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Thematic discussion on international cooperation in criminal matters

Discussion guide for the thematic discussion on international cooperation in criminal matters

Note by the Secretariat

Summary

The present note has been prepared by the Secretariat as a guide for the thematic discussion of the Commission on Crime Prevention and Criminal Justice at its twenty-third session, pursuant to Commission decision 18/1, entitled "Guidelines for the thematic discussions of the Commission on Crime Prevention and Criminal Justice". In its decision 2010/243, the Economic and Social Council decided that the prominent theme for the twenty-third session of the Commission would be "International cooperation in criminal matters, bearing in mind paragraph 21 of the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World". In the present note, a series of questions on the relevant topics are proposed for discussion by the Commission, some issues are outlined for shaping that discussion and background information is provided.

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I. Introduction

1. At its reconvened twenty-second session, held on 12 and 13 December 2013, the Commission endorsed the following approach to the organization of the thematic discussion at the twenty-third session: the thematic debate would take place during a morning and an afternoon meeting and all topics would be discussed at both meetings. The debate during the morning would focus on taking stock of lessons learned and challenges faced, and the debate during the afternoon would cover the way forward and further action to address challenges faced, bearing in mind paragraph 21 of the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World. The following topics were approved by the Commission:

(a) Specific modalities of international cooperation in criminal matters:

(i) Extradition and mutual legal assistance;

(ii) International cooperation for the purposes of confiscation;

(iii) Use of other forms of international cooperation in criminal matters;

(b) How to manage international cooperation in multiple legal proceedings where the same individual is involved;

(c) Implementing international instruments containing provisions on international cooperation in criminal matters;

(d) Learning from experiences at the regional level;

(e) International cooperation in combating new and emerging forms of crime;

(f) Provision of technical assistance;

(g) Addressing the gaps — the way forward.

2. The present note has been prepared by the Secretariat in accordance with Commission decision 18/1, entitled “Guidelines for the thematic discussions of the Commission on Crime Prevention and Criminal Justice”, in which the Commission decided that the discussion on the prominent theme would be based on a discussion guide including a list of questions to be addressed by participants.

II. Issues for discussion

A. Specific modalities of international cooperation in criminal matters

Background

(i) Extradition and mutual legal assistance

3. International cooperation in criminal matters is the cornerstone of coordinated efforts to prevent and combat crime in its transnational manifestations. The United Nations conventions against crime, such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the United

Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption and the universal counter-terrorism conventions and protocols, have included — in most cases — comprehensive provisions on strengthening international cooperation among parties, with special emphasis on extradition and mutual legal assistance.

Extradition

4. With regard to extradition, article 6 of the 1988 Convention, article 16 of the Organized Crime Convention and article 44 of the Convention against Corruption set a minimum standard for enhancing the efficiency of extradition mechanisms in relation to the offences covered by those conventions. The conventions encourage States parties to expand their extradition network by concluding bilateral or regional treaties or arrangements that can go beyond that minimum standard. The conventions also encourage States parties that do not make extradition conditional on the existence of a treaty to recognize the offences to which they apply as extraditable offences between themselves.

5. Recent trends and developments in extradition law and practice have focused on relaxing the strict application of certain grounds for refusal of extradition requests. In addition, double criminality is usually deemed fulfilled by use of a conduct-based approach, regardless of the terminology used to denominate the offence in question. In that context, article 43, paragraph 2, of the Convention against Corruption appears to codify existing practice between States parties in the field of international cooperation in criminal matters, including extradition.

6. The reluctance to extradite their own nationals appears to be lessening in many States. However, while more Member States are now allowing the extradition of their nationals, others still have constitutional or legislative limitations. To deal with such situations, the above-mentioned conventions contain provisions to ensure that the denial of extradition on the grounds of nationality does not result in immunity. For example, article 16, paragraph 10, of the Organized Crime Convention and article 44, paragraph 11, of the Convention against Corruption stipulate that in cases where the requested State refuses to extradite a fugitive on the grounds that the fugitive is its own national, that State has the obligation to bring the person to trial. This is an illustration of the principle of *aut dedere aut judicare* (extradite or prosecute). Where extradition is requested for the purpose of enforcing a sentence, the requested State may also enforce the sentence that has been imposed in accordance with the requirements of its domestic law (see article 16, paragraph 12, of the Organized Crime Convention and article 44, paragraph 13, of the Convention against Corruption).

7. The surrender of a person for trial in the requesting State, on the condition that any sentence imposed will be served in the requested State, can resolve the impasse that results when submission for prosecution is not considered a desirable outcome. The Organized Crime Convention (article 16, paragraph 11) and the Convention against Corruption (article 44, paragraph 12) provide that conditional extradition or surrender, when permitted by domestic law, satisfies the “extradite or prosecute” obligation. That solution permits the case to be tried where the social harm occurred and where the victims and witnesses are located. Returning the prisoner to the State of nationality has clear rehabilitative and humanitarian advantages, so conditional extradition or surrender can be a mutually beneficial resolution that merits increased

consideration. It may be accomplished through the combination of an extradition treaty and a treaty on the transfer of a foreign sentenced person.

