



# Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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## Report on the meeting of the Working Group on International Cooperation held in Vienna on 20 and 21 October 2010

### I. Introduction

1. In its decision 2/2, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime decided to establish at its third session an open-ended working group to hold substantive discussions on practical issues pertaining to extradition, mutual legal assistance and international cooperation for the purpose of confiscation. In its decision 3/2, the Conference decided that the working group on international cooperation would be a constant element of the Conference.

2. The Working Group on International Cooperation held a meeting in Vienna on 20 and 21 October 2010 during the fifth session of the Conference. The Working Group was chaired by Thomas Burrows (United States of America). Representatives of regional networks were invited to attend the meeting. The participants engaged in substantive discussions on the issues of extradition, mutual legal assistance and international cooperation for purposes of confiscation. The Chair of the Working Group presented to the Conference at its fifth session a summary of the outcome of the meeting and the recommendations of the Working Group aimed at strengthening international cooperation.

### II. Recommendations

3. The following recommendations were formulated by the Working Group:

(a) States welcomed the increase in the use of the United Nations Convention against Transnational Organized Crime as a legal basis for extradition, mutual legal assistance and confiscation, while noting that parties to the Convention had not yet taken full advantage of the potential of the Convention;

(b) States should, where appropriate, accept the use of the Convention as a legal basis for extradition, mutual legal assistance and international cooperation for



purposes of confiscation and undertake efforts to familiarize their authorities with its use;

(c) States and the United Nations Office on Drugs and Crime (UNODC) should promote and facilitate the establishment of regional cooperation networks of central and other competent authorities in regions where no such networks existed;

(d) States and UNODC should promote the strengthening of central authorities;

(e) UNODC should continue working with regional networks and platforms to develop practical tools for facilitating international cooperation;

(f) UNODC should further expand the information on its website on international cooperation networks so that it contained information on all networks, together with their points of contact, links to the websites maintained by those networks and the identification of members of regional networks in the directory of competent national authorities;

(g) UNODC should consider reflecting the importance of effective international cooperation in all regional programmes developed by it, including by providing for the training, on a regular basis, of central authorities, prosecutors and law enforcement authorities in the provisions in the Convention relating to international cooperation;

(h) UNODC should continue providing training and advice, upon request, to support States in their efforts to make more effective use of the provisions in the Convention relating to international cooperation, including on the use of the Mutual Legal Assistance Request Writer Tool developed by UNODC;

(i) UNODC should develop a guide for practitioners on the use of videoconferencing testimony, taking into account the main points made during the meeting of the expert group on technical and legal obstacles to the use of videoconferencing, held in Vienna on 14 and 15 October 2010, and reflecting both the advantages and the challenges of videoconferencing;

(j) States should make use of the Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property (Economic and Social Council resolution 2005/14, annex);

(k) States should make every effort to establish direct contact between central authorities in different States and consult with each other throughout the preparation and execution of requests for international cooperation;

(l) States should inform the Secretary-General whether they will accept the Convention as a legal basis for extradition in accordance with article 16, paragraph 5 (a), of the Convention;

(m) States should consider providing for simplified extradition procedures, as well as simplified extradition in cases where the individual sought has consented to extradition;

(n) States should consider the use of procedures for simplified extradition at the regional level.

### III. Summary of the deliberations

4. For its consideration, the Working Group had before it the following:

(a) Report of the Secretariat on activities of the United Nations Office on Drugs and Crime to promote the implementation of the provisions on international cooperation in the United Nations Convention against Transnational Organized Crime (CTOC/COP/2010/2);

(b) Working paper prepared by the Secretariat on technical assistance programmes, proposals and future programmes envisaged in the priority areas determined by the Conference and the Working Group of Government Experts on Technical Assistance (CTOC/COP/2010/4);

(c) Conference room paper prepared by the Secretariat on the technical and legal obstacles to the use of videoconferencing (CTOC/COP/2010/CRP.2);

(d) Catalogue of examples 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 Corr.1);

(e) Conference room paper prepared by the Secretariat summarizing the main points made during the meeting of the expert group on the technical and legal obstacles to the use of videoconferencing (CTOC/COP/2010/CRP.8).

