

UNODC Expert Group Meeting on International Cooperation in Criminal Matters

The United Nations Office on Drugs and Crime (UNODC) is holding an Informal Expert Group Meeting on International Cooperation in Criminal Matters, from 23 to 25 October 2023.

This meeting is aimed at enabling the exchange of experience and views among experts and facilitating dialogue on practical aspects of international cooperation in criminal matters, capacity-building and technical assistance priorities.

ICTP will attend the meeting virtually, as well as officers from the Transnational Serious and Organised Crime team, and the AFP.

The meeting agenda covers the following thematic areas:

1. The use of the United Nations Convention against Transnational Organized Crime (UNTOC) as a legal basis for international cooperation in criminal matters – challenges and potential use: an update
2. The impact of the COVID-19 pandemic in the field of international cooperation in criminal matters: the practitioners' perspective – New challenges and opportunities;
3. Updating of the UNODC Manual