8. Different prosecutorial practices under common law and civil law systems make effective interregional and international cooperation more difficult. In the field of extradition, such differences are even more acute when dealing with the relevant evidentiary requirements for granting an extradition request. Both the Organized Crime Convention (article 16, paragraph 8) and the Convention against Corruption (article 44, paragraph 9) urge States parties to simplify the evidentiary requirements set forth in their domestic extradition proceedings.

9. With regard to the time needed for granting an extradition request, divergent practices exist. In the vast majority of Member States, the length of extradition proceedings is subject to such factors as the availability of judicial remedies against the extradition decision at the judicial stage of the process or the executive stage (against the ministerial decision allowing extradition) or both, parallel asylum proceedings that may be pending in the requested State and the complexity of the case. In a growing number of Member States, a simplified extradition process is in place, whereby the person sought may consent to his or her extradition to the requesting State, which makes the process much faster.

Mutual legal assistance

10. Article 18 of the Organized Crime Convention and article 46 of the Convention against Corruption are typical examples of what may be called a “mini mutual legal assistance treaty”.

11. Experience under those articles has led to the recognition that a substantial contribution by central authorities is the most direct avenue to improving mutual assistance practices. The above-mentioned conventions require the designation of a central authority with the responsibility and power to execute mutual assistance requests or to transmit them for execution to the competent authorities.

12. One of the major problems in mutual legal assistance practice is that the requested State is often slow in replying. There are many reasons for such delays, including a shortage of trained staff, linguistic difficulties and delays in translation and differences in the procedures that need to be followed for the execution of the requests. Emphasis is placed on the importance of promptness when it comes to requests for mutual legal assistance in both the Organized Crime Convention (article 18, paragraphs 13 and 24) and the Convention against Corruption (article 46, paragraphs 13 and 24).

13. A crucial factor in and a precondition for a prompt response to requests for mutual legal assistance is flexibility in their execution. Under article 18, paragraph 17, of the Organized Crime Convention and article 46, paragraph 17, of the Convention against Corruption, a request should be executed in accordance with the domestic law of the requested State. However, the article also provides that, to the extent not contrary to the domestic law of the requested State and where possible, the request should be executed in accordance with the procedures specified in the request.

(ii) International cooperation for the purposes of confiscation

14. It has been relatively recently that international agreements have begun to contain provisions on assistance in identifying, tracing and freezing or seizing proceeds of crime for the purpose of eventual confiscation (which can be regarded as a special form of mutual legal assistance). The reason for the inclusion of such provisions was the need to target the proceeds of crime and the profit motive, which are behind the rapid growth of crime.

15. Confiscation of assets based on foreign evidence or a foreign court order or conviction requires decisions to be made concerning the disposal of those assets. In article 5, paragraph 5 (b), of the 1988 Convention it is proposed that a State party confiscating proceeds or property consider sharing the proceeds with intergovernmental bodies specializing in the fight against illicit traffic in and abuse of narcotic drugs and psychotropic substances or with other States parties. The Organized Crime Convention, with its broad application to any type of serious crime committed by a group for profit, contains the same provision, and also urges the return of confiscated property to the requesting State party so that compensation can be given to victims of crime. The Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property was developed under the auspices of the Commission on Crime Prevention and Criminal Justice and adopted by the Economic and Social Council in its resolution 2005/14. The Convention against Corruption is the first convention that introduces the concept of unconditional return of confiscated proceeds of crime when certain prerequisites are met.

16. Asset recovery is a relatively new area for international cooperation. It was introduced through chapter V of the Convention against Corruption, which includes the provision that States parties should afford one another the widest measure of cooperation and assistance in the field. In the Convention, emphasis is placed on effective mechanisms to prevent the laundering of the proceeds of corrupt practices and on the recovery of assets diverted through corrupt practices, and includes specific provisions on the return and disposal of assets (article 57). Asset recovery is linked to other areas covered by the Convention. For example, the provisions on the prevention and detection of transfers of proceeds of crime (article 52) complement the measures to prevent money-laundering (article 14), while the provisions on international cooperation for purposes of confiscation (articles 54 and 55) tie in closely with the provisions on international cooperation (chapter IV), in particular with regard to mutual legal assistance (article 46). The complementarity between the provisions of the Convention on asset recovery and mutual legal assistance is of particular importance, as offenders frequently seek to hide their ill-gotten proceeds in more than one jurisdiction in order to thwart law enforcement efforts to locate, seize and ultimately confiscate them. Together, the provisions provide a unique and innovative framework for asset recovery, but much depends on their effective implementation by States parties.

(iii) Use of other forms of international cooperation in criminal matters

17. With the increase in international travel and migration, it has become progressively more common for countries around the world to convict and sentence foreign citizens to terms of imprisonment or other forms of deprivation of liberty. The transfer of sentenced persons to their country of origin so that they complete

their sentences there is based on humanitarian principles and is usually consent-based.

18. Member States have tended to enter into bilateral or multilateral agreements or arrangements on the transfer of prisoners. That approach is encouraged in article 17 of the Organized Crime Convention and article 45 of the Convention against Corruption. In practice, multilateral conventions also appear to be used extensively in the field, especially at the regional level.

19. A relatively new option in transnational criminal justice is for one State to transfer criminal proceedings to another State. That may be a practical alternative in cases where the latter State appears to be in a better position to conduct the proceedings or the defendant has closer ties to it, for example as a citizen or resident. It may also be used as an appropriate procedural tool to increase the efficiency and effectiveness of domestic prosecutions initiated and conducted in lieu of extradition.

