

Informal Expert Group Meeting on International Cooperation in Criminal Matters

Vienna, 23-25 October 2023

Concept Note

I. A long-established practice and the useful precedents: the added value of organizing expert group meetings on international cooperation in criminal matters

In its resolution 8/1, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime (COP-UNTOC) strongly encouraged States parties to facilitate engagement between and among central authorities in person, including through regional networks, or by virtual means, such as videoconferences, and highlighted the particular importance of engagement between central authorities in order to review the execution of requests, discuss impediments to mutual cooperation and identify solutions to those challenges. In the same resolution (para. 18), the COP-UNTOC encouraged States parties to consider holding bilateral and/or multilateral meetings of representatives of central authorities, including on the margins of the Working Group on International Cooperation, to discuss issues of common interest”.

To support the efforts of States parties in that regard, UNODC, with the financial support of the United States of America, held an expert group meeting in Vienna on 5 and 6 October 2017, which brought together experts from central authorities or practitioners dealing directly with the work of central authorities from different countries. The participants shared experiences and good practices on such issues as the establishment, roles and functions of central authorities; inter-agency cooperation; the provision of information on legal requirements and procedures; case management and tracking; confidentiality of requests and communications; consultations practice; challenges relating to the translation of requests and supporting documentation; channels of transmission and electronic evidence, *de minimis* requests and grounds for refusal; use of the UNTOC as a legal basis for international cooperation; and capacity-building and resources.

In one of its recommendations annexed to its resolution 9/3 (Annex I, para.(h)), and with a view to further supporting the exchange of practical expertise among practitioners in the field of international cooperation, the COP-UNTOC requested the Secretariat to continue to seek to organize, within its mandate, subject to the availability of resources and with a view to making best use of such resources, practically oriented expert group meetings either on the margins of the meetings of the Working Group or in conjunction with those of relevant intergovernmental bodies.

Building on this mandate, UNODC, with the financial support of the Government of the People's Republic of China, organized, from 9 to 11 April 2019, in Vienna, an informal expert group meeting on international cooperation in criminal matters. The meeting brought together 36 experts and practitioners from 19 countries, representing both civil and common law legal

systems, coming from institutions and agencies directly dealing with practical aspects of international cooperation in criminal matters. The participants discussed, among others, the use of UNTOC as a legal basis for international cooperation in criminal matters; advantages, current challenges, lessons learnt and possible responses to international cooperation through mutual legal assistance; international cooperation for confiscation and disposal of confiscated proceeds of crime or property; practical aspects, challenges encountered and good practices in the field of extradition; and UNODC tools on international cooperation in criminal matters and regional networks.

II. Ensuring continuity and promoting further dialogue: the necessity for a new EGM on international cooperation

Building on existing mandates and consistent with established practice as described above, a new EGM on international cooperation is scheduled to take place from 23 to 25 October 2023 with a view to promoting further constructive dialogue among experts and practitioners in the field of international cooperation in criminal matters. The EGM will be organized by UNODC, with the financial support of the Government of the People's Republic of China.

Timeframe – Objective/nature of the meeting

The meeting will be held in a hybrid format (physical attendance at UNODC Headquarters/Vienna and online participation of experts) and will last 3 working days.

The objective of the EGM will be tightly linked to its nature: it is envisaged that this EGM will not be an intergovernmental meeting, but an expert meeting of practical orientation. As such, the expert meeting will enable the exchange of experience and views among the experts and will further facilitate dialogue on practical aspects of international cooperation, capacity-building and technical assistance priorities in the field of international cooperation in criminal matters, particularly to combat transnational organized crime. In accomplishing its objective, the EGM meeting is expected to supplement the work of intergovernmental bodies, primarily the COP-UNTOC and its Working Group on International Cooperation.

The working language of the meeting will be English and simultaneous interpretation will be available in French, Spanish, Arabic, Russian and Chinese. It should be noted that, based on established practice that has been followed with interpreters also in relation to intergovernmental meetings, and in order to keep the 3 hours of interpretation per session of the expert group meeting, only a total of 30 minutes of online interventions will be allowed in each 3-hour session slot and any further online intervention will not be interpreted.

Attendance

In terms of target audience, 20 participants working as practitioners and experts from central authorities of 20 Member States (one from each of them), representing both civil and common law systems, and taking into account gender and geographical considerations, will be invited

to attend in person the EGM. For those participants, travel and DSA costs are to be covered by UNODC, through the generous support of the Government of the People's Republic of China.

An additional number of 28 participants (20 participants from Member States; nine (9) participants from intergovernmental organizations (IGOs), with relevant mandates in the field of international cooperation in criminal matters, as well as representatives from two (2) Institutes of the United Nations Crime Prevention and Criminal Justice Programme Network (PNI Network) are expected to participate remotely. Similarly, participation on the basis of gender considerations, geographical distribution, and representation of civil and common law systems, will be envisaged. If any of the Member States and/or intergovernmental organizations falling within this “category of remote participation” prefer the in-person participation of their experts in the expert group meeting, they are encouraged to cover their air ticket and Daily Subsistence Allowance.

