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Agenda item 4

**International cooperation, including at the regional level,
to combat transnational organized crime**

Draft report

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Addendum

**International cooperation, including at the regional level, to
combat transnational organized crime**

Proceedings

1. At its 9th and 10th plenary meetings, on 16 April 2015, the Congress considered agenda item 4, entitled “International cooperation, including at the regional level, to combat transnational organized crime”. For its consideration of the item, the Congress had before it the following documents:

(a) Working paper prepared by the Secretariat on international cooperation, including at the regional level, to combat transnational organized crime (A/CONF.222/7);

(b) Discussion guide for the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice (A/CONF.222/PM.1).

2. The 9th plenary meeting was chaired by the President of the Congress, Sheikh Abdullah bin Nasser bin Khalifa Al-Thani, and by the Vice-President of the Congress, Sadiq Marafi (Kuwait). A representative of the Secretariat introduced the agenda item, and a summary was presented to the plenary by the moderator of workshop 2, on “Trafficking in persons and smuggling of migrants: successes and challenges in criminalization, in mutual legal assistance and in effective protection of witnesses and trafficking victims”. Statements were made by the representatives of Germany, Japan, Thailand, Norway, Canada, Australia, Algeria, the Sudan, Iraq, Viet Nam, Romania, Venezuela (Bolivarian Republic of), Azerbaijan, China, Indonesia, Tunisia and Egypt.

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3. The 10th plenary meeting was chaired by the Vice-President of the Congress. Statements were made by the representatives of Argentina, India, Morocco, Kuwait, Oman, Spain, Peru, the United States, Cuba, Switzerland, Pakistan, France and Iran (Islamic Republic of). Statements were also made by the observers for the League of Arab States and the Ibero-American Legal Assistance Network, in conjunction with the Conference of Ministers of Justice of Ibero-American Countries.

General discussion

4. Speakers stressed the importance of the United Nations conventions on crime prevention and criminal justice in providing a solid legal framework for international cooperation in criminal matters, and invited all Member States that had not yet done so to become parties to those instruments. Many speakers underlined the need for enhanced efforts to ensure the implementation of those conventions. In that regard, speakers referred to their domestic legislative measures, as well as legal and institutional reforms aimed at ensuring compliance with the international cooperation standards enshrined in the United Nations conventions on crime prevention and criminal justice. In that regard, reference was made, inter alia, to not only the enactment of domestic legislation on international cooperation, but also to legislation pertaining to specific forms of crime, such as trafficking in persons, corruption, cybercrime and other crimes that exploited modern technologies, including organized crime and terrorism.

5. A number of speakers favoured the adoption of harmonized criminalization standards to overcome problems posed by the rigid application of the dual criminality requirement in international cooperation. They supported the provision of assistance in the absence of dual criminality when such assistance involved non-coercive measures.

6. Many speakers proposed a more flexible approach which would allow the use of a broader range of legal bases for international cooperation, including domestic legislation, the principle of reciprocity and case-by-case arrangements. In addition, they referred to the conclusion and implementation of bilateral and regional treaties, agreements and arrangements covering different modalities of international cooperation in criminal matters, such as extradition, mutual legal assistance, law enforcement cooperation, joint investigations and asset recovery.

7. Many speakers expressed support for the international cooperation framework under the United Nations conventions on crime prevention and criminal justice and said that they were in favour of the further use of those conventions as a legal basis for such cooperation, including for combating new and emerging forms of crime, such as cybercrime and trafficking in cultural property or wildlife. Reporting that the Organized Crime Convention had been used approximately 250 times as a legal basis in extradition and mutual legal assistance cases involving his country, one speaker argued in support of the great potential that the wide scope of application of that Convention could have in addressing a broader range of crimes, taking into account the definition of "serious crime" contained in its article 2, paragraph (b). One speaker urged caution regarding the use of the Convention to promote international cooperation in the fight against new and emerging forms of crime.

8. Moreover, the significance of the conclusion of bilateral and/or regional agreements or arrangements to give practical effect to the international cooperation

provisions of the Organized Crime Convention and the Convention against Corruption was widely acknowledged. One speaker expressed caution in that regard.