20. At the normative level, the 1988 Convention, the Organized Crime Convention and the Convention against Corruption include specific provisions on the transfer of criminal proceedings, enabling States parties to resort to that form of international cooperation where it is in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved (see paragraphs 26-35 below), with a view to concentrating the prosecution.

21. Joint investigations have been used as a form of international cooperation for many years in cross-border crime, particularly in relation to organized crime. However, the practice appears to have developed on the basis of ad hoc arrangements. Practical experience has shown that such operations raise issues related to the legal standing and powers of officials operating in another jurisdiction, the admissibility of evidence in a State obtained by an official from another State, the giving of evidence in court by officials from another jurisdiction, and the sharing of information between States before and during an investigation.

22. Under article 19 of the Organized Crime Convention and article 49 of the Convention against Corruption, States parties are encouraged to conclude bilateral or multilateral agreements or arrangements on the establishment of joint investigative bodies in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States and, in the absence of such agreements or arrangements, to seek to conduct joint investigations on a case-by-case basis, provided that the sovereignty of the State party in which the joint investigation takes place is fully respected.

23. In investigations where evidence or intelligence originates from overseas, information could initially be sought through informal law enforcement channels, which may be faster, cheaper and more flexible than the more formal route of mutual legal assistance. The necessary arrangements for such informal contacts should, however, be subject to appropriate protocols and safeguards.

24. The aim of article 27 of the Organized Crime Convention and article 48 of the Convention against Corruption, as well as article 20 of the Organized Crime Convention and article 50 of the Convention against Corruption, to the extent that they relate to the use of special investigative techniques in the context of cooperation at the international level, is to promote close cooperation between law

enforcement authorities of States parties as an important tool for the successful investigation of transnational organized crime and corruption.

Questions for discussion

25. The Commission may wish to consider the following questions for further discussion:

(a) What are the main obstacles to more extensive use of the United Nations conventions as the legal basis for international cooperation in criminal matters? What can be done to promote such use, especially in the absence of bilateral or regional instruments?

(b) In the area of extradition, how can requirements, conditions and processes relating to issues such as double criminality, grounds for refusal, evidentiary thresholds and judicial review of extradition decisions be simplified and streamlined?

(c) What is the potential for regional models on the mutual recognition of arrest warrants (e.g. the European arrest warrant) to be adopted in other regions?

(d) How can obstacles linked to the non-extradition of nationals be overcome? How can the use of alternatives — application of the *aut dedere aut judicare* principle or conditional surrender and/or enforcement of a foreign sentence — be further promoted?

(e) In the area of mutual legal assistance, what good practices contribute to the expeditious cooperation for the full execution of requests? What national practices are followed with regard to the application of double criminality in mutual legal assistance involving coercive and non-coercive measures and action? Is spontaneous transmission of information before the submission of mutual legal assistance requests used extensively and, if so, what are the lessons learned from that practice? Is it common to extend assistance beyond cooperation in criminal matters to include assistance in investigations of and proceedings in civil and administrative matters relating to the offence in question? What are the rules and requirements in place regulating the execution of mutual legal assistance requests?

(f) How can networks of liaison magistrates, prosecutors and police officers posted abroad be extended to facilitate communication and promote law enforcement cooperation?

(g) What experiences, practical cases and good practices exist in setting up joint investigative teams to combat transnational crimes? What are the main legal impediments to the establishment of joint investigations? What administrative and operational challenges have been encountered in practice?

(h) What difficulties are encountered when using special investigative techniques in the context of cooperation at the international level, especially with regard to the production and admissibility of evidence?

(i) How can international cooperation be enhanced with regard to tracing, freezing and confiscating proceeds of crime in order to deprive criminals of their profits? What are the difficulties encountered in practice with regard to the return and disposal of assets derived from corruption offences? What are the specific legal, institutional, operational and communication barriers to effective asset recovery and

how can they be addressed? What can be defined as good practices in the areas of disposal of confiscated proceeds of crime and asset recovery? How can differences in approaches to confiscation (conviction-based and non-conviction-based) be overcome to facilitate speedy and effective international cooperation? How can confiscation orders be enforced against legal persons in jurisdictions where the criminal liability of legal persons is not recognized? How can legislation on combating money-laundering, such as that on beneficial owner identification, be used efficiently to facilitate the implementation of cooperation requests for purposes of confiscation?

B. How to manage international cooperation in multiple legal proceedings where the same individual is involved

Background

26. Multiple legal proceedings involving the same individual or individuals pose a series of challenges in the prosecution of organized crime, both in national and international contexts. At the national level, multiple proceedings may arise as a result of state and federal jurisdictions, or where criminal proceedings and civil claims derived from the same underlying conduct give rise to distinct causes of legal action. At the international level, however, the potential for multiple legal proceedings is greatly increased. A transnational offence committed in more than one State, or committed in one State but with substantial effects in another, can engage the criminal jurisdiction of multiple countries at the same time. Alternatively, individuals may be subject to investigation and prosecution for different crimes by different countries but at the same point in time. In addition, proceedings aimed at identifying, tracing or seizing proceedings or instrumentalities of crime may involve overlapping jurisdictions and investigations in respect of the same assets.