The UNODC officers will service the meeting in person from UNODC Headquarters/Vienna.

The number of participants proposed to attend in person is due to the need to ensure that all necessary facilities are in place to guarantee that the EGM proceedings will be conducted in a combined manner (in person and remotely) with interpretation to all UN official languages. Furthermore, the proposed limited number of participants is in line with the nature of an informal expert group meeting: enabling focused discussions and ensuring effective contributions, while making best use of time available.

Thematic scope

Bearing in mind the planned duration of the EGM and existing mandates to implement, the agenda of the meeting will revolve around the following thematic areas:

a) The use of the UNTOC as a legal basis for international cooperation in criminal matters - challenges and potential: an update

Developed pursuant to UNTOC-COP resolution 9/3 and drawing on the discussion and conclusions of the informal expert group meeting on international cooperation in criminal matters, organized in Vienna from 9 to 11 April 2019 with the financial support of China, the Digest of cases of international cooperation in criminal matters involving the UNOTC as a legal basis ([Digest of cases of International Cooperation in Criminal Matters Involving the United Nations Convention Against Transnational Organized Crime as a Legal Basis \(unodc.org\)](#)) represents the first and most comprehensive study of the practical use of the international cooperation provisions of the Convention, as documented in actual cases.

However, it should be stressed that the Digest offers merely a snapshot of known cases, which by its nature is selective and indicative. It would be highly desirable to turn this Digest into a “living document”, as research continues on the use of the Convention in real-life cases.

The EGM will offer the opportunity to participants to provide further information, and trigger discussion about it, on additional – beyond the ones reflected in the Digest - cases of international cooperation involving the competent authorities of their countries in which the UNTOC was used as a legal basis for such cooperation. UNODC has already prepared and disseminated a template for the compilation of such information, which will also be distributed in advance of the meeting. A team of UNODC officers will also be available during the meeting for the provision of clarifications on the template used for the compilation of relevant information, so that action to compile cases can be undertaken as a follow-up after the meeting as well.

The ultimate purpose will be to gather a representative number of additional cases for relevant updates on SHERLOC, but also for the preparation in future of a second edition of the Digest.

b) Development of a matrix identifying legal and practical issues that could arise in the implementation of article 19 of the UNTOC on joint investigations

The matrix identifying legal and practical issues that could arise in the implementation of article 19 of the UNTOC on joint investigations will be developed in fulfilment of the following recommendation of the COP-UNTOC:

COP-UNTOC resolution 11/1, Annex I

- (i) In accordance with the mandates contained in Conference resolution 5/8 and relevant guidance stemming from the deliberations of the Working Group, the Secretariat should develop, subject to the availability of resources, a matrix identifying legal and practical issues that could arise in the implementation of article 19 of the Convention, as well as possible solutions for those issues, including by collecting examples of arrangements or agreements concluded between States parties for that purpose, and, upon request, should assist States parties in developing a set of legal, practical and operational guidelines for the implementation of article 19.*

The EGM will offer a platform to discuss elements and aspects for inclusion in such a matrix. The exchange of views will be used as reference material for follow-up work by the Secretariat to develop this tool. UNODC will provide in advance an outline of elements for inclusion in the matrix for further consideration and in support of the discussions.

c) Updating of the UNODC Manual on Extradition and Mutual Legal Assistance (2012)

In its resolution 10/4 (para. 15), the COP-UNTOC requested UNODC, within its mandate, to continue to provide technical assistance and capacity-building to Member States, upon request, to support their capacity to prevent and combat transnational organized crime, including through the updating, as necessary, of publications, such as the UNODC guide on current practices in electronic surveillance in the investigation

of serious and organized crime (2009), and the UNODC Manual on Extradition and Mutual Legal Assistance (2012), also with a view, as appropriate, to including updated material on the use of special investigative techniques and the gathering of electronic evidence.

As a follow-up to this mandate, UNODC will prioritize first the updating of the UNODC Manual on Extradition and Mutual Legal Assistance (2012) ([Manual on Mutual Legal Assistance and Extradition \(unodc.org\)](https://www.unodc.org/manual-on-mutual-legal-assistance-and-extradition)). The experts at the EGM can further provide guidance and directions for further work on the updating of this manual. UNODC will provide in advance an outline of proposed elements for amendment/updating for further consideration and in support of the discussions.

d) The impact of the COVID-19 pandemic in the field of international cooperation in criminal matters: the practitioners' perspective – New challenges and opportunities

In the field of international cooperation in criminal matters, the COVID-19 pandemic had led many central authorities, as well as judicial and investigative bodies, to switch to remote working. Generally, most judges and prosecutors were teleworking (from home), and therefore the activities of the national courts and public prosecutors' offices were limited.