9. In terms of implementation, many speakers referred to the pivotal role of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, which was examining within its first review cycle the implementation of, *inter alia*, chapter IV of the Convention, on international cooperation. Several speakers referred to other regional monitoring mechanisms of anti-corruption instruments. Many speakers emphasized the importance of putting in place a mechanism for the review of implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto. One speaker underlined the importance of the Working Group on International Cooperation, which had been established within the framework of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, and noted that the frequency of meetings of that Working Group was to be further considered.

10. Several speakers reported on challenges encountered in practice which hampered the timely execution of requests for international cooperation, including a lack of effective coordination between competent authorities, bank secrecy regulations, limited capacity of judicial officers and law enforcement authorities, a lack of or limited experience of practitioners in making use of existing international cooperation mechanisms, existing differences between legal systems, language barriers and a lack of financial and human resources.

11. In the context of proposals to overcome such challenges, the need for practical and flexible approaches to ensure more efficient responses to international cooperation requests was emphasized. Many speakers stipulated that practices such as the spontaneous transmission of information prior to the submission of formal requests for mutual legal assistance, as well as the use of direct channels of communication not only for police-to-police cooperation, but also for cooperation among prosecutors, practitioners and central authorities, would facilitate faster responses to requests for international cooperation. One speaker referred to the need to prioritize requests and, where appropriate, defer or refuse requests that were of a *de minimis* nature or that related to less serious crimes. Such methods could alleviate the burden of heavy casework in the practice of mutual legal assistance. It was widely acknowledged that the growing use of information and communication technologies by criminals had increased the need to expedite international cooperation responses, including through videoconferencing.

12. Some speakers identified asset recovery as not only one of the most important, but also one of the most challenging, areas of international cooperation. The need to overcome legal, operational and other barriers to asset recovery through mutual trust and a spirit of cooperation was underlined. One speaker emphasized the need to respect the principle of the rule of law, due process and fundamental human rights in international cooperation proceedings, including in asset recovery cases.

13. Several speakers stressed the importance of the provision of technical assistance to developing countries to bolster and strengthen their national legal frameworks on international cooperation in criminal matters and enhance the capacity of their practitioners, prosecutors, judges and law enforcement officers to deal effectively with the challenges posed by the transnational nature of crime and,

in particular, the growing links that might exist between transnational organized crime and terrorism.

14. A number of speakers expressed support for the work of UNODC in providing technical assistance to Member States, including legislative assistance, training and capacity-building programmes for central authorities, to effectively implement the international cooperation provisions of the United Nations conventions on crime prevention and criminal justice. In doing so, they made specific reference to the tools developed by UNODC to facilitate the accumulation of knowledge and the exchange of information on national legislation and case law relating to international cooperation in criminal matters: the directory of competent national authorities, the Sharing Electronic Resources and Laws against Organized Crime (SHERLOC) portal, the mutual legal assistance request writer tool, legislative guides and manuals. Several speakers underlined the need to keep the information contained in those tools updated and called on Member States to support UNODC in that endeavour.

15. Speakers highlighted the importance of establishing and/or further strengthening the institutional and operational capacity of central and other competent national authorities involved in international cooperation in criminal matters. Several speakers underscored in that regard the added value of inter-agency mechanisms at the domestic level entrusted with working and coordinating with central authorities with a view to providing timely responses to their foreign counterparts.

16. As an effective means of increasing the operational efficiency and effectiveness of international cooperation, many speakers stressed the importance of regional networks for assistance in the coordination and execution of relevant requests, as well as for overcoming the diversity of legal standards used in transnational investigations. Reference was made to a number of those regional networks, as well as mechanisms or coordination schemes, such as Eurojust, the European Judicial Network and the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime. In addition, the Congress was briefed on the work of the Ibero-American Legal Assistance Network, in conjunction with the Conference of Ministers of Justice of Ibero-American Countries. The need to ensure the interconnection, as well as linking up, of those regional networks, including through the reinforcement of existing memorandums of understanding between them and institutional support by UNODC, was stressed. Some speakers referred to tools such as guidelines on mutual legal assistance or extradition used at the regional level. Another speaker emphasized the work of the Camden Asset Recovery Inter-Agency Network as an informal network of contacts and a cooperative group dealing with coordination for purposes of confiscation of proceeds of crime or property and asset recovery.

17. One speaker referred to the effects on international cooperation of sanctions and unilateral action against his country. He proposed that such effects of sanctions on international cooperation be further studied and appropriately addressed by the Commission on Crime Prevention and Criminal Justice.