27. Effective coordination and handling of multiple legal proceedings are important for a number of reasons. Multiple criminal proceedings regarding the same individual may involve, for example, considerations such as the principle that no one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted (*non bis in idem*, or double jeopardy). The possibility that a suspect could be prosecuted in any one of a number of jurisdictions also brings up the consideration of ensuring that justice be brought as close as possible to identified victims of the crime.

28. The wide-ranging nature of the challenge is recognized in international instruments such as the Organized Crime Convention. In article 15, paragraph 5, of that Convention, for example, it is stated that if a State party learns that one or more other States parties is conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States parties should consult one another with a view to coordinating their actions. The Convention does not, however, provide specific guidance regarding the relationship between multiple legal proceedings in general. Neither does it clearly resolve concurrent exercise of jurisdiction by different countries. The same approach is followed in article 42, paragraph 5, of the Convention against Corruption.

29. The development of practice in handling multiple legal proceedings where the same individual is involved should therefore be undertaken at the regional, bilateral and national levels. With respect to extradition in particular, treaties and national laws often address the procedures to be followed when an extradition request is received for an individual in respect of whom national proceedings have been or could be commenced (for the same, similar or a different offence) and when multiple, or concurrent, extradition requests are received from different countries for the same individual.

30. Ongoing or completed criminal proceedings in the requested country in respect of the same or (in some cases) a similar offence is a common optional, or sometimes mandatory, ground for refusal of extradition in national extradition laws. The existence of such proceedings implies an overlap of jurisdiction between both the requesting and requested country regarding the offence, with the ground for refusal tending towards protection of the individual from double prosecution.[1] The Model Treaty on Extradition, for example, suggests that refusal of extradition should be mandatory where a final judgement in respect of the offence for which extradition is requested has been rendered in the requested State, but optional where prosecution for the offence is pending in the requested State or the authorities of that State have decided not to institute or to terminate proceedings. In the Model Law on Extradition produced by the United Nations Office on Drugs and Crime (UNODC) in 2004, an additional ground for refusal is suggested in section 8, namely if a final judgement has been rendered and enforced against the person sought in a third State.

31. When it comes to multiple legal proceedings involving the same individual but in respect of a different crime, many States consider postponement of surrender if proceedings for a crime other than that for which extradition is sought are pending in the requested State. Under that approach, a surrender warrant or final order of extradition may be issued but will not take effect until the person sought has been acquitted or until any sentence arising from national proceedings has expired. Other States regard national proceedings for a different offence as a ground for mandatory or optional refusal of extradition.

32. When a person is sought by more than one State for the same or different offences, multiple extradition requests may be received by a requested State. National extradition legislation typically sets out a range of factors to be taken into account in according priority to requests in such circumstances. They include the existence of treaty obligations, the place of commission of the offence, the chronological sequence in which the requests were received, the nationality of the person in question, the seriousness of the offences (where requests concern different offences), the possibility of subsequent extradition to a third State, prospects for the social rehabilitation of the individual, whether the request is for prosecution or enforcement of sentence, and national interest considerations. Bilateral extradition treaties may also contain factors that must be considered by the requested State in case of concurrent extradition requests from both the contracting State and any other State. Such factors are often similar to those found in national laws and usually do

[1] It should be noted that the *non bis in idem* rule does not have a clear universal interpretation. For some countries, it applies only to punishment following conviction in that State for exactly the same offence. For others, it may enable the protection of a person convicted or acquitted in any jurisdiction from prosecution for an offence based on the same set of facts.

not require the contracting State to accord priority to requests under the particular treaty. From a practical perspective, States may also take into account the location, attendance and protection of witnesses, the possibility for victims to participate in or follow the proceedings, and the expected length of proceedings.

33. Harmonization of relevant factors to be taken into account has commenced, to some extent, at the regional level. Article 46 of the Riyadh Arab Agreement on Judicial Cooperation, for instance, sets out an order of priority where more than one contracting party submits an extradition request in respect of the same individual. Under article 15 of the Inter-American Convention on Extradition, preference is given to the State in which the offence was committed. Article 16 of Council of the European Union framework decision 2002/584/JHA as amended by 2009/299/JHA, on the European arrest warrant and the surrender procedures between Member States, contains factors to be taken into account both when two or more member States have issued European arrest warrants for the same person and when a conflict arises between a European arrest warrant and a request for extradition presented by a third country.

34. While the challenge of multiple legal proceedings is often associated primarily with extradition, States may increasingly become aware of multiple proceedings through requests for mutual legal assistance regarding the same individual or set of facts or events. Where multiple criminal investigations take place without the full knowledge of all States involved, there is a risk that investigations may become compromised or that, owing to the double jeopardy principle, commencement of prosecution in one State will prevent prosecution in another State where stronger evidence may have been gathered. In that respect, the obligation for States parties to consult in the case of multiple proceedings is specifically addressed in some regional instruments. For example, under article 5 of Council of the European Union framework decision 2009/948/JHA, on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, member States are obliged to contact the competent authorities of other member States in which it has “reasonable grounds” to believe that parallel proceedings are being conducted.

