background paper on Workshop 1: Enhancing International Law Enforcement Cooperation, including Extradition Measures ([A/CONF.203/9](#)).
- Working paper prepared by the Secretariat on international cooperation, including at the regional level, to combat transnational organized crime ([A/CONF.222/7](#)).
- Report of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice ([A/CONF.222/17](#)).
- Background paper prepared by the Secretariat on Workshop 4: Current crime trends, recent developments and emerging solutions, in particular new technologies as means for and tools against crime ([A/CONF.234/11](#)).

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

Report of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its third session, held in Vienna from 9 to 18 October 2006 ([CTOC/COP/2006/14](#)).

Information submitted by States in their responses to the checklist/questionnaire on the implementation of the United Nations Convention against Transnational Organized Crime for the first reporting cycle ([CTOC/COP/2008/CRP.7](#)).

Catalogue of cases involving extradition, mutual legal assistance and other forms of international legal cooperation requested on the basis of the United Nations Convention against Transnational Organized Crime ([CTOC/COP/2008/CRP.2](#)).

Catalogue of cases involving extradition, mutual legal assistance and other forms of international legal cooperation requested on the basis of the United Nations Convention against Transnational Organized Crime ([CTOC/COP/2010/CRP.5](#)) and corrigendum ([CTOC/COP/2010/CRP.5/Corr.1](#)).

Background paper by the Secretariat on criminalization of participation in an organized criminal group (article 5 of the United Nations Convention against Transnational Organized Crime) ([CTOC/COP/WG.2/2014/2](#)).

Background paper by the Secretariat on the use of the United Nations Conventions against Transnational Organized Crime as a legal basis for international cooperation against all forms of transnational organized crime ([CTOC/COP/WG.3/2015/3](#)).

Background paper prepared by the Secretariat on gathering and sharing electronic evidence ([CTOC/COP/WG.3/2015/2](#)).

Background paper prepared by the Secretariat on the implementation of articles 13 and 14 of the United Nations Convention against Transnational Organized Crime: international cooperation for purposes of confiscation and disposal of confiscated proceeds of crime or property ([CTOC/COP/WG.3/2016/3](#)).

Information provided by the Secretariat on the notification requirement of article 16, paragraph 5 (a) of the United Nations Convention against Transnational Organized Crime ([CTOC/COP/WG.3/2016/CRP.1](#)).

Background paper prepared by the Secretariat on practical considerations, good practices and challenges encountered in the area of transfer of criminal proceedings as a separate form of international cooperation in criminal matters ([CTOC/COP/WG.3/2017/2](#)).

Background paper prepared by the Secretariat on the discussion of challenges faced in the course of extradition proceedings ([CTOC/COP/WG.3/2018/2](#)).

Background paper prepared by the Secretariat on the challenges faced in expediting the extradition process, including addressing health and safety and other human rights issues, as well as litigation strategies utilized by defendants to delay the resolution of an extradition request ([CTOC/COP/WG.3/2018/5](#)).

Report on the meeting of the Working Group on International Cooperation held in Vienna on 6 October 2018 ([CTOC/COP/WG.3/2018/6](#)).

Background paper prepared by the Secretariat on the use and role of joint investigative bodies in combating transnational organized crime ([CTOC/COP/WG.3/2020/2](#)).

Background paper prepared by the Secretariat on international cooperation involving special investigative techniques ([CTOC/COP/WG.3/2020/3](#)).

Report on the meeting of the Working Group on International Cooperation held in Vienna on 7 and 8 July 2020 ([CTOC/COP/WG.3/2020/4](#)).

Expert Group to Conduct a Comprehensive Study on Cybercrime

Report on the meeting of the Expert Group to Conduct a Comprehensive Study on Cybercrime held in Vienna from 27 to 29 March 2019 ([UNODC/CCPCJ/EG.4/2019/2](#)).



UNODC

United Nations Office on Drugs and Crime

Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria
Tel.: (+43-1) 26060-0, Fax: (+43-1) 263-3389, www.unodc.org