5. A representative of the Secretariat made a presentation on the ongoing international cooperation activities undertaken by UNODC, including workshops, publications and online legal tools, such as the Mutual Legal Assistance Request Writer Tool, the online legal library and the online directory of competent national authorities.

#### A. Extradition

6. The Working Group reviewed in detail article 16 of the Convention, relating to extradition, and discussed current practices and experiences with regard to the application of the article. There was a lengthy discussion on the experiences of States in the use of the Convention as legal basis for extradition. Speakers stressed the difficulties encountered in cases where a requested State party required a treaty but did not have a bilateral agreement with the requesting State party and did not recognize the Organized Crime Convention as legal basis for extradition.

7. Recalling the notification obligation under article 16, paragraph 5 (a), of the Convention, the Working Group reminded States parties in which extradition was conditional upon the existence of a treaty, to notify the Secretary-General whether they would recognize the Convention as the legal basis for extradition. In addition, the Working Group considered it useful for States parties not requiring a treaty as a legal basis for extradition to also inform the Secretary-General.

8. The Working Group discussed the issue of the non-extradition of nationals. It was noted that a State not extraditing its nationals adhered to the principle of *aut dedere aut judicare* and thus pursued the prosecution of those persons in accordance with its domestic law. Speakers stated that a considerable amount of cooperation

between the requesting State and the requested State would be necessary to prepare a case for trial in the requested State. Examples were given of cooperation in the prosecution of nationals in different States. Speakers stressed the importance of States pursuing prosecution in cases involving nationals of other States with the same vigour as in domestic cases in order to prevent the creation of safe havens.

9. Some speakers encouraged competent national authorities to communicate with one another by e-mail, fax and telephone in order to facilitate and expedite the extradition proceedings.

10. Reference was made to the European arrest warrant and the proposed arrest warrant of the Common Market of the South (MERCOSUR) as a means of expediting and simplifying extradition proceedings among participating countries.

## **B. Mutual legal assistance**

11. The Working Group reviewed in detail the implementation of article 18 of the Convention, on mutual legal assistance, and discussed current practices and experiences with regard to its application. In particular, the Working Group discussed the broad scope of application of article 18, which allowed States to provide one another the widest mutual legal assistance possible in relation to the offences covered by the Convention.

12. Some speakers noted the number of cases involving mutual legal assistance that had been handled using the Convention as a basis. Many speakers reported that the convention had been used in their States, alone or in combination with regional and bilateral agreements, as a basis for requesting mutual legal assistance.

13. Many speakers stressed the importance of training courses, seminars and workshops using the Convention as a basis for requesting mutual legal assistance.

14. Speakers highlighted the usefulness of tools such as the UNODC Mutual Legal Assistance Request Writer Tool in the preparation of requests for mutual legal assistance. It was noted that the Request Writer Tool was available in 10 languages. It was suggested that it would be useful to develop a Chinese version of the Request Writer Tool.

15. The Working Group highlighted the role of regional networks in coordinating and facilitating mutual legal assistance and other forms of international cooperation. Representatives of two regional networks, the Justice Platform of the Indian Ocean Commission and the Ibero-American Legal Assistance Network (IberRed) provided information on the operation of their networks.

16. The representative of IberRed outlined how e-mail contact could replace rogatory letters and accelerate mutual legal assistance proceedings. She stated that IberRed allocated funds for the training of judicial officials and that every year 30 prosecutors were trained through virtual courses on the use of the Convention and the online directory of competent national authorities.

17. It was suggested that regional cooperation networks be invited to attend the sixth session of the Conference and the meeting of the Working Group to be held during that session. Speakers also suggested that regional and interregional networks be further developed through training.

18. A number of speakers stressed the importance of face-to-face contact between competent national authorities in developing trust among such authorities. Meetings of competent national authorities created trust and greatly facilitated the provision of mutual legal assistance. Some speakers encouraged informal contact such as e-mail correspondence to simplify the mutual legal assistance proceedings.