35. At the international level, both the Convention against Corruption and the Organized Crime Convention offer practical tools for coordinating multiple legal proceedings. In relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, competent authorities may establish joint investigative bodies, either through bilateral or multilateral agreements, or on a case-by-case basis. In addition, and as mentioned above, where initial investigations in one State reveal that the interests of justice are best served by prosecution in another State, States parties should consider the possibility of transferring proceedings with a view to concentrating the prosecution. In practice, that may involve the transfer of evidence or case files from one investigating jurisdiction to another, on the understanding that the receiving jurisdiction will take action on such information.

Questions for discussion

36. The Commission may wish to consider the following questions for further discussion:

(a) What experience have countries had in promulgating national laws and establishing national practices on handling extradition and providing mutual legal assistance when multiple legal proceedings become evident?

(b) What are successful strategies for ensuring that prosecutions occur in the most appropriate jurisdiction? How is the double jeopardy, or *non bis in idem*, principle applied? Is it generally given a narrow or a broad interpretation?

(c) What has been the impact of developments such as the increasing use of digital evidence in investigations that may engage many jurisdictions? Is it expected that the phenomenon of multiple legal proceedings will increase in the future?

(d) What experience have countries had in the coordination of multiple criminal investigations through joint investigation teams? What difficulties have been encountered and what good practices can be identified?

(e) Are existing legal approaches and models at the international, regional, bilateral and national levels sufficient to assist States in coordinating international cooperation in respect of the same individual and crimes? Could legal approaches be strengthened in any respect?

(f) What additional actions could competent authorities undertake in practice in the management of multiple legal proceedings in respect of the same individual? What capacity-building needs might competent authorities have in that respect?

C. Implementing international instruments containing provisions on international cooperation in criminal matters

Background

37. The plethora of bilateral and multilateral instruments, and thus the availability of multiple provisions on international cooperation, is not a panacea for overcoming the problems and difficulties encountered in daily practice. International instruments may provide a sufficient legal basis for cooperation, given that they, as well as existing regional and bilateral treaties or agreements, lay down a fairly detailed and well-articulated framework for such cooperation. However, the existence of international cooperation instruments does not, as such, provide assurances and guarantees that such cooperation will be provided. Most of the difficulties encountered in the field of international cooperation appear to be of an operational nature and mostly relate to the adequacy, or lack thereof, of the practical measures in place to effectively implement the existing legal instruments. A sufficient number of well-trained personnel who are able to use the legal tools in an appropriate manner, have access to information and contacts and have the necessary trust and confidence in the operation of the law enforcement and criminal justice system of the cooperating State are also needed.

38. The Conference of the Parties to the United Nations Convention against Transnational Organized Crime and the Conference of the States Parties to the United Nations Convention against Corruption have established specific mechanisms with regard to the effective implementation of the conventions, particularly their provisions on international cooperation. In that regard, the Working Group on International Cooperation was established by the Conference of the Parties to the Convention in its decision 2/2 to hold substantive discussions on practical issues pertaining to extradition, mutual legal assistance and international cooperation for the purpose of confiscation. Similarly, experts to enhance international cooperation under the Convention against Corruption are convened pursuant to resolution 4/2 of the Conference of the States Parties to the Convention to, inter alia, assist the Conference in encouraging cooperation among relevant existing bilateral, regional and multilateral initiatives, contribute to the implementation of the related provisions of the Convention and facilitate the exchange of experiences among States by identifying challenges and disseminating information on good practices to be followed in order to strengthen capacities at the national level.

39. Moreover, pursuant to its resolution 1/4, the Conference of the States Parties to the Convention established the Open-Ended Intergovernmental Working Group on Asset Recovery to, inter alia, assist it in developing cumulative knowledge in the area of asset recovery.

40. With a view to further promoting the implementation of chapter V of the Convention against Corruption, the Stolen Asset Recovery (StAR) Initiative was launched jointly by UNODC and the World Bank in 2007. The initiative focuses on lowering the barriers to asset recovery, building national capacity for asset recovery and providing preparatory assistance in the recovery of assets.

41. Within the context of the Mechanism for the Review of Implementation of the Convention against Corruption, the provisions on international cooperation contained in chapter IV of the Convention are currently under review. A growing body of knowledge has emerged as a result of the completed reviews. A cross-cutting problem regarding the implementation of chapter IV in many of the reviews was the lack — or limited availability — of adequate statistical data relating to grounds for refusal or to the length of extradition and mutual legal assistance proceedings. In many countries under review there was no consistency in the methodology used and the type of data collected and no central mechanisms existed through which such data could be accessed. As emphasized in several reviews, concrete information on implementation practice is important for assessing the effectiveness of international cooperation mechanisms.

Questions for discussion

42. The Commission may wish to:

(a) Refer to the questions for discussion on various aspects of international cooperation, as contained in the relevant sections of the present guide;

(b) Consider good practices in the collection and systematic use of statistical data on different modalities of international cooperation.

D. Learning from experiences at the regional level

Background

43. While extradition and mutual legal assistance have their roots in diplomatic bilateral relationships between territories, the emergence of international organizations has facilitated cooperation arrangements at the global and regional levels. As criminal jurisdiction over national territory is strongly linked to State sovereignty, such arrangements involve varying extents of State obligation, depending on the commitments that groups of countries are prepared to undertake. At the regional level, in particular, those commitments form a continuum, in terms of both the legal or other nature of the regional arrangement, and the operational activities conducted under the arrangement.