As reported at the eleventh meeting of the Working Group on International Cooperation of the COP-UNTOC, held in July 2020, while the pandemic had caused difficulties that had had an impact on international cooperation, at the same time, it had also been an opportunity to realize the potential for versatility, flexibility and adaptability in that field and to visualize how we could rethink international cooperation in the future, with or without COVID-19. In this context, the advantages and added value of the electronic transmission of international cooperation requests and the videoconferencing, for example, can be discussed from a practitioners' point of view.

Further, at the twelfth meeting of the Working Group on International Cooperation, held in March 2021, a number of speakers confirmed that the crisis caused by the pandemic had demonstrated capacities for the diversification and sophistication of criminal activities, including crimes that involved electronic evidence, and revealed vulnerabilities in mechanisms to confront transnational organized crime. It was reported that national authorities had seen crime and security-related trends accelerate faster than expected. However, some speakers underlined that the pandemic had also made it possible to develop strengths and innovations to confront crime. From this perspective and particularly in the field of international cooperation in criminal matters, a series of measures and the trends developed in practice in different jurisdictions to address related challenges were examined by the Working Group thoroughly.

Building on the above, the Working Group on International Cooperation of the COP-UNTOC agreed in March 2021, one year after the beginning of the pandemic, on important recommendations regarding the impact of the coronavirus disease (COVID-19) on international cooperation in criminal matters. These recommendations were endorsed by the COP-UNTOC in its resolution 11/1 (Annex I).

The EGM will offer the opportunity to take stock of lessons learned from the impact of the COVID-19 pandemic in the field of international cooperation in criminal matters. It will also offer the opportunity to exchange views and gather advice and suggestions on possible elements for inclusion in a research/issue paper on the “Impact of the COVID-19 pandemic on international cooperation in criminal matters: challenges encountered, good practices and lessons learnt in the aftermath of the pandemic” that UNODC is planning to elaborate. UNODC will provide in advance an outline of elements for inclusion in the research/issue paper for further consideration and in support of the discussions.

e) An update on UNODC tools to promote international cooperation in criminal matters

The EGM is envisaged to offer the opportunity for UNODC to present updates on the development of tools to promote international cooperation; and to engage in a dialogue on ideas for potential improvements and on similar tools used at the regional level.

Methodologies to be involved

The discussion on the aforementioned thematic areas is to be supported by presentations by the participants. Invited Member States and IGOs will be called to confirm their nominated experts and whether they will also deliver a presentation in any of the above (a), (b), (c) and (d) thematic areas of the EGM. In doing so, Member States and IGOs will be called to identify their preferences in matching the panellist presentations with the topics under discussion. The maximum duration of each presentation will be 8 minutes, thus leaving sufficient time for further debate or additional interventions in each session.

A key role will be given to a moderator (from the donor country), who will be entrusted with the task to facilitate the structured “flow” of the discussion and ensure time compliance.

All participants will be invited to prepare themselves in advance and bring to the meeting national material/cases, especially very recent updates of cases involving the use of the UNTOC as a legal basis for international cooperation. They are also expected to familiarize themselves in advance with the aforementioned outlines for inclusion in the matrix on joint investigations and the research paper on the impact of the COVID-19 pandemic on international cooperation in criminal matters, as well as with the UNODC Manual on Extradition and Mutual Legal Assistance (2012) and the outline with proposed elements for its amendment/updating, so that they are ready during the meeting to provide guidance, directions and feedback on its updating.

Deliberations will be enriched by presentations from UNODC officers on tools geared towards promoting international cooperation, as well as practical aspects linked to the implementation of the international cooperation provisions of the UNTOC.

Unless otherwise instructed or guided by the participants, the presentations will be made available on the dedicated to the EGM webpage.

Outcome of the meeting

The moderator will prepare a list of the salient points of the deliberations, which will be compiled also with the support of UNODC. This list of salient points will constitute the outcome of the meeting and will be distributed after the meeting (not to be “negotiated” by the participants, although they will be invited to offer their remarks within a certain deadline after the distribution – the final text of the salient points being posted on the EGM webpage).

Furthermore, the compilation of guidance, comments and directions on the development of the matrix identifying legal and practical issues that could arise in the implementation of article 19 of the UNTOC on joint investigations, the elaboration of a research/issue paper on the “Impact of the COVID-19 pandemic on international cooperation in criminal matters: challenges encountered, good practices and lessons learnt in the aftermath of the pandemic”, as well as the updating of the UNODC Manual on Extradition and Mutual Legal Assistance (2012), will also be concrete outcomes of the meeting.