19. The long time frame for fulfilling requests and the absence of agreement on assistance between States were identified as problems affecting international cooperation.

20. Speakers noted that the lack of sufficient information in requests for mutual legal assistance could also contribute to delaying the execution of the requests; thus, it was important to prepare detailed requests. It was suggested that States adopt a common terminology in preparing requests for mutual legal assistance in order to facilitate the handling of those requests. Speakers also emphasized that it was important to use e-mail messages to obtain feedback from counterparts before formally submitting a request for mutual legal assistance.

21. Some speakers identified the application of the condition of dual criminality as an obstacle to mutual legal assistance, even though it was not required according to article 18, paragraph 9, of the Convention.

22. Speakers provided examples of key requirements that requesting States should address in preparing requests for mutual legal assistance, such as the legal basis for the request, the translation of the materials into the national language of the requested State and the provision of sufficient details relating to personal information to facilitate the identification of individuals. The importance of establishing a good working relationship with the central authority in the requested State was emphasized. It was stated that a request for a national of the requested State to appear in court in the requesting State should be made at least six months prior to the date set for the hearing. With regard to the freezing of assets, it was stated that the requesting State should ensure that legal documents were given to the institutions responsible for freezing the assets.

### **C. Videoconferencing**

23. At its meeting held during the fourth session of the Conference, in 2008, the Working Group had recommended that the use of videoconferencing and the giving of evidence by video link be discussed at its meeting to be held in 2010. It was noted that article 18, paragraph 18, of the Convention provided for the use of videoconferencing in the hearing of witnesses and experts.

24. A representative of the Secretariat made a presentation on the use of videoconferencing to facilitate the provision of mutual legal assistance and gave an overview of the outcome of the meeting of the expert group on technical and legal obstacles to the use of videoconferencing held in Vienna on 14 and 15 October 2010.

25. Speakers recognized that the use of videoconferencing for the hearing of witnesses could save a considerable amount of time and money. It could also serve as a useful alternative to the transfer of witnesses, as witnesses in prisons or police stations could testify by video link.

26. The Working Group acknowledged that, for lack of technical facilities or for legal reasons, several States parties had not yet considered that type of cooperation. Some speakers raised the issue of the reliability of testimonies obtained by the use of videoconferencing.

27. The importance of using videoconference technology to ensure the protection of witnesses' and victims' rights was underlined.

28. The Working Group recommended that UNODC should develop a guide on the use of videoconferencing to obtain testimony.

#### **D. International cooperation for purposes of confiscation**

29. The Working Group discussed the implementation of article 13 of the Convention, relating to international cooperation for purposes of confiscation. During the discussion, speakers mainly described their national legislation relating to such cooperation.

30. The Chair pointed out the difficulties encountered in tracing assets of shell companies. He raised a second issue, relating to non-conviction-based seizure and confiscation. He underlined the potential advantages of such a procedure in cases in which the convicted person had fled or died or in which there was insufficient evidence to establish proof beyond a reasonable doubt. The Chair referred to the Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property (Economic and Social Council resolution 2005/14, annex).

31. Speakers pointed out that national laws and international treaties usually dealt with only seizure and confiscation of the proceeds of crime. They emphasized that the possibility of seizing all assets — not only those proved to be purchased using proceeds of crime — was also important. Those other assets could be sold and used as compensation for victims.

32. The Working Group discussed the restitution of confiscated proceeds of crime. Some speakers reported that their national laws did not provide sufficient mechanisms for restoring money or property to victims of crime. States were encouraged to adopt legislation on the return of assets to victims, as required in article 14, paragraph 2, of the Convention. The idea of selling assets to raise funds for the compensation of victims was also raised. The importance of having effective mechanisms for freezing assets before criminal judgements were rendered, in order to be able to restore assets to victims afterwards, was also highlighted.

33. Finally, speakers underlined that the requesting State should provide enough evidence in due time to be able to seek the restitution of assets.

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