44. From the legal and institutional perspective, regional cooperation arrangements may involve treaties between countries[2] or may rely on political or working-level memorandums or declarations. Such instruments are often promulgated within the context of regional organizations or existing specialized regional structures, such as councils of ministers of justice or attorneys general. Where regional cooperation treaties exist, they can take the form of regional extradition or mutual legal assistance treaties. Some regions also have broader treaties on cooperation in criminal matters in general.

45. Through regional extradition and mutual legal assistance treaties, States parties agree to a common regional understanding of an extraditable offence or forms of judicial assistance that can be requested. Treaties also often include common procedures for submitting requests, as well as mandatory or optional grounds for refusal. Such treaties can facilitate timely consideration and outcomes of requests, not only by creating legal obligations but also through the creation of common standards for supporting documentation, costs and disposal of assets. Some regional extradition and mutual assistance treaties may include coordination mechanisms through a regional secretariat. Under the Southern African Development Community Protocol on Mutual Legal Assistance in Criminal Matters, for example, States parties are required to designate a central authority that is communicated to the member States through the secretariat of the organization.

46. Some regional legal frameworks go beyond arrangements for mutual assistance through the principle of mutual recognition. In regions with close economic integration and cross-border areas of free movement of goods and persons in particular, mutual recognition of national criminal warrants and judgements can

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[2] Regional extradition and mutual assistance treaties include the Association of Southeast Asian Nations Treaty on Mutual Legal Assistance in Criminal Matters; the Commonwealth of Independent States Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters; the European Convention on Extradition; the Economic Community of West African States Convention on Extradition and Convention on Mutual Assistance in Criminal Matters; the Riyadh Arab Agreement on Judicial Cooperation; the Inter-American Convention on Extradition and Convention on Mutual Assistance in Criminal Matters; and the Southern African Development Community Protocol on Extradition and Protocol on Mutual Legal Assistance in Criminal Matters. Other international organizations that do not have cooperation treaty arrangements may make use of model legislation and schemes that can be implemented at the national level, such as the Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth and the London Scheme for Extradition within the Commonwealth.

be a key tool. In the European Union, for example, member States agree, subject to specified grounds for refusal, to recognize and execute European evidence and arrest warrants without any further formalities. Similarly, under a Caribbean Community (CARICOM) arrest warrant treaty, States parties are required to make provision in national law for the arrest and detention of any requested person pursuant to a CARICOM arrest warrant issued by another State party. A review of the European arrest warrant system showed that, between 2005 and 2009, around 21 per cent of the European arrest warrants issued were executed, with an average surrender time of 14-17 days when requested persons consented to their surrender, and about 48 days when persons did not consent.[3]

47. At the operational level, regional cooperation arrangements may include the designation of international cooperation focal points, communication of national requirements and procedures for cooperation, creation of secure communication channels or platforms, mechanisms for case handling and sharing of experience between authorities of participating States. Such activities may focus on the facilitation of formal judicial cooperation and informal law enforcement cooperation and intelligence-sharing. Those activities are not necessarily dependent upon a treaty basis and may exist alongside or in the absence of regional cooperation treaties.

48. Arrangements such as Eurojust and the European Judicial Network, for example, are established by decisions of the Council of the European Union, which are made in the context of a regional system of mutual recognition in criminal matters, as well as the European Convention on Extradition, promulgated under the auspices of the Council of Europe. Other arrangements, such as the Ibero-American Network for International Legal Cooperation (IberRed), are established by decision of a conference of ministers of justice. There is no extradition or mutual assistance treaty among all Ibero-American countries. There is, however, the Ibero-American Convention on the Use of Videoconferencing in International Cooperation between Justice Systems. Most Ibero-American countries are also party to Organization of American States conventions on extradition and mutual legal assistance.

49. Some regional cooperation arrangements establish organizations or secretariats to assist with or coordinate investigations and prosecutions that concern more than one country. Eurojust is mandated to assist competent authorities in ensuring coordination of investigations and prosecutions, and may supply logistical support such as assistance in translation and organization of coordination meetings. Whether a central secretariat exists or not, many regional cooperation arrangements establish networks of national focal or contact points for the purposes of facilitating communication. For formal judicial cooperation, they are usually central authorities. In some networks, such as the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition and IberRed, contact points have access to a secure communications system that can be used to facilitate the exchange of information and real-time communication.

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[3] European Commission, “Report from the Commission to the European Parliament and the Council on the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States”, document COM (2011) 175 final.

50. Regional cooperation networks can play an important role in supporting countries to consider transnational or regional dimensions to criminal investigations. For example, the Central American Network of Prosecutors against Organized Crime (REFCO), supported by UNODC, facilitates the exchange of information on organized crime cases between member countries, including in the areas of information-sharing, obtaining evidence and identifying, freezing and confiscating criminal assets. In order to move beyond a reactive case-driven approach, the Network supports countries in adopting proactive information-sharing on organized crime trends and challenges in the region. The Network also provides a platform for regional training and capacity-building on issues such as racketeering, criminal gangs, extortion, money-laundering and special investigative techniques.

51. A similar arrangement exists among Economic Community of West African States (ECOWAS) countries, in the form of the Network of West African Central Authorities and Prosecutors against Organized Crime, established with the support of UNODC in close collaboration with ECOWAS and the ECOWAS Court of Justice. The Network is currently moving towards the establishment of an operational secretariat with the capacity to support regional cooperation in organized crime and corruption cases. UNODC has also supported the development of two regional judicial platforms, one in the Sahel region and the other in the Indian Ocean countries. The platforms consist of networks of national focal points who facilitate both extradition and mutual legal assistance in criminal matters, as well as identify technical assistance needs for strengthening judicial cooperation among the member States.

52. UNODC experience with supporting regional networks suggests that key features for success include the embedding of the network in an existing institutional structure, such as the Central American Council of Public Prosecutors in the case of REFCO. Clear founding documents, regulations and strategic plans are also critical to effective network operation. Where networks are based on links between central authorities, they may include contact point specialization for specific crimes such as terrorism or corruption, but should seek to address all forms of transnational crime. That approach can lead to the strengthening of central authorities as a single contact point for international judicial cooperation in criminal matters. In addition, while some forms of crime require a specific regional focus, transnational crime is increasingly demanding a global and interregional response. Once established, regional arrangements must therefore be progressively outward looking, including through the development of connections between different regional networks. That “networking of networks” approach may offer one route to enhanced global cooperation in criminal matters.

Questions for discussion

53. The Commission may wish to consider the following questions for further discussion:

(a) What experience have countries had in participating in regional arrangements for cooperation in criminal matters? What are the factors that contribute to the success of such arrangements? What challenges are faced?

(b) What role do regional extradition and mutual assistance treaties play? Are such treaties often relied upon as the legal basis for requests? Do any regions require the strengthening of such regional legal frameworks?

(c) How should the operational case-oriented activities of regional arrangements be structured? What are good practices with regard to the role, responsibility and procedures of a regional secretariat for international cooperation?

(d) To what extent can regional cooperation arrangements reflect the principle of mutual recognition of national criminal warrants and judgements? Is mutual recognition a future direction for enhanced cooperation at the regional level?

(e) How can regional cooperation arrangements best contribute to enhanced international cooperation in criminal matters at the global level? How can "networking of regional networks" be achieved?

E. International cooperation in combating new and emerging forms of crime

Background

54. Member States have recently considered international cooperation needs with respect to emerging crime types such as trafficking in cultural property. Chapter III of the Guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property and other related offences,[4] addresses international cooperation in cases of crimes against cultural property and related offences. Under the Guidelines, States should consider making crimes against cultural property extraditable offences. States should also consider adopting provisional measures, where applicable, in order to preserve the cultural property related to the alleged offence for the purpose of restitution.

55. The Guidelines also refer to the exchange of information on trafficking in cultural property among States by the interconnection of inventories of and databases on trafficked cultural property as a way to enhance international cooperation among law enforcement and investigating authorities. Under the Guidelines, States are also encouraged to conclude bilateral and multilateral agreements or arrangements in order to establish joint investigative teams for trafficking in cultural property and related offences, as well as to establish privileged channels of communication between law enforcement agencies.

56. The Working Group on International Cooperation and the Working Group of Government Experts on Technical Assistance of the Conference of the Parties to the Organized Crime Convention have further suggested a number of concrete measures that States could undertake, including the designation of contact points to facilitate international cooperation and the conclusion of bilateral agreements for preventing and combating trafficking in cultural property.[5]

57. Cybercrime is by no means the first new form of crime to demand a global response. It is nonetheless true that contemporary cybercrime, as well as crimes

[4] Contained in document UNODC/CCPCJ/EG.1/2014/3, annex I.

[5] See documents CTOC/COP/WG.3/2012/5 and CTOC/COP/WG.2/2012/4.

involving digital evidence, present unique challenges to international cooperation. Owing to the volatile nature of electronic evidence, international cooperation in cybercrime matters requires a timely response and the ability to request specialized investigative actions, including preservation and production of data by private sector providers. While a number of modes of informal law enforcement cooperation exist, including "24/7" networks, countries continue to rely heavily on traditional formal judicial means, in particular bilateral mutual legal assistance instruments, to obtain digital evidence.

58. Response times for such mutual legal assistance requests involving investigation of cybercrime are typically about 150 days. Such timescales may often fall outside of service provider data retention periods or may enable perpetrators to permanently destroy key digital evidence. Effective international cooperation in cases involving digital evidence therefore requires mechanisms for the expedited preservation of data pending consideration of further investigative measures. International cooperation in cases involving digital evidence may also be enhanced by common approaches for formulating requests for specific forms of evidence, including network evidence, connections logs and forensic images.

59. Moreover, the increasing use of digital information has opened new possibilities for offenders to access identity-related information. The transformation from industrialized countries to information societies has had a particularly large impact on the spread of identity-related crimes. Similarly to cybercrime, the volatility of data pertaining to identity abuses in the digital environment requires rapid responses and expedited means of communication and cooperation. The practical guide to international cooperation to combat identity-related crime, contained in the *Handbook on Identity-related Crime*,[6] provides an overview of aspects pertaining to the transnational dimension of identity-related crime and focuses on basic information and guidelines on how to best deal with international cooperation requests in that field, including through relevant case examples.

60. With regard to another category of new and emerging forms of crime, namely match-fixing and illegal and irregular betting, existing data demonstrate an increase in the number of cases over the last few years. That can partly be explained by the increase in the availability of online gambling, which has in turn significantly increased the number of people with a direct economic interest in sporting competitions, and partly by the fact that gambling on sport events over the Internet can permeate national boundaries, which also limits the risk of perpetrators being arrested.

61. While problems linked to betting are not new, it appears that illegal betting in sport has reached new levels of sophistication, with those involved being located in several countries and continents and new offshore betting companies being established. Such sophistication indicates the involvement of organized crime patterns and corrupt practices with transnational dimensions. *Criminalization Approaches to Combat Match-Fixing and Illegal/Irregular Betting: A Global Perspective*, published jointly by UNODC and the International Olympic Committee in 2013, contains an assessment of, among others, the applicability of existing multilateral conventions to the crimes, with a main focus on the Organized Crime Convention and the Convention against Corruption.

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[6] UNODC, 2011.

Questions for discussion

62. The Commission may wish to consider the following questions for further discussion:

(a) How can the timeliness of mutual legal assistance procedures be enhanced in cases involving cybercrime and digital evidence? Are there alternatives to the use of mutual legal assistance in cybercrime cases? What safeguards are required in the context of international cooperation against cybercrime?

(b) Building on the above question, what are the specific challenges encountered by practitioners when dealing with international cooperation requests to combat identity-related crime?

(c) Do the divergent national approaches to the criminalization of match-fixing have an impact on the scope of international cooperation that could be provided in related cases in view of the double criminality requirement?

F. Provision of technical assistance

Background

63. Effective international cooperation in criminal matters is dependent upon both legal and institutional frameworks at the national, regional and international levels, as well as upon the practical capacity of national institutions. Technical assistance activities may focus on both of those areas, with a view to strengthening international cooperation in general.

64. In the legal sphere, technical assistance activities can support the drafting and promulgation of national laws on extradition and mutual legal assistance based on legal tools and international good practice. The UNODC model laws on extradition and mutual assistance in criminal matters represent important tools in that respect, having been used extensively as a resource for the development of national legislation, most recently in countries in South and South-East Asia. The model laws include a range of options in areas such as definitions, the grounds for refusal of a request and documentary requirements for requests. At the treaty level, the Model Treaty on Extradition[7] and the Model Treaty on Mutual Assistance in Criminal Matters[8] also represent key technical assistance tools for States seeking to conclude bilateral agreements to enhance the effectiveness of extradition or mutual legal assistance. With a view to reflecting recent developments in the field of international cooperation in criminal matters, in the discussion guide for the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, it is suggested that the Congress may wish to revisit those model treaties, for the purpose of updating and consolidating them.[9]

65. UNODC has also been active in the development of tools for facilitating practical aspects of international cooperation. The online directories of competent national authorities under the 1988 Convention, the Organized Crime Convention and the Convention against Corruption enable simple access to the contact

[7] General Assembly resolution 45/116, annex, and resolution 52/88, annex.
[8] General Assembly resolution 45/117, annex, and resolution 53/112, annex I.
[9] A/CONF.222/PM.1, paragraph 36 (g).

information for authorities designated to receive, respond to and process requests under the provisions of those Conventions.

66. In the institutional development sphere, technical assistance programmes may focus on the establishment of effective central authorities and the building of their capacity. That may include support to the creation and delineation of the work of units responsible for preparing requests, centralizing all information about incoming and outgoing requests and monitoring their implementation. It might also involve the development of standard operating procedures and memorandums of understanding between the central authority and other relevant national authorities and institutions, or the development of guidelines for the preparation of requests. In that connection, UNODC is currently reviewing the platform and functionality of the Mutual Legal Assistance Request Writer Tool in order to make it more widely accessible and relevant to modern assistance requests. UNODC has also been delivering training programmes to the staff of central authorities, combining presentations aimed at raising national experts' awareness of the international and regional frameworks for cooperation and promoting good practices in extradition and mutual legal assistance proceedings, together with case studies.

67. Within the context of the Mechanism for the Review of Implementation of the Convention against Corruption, the findings on the implementation of chapter IV of the Convention provide a solid body of knowledge about technical assistance needs that should be addressed in order to enhance the capacity of States parties to better use international cooperation mechanisms, in line with the requirements of the Convention.

Questions for discussion

68. The Commission may wish to consider the following questions for further discussion:

(a) What kind of technical assistance activities are considered effective in strengthening the capacities of central and other competent authorities?

(b) What are the needs at the national level in terms of staffing, training, equipment, technology and telecommunications facilities?

G. Addressing the gaps — the way forward

69. Increased efforts have been made in recent years to expand and deepen international cooperation as a response to transnational crime through the conclusion of multilateral instruments. The pace of development quickened during the 1990s and the beginning of the new millennium. The 1988 Convention, the Organized Crime Convention and the Convention against Corruption are clear signs that multilateral instruments are assuming increasing importance. Those multilateral instruments call upon States parties to seek to conclude bilateral and multilateral agreements or arrangements to enhance the effectiveness of extradition and mutual legal assistance mechanisms and to promote cooperation between law enforcement agencies.

70. In considering further action to address challenges faced and the way forward towards the promotion of international cooperation in criminal matters, the

Commission may wish to focus its attention on ways and means to avoid piecemeal and fragmented solutions and ensure the proper administration of justice. In doing so, the Commission may also wish to assess the advantages and practical consequences of a holistic and flexible approach that renders the different modalities of international cooperation complementary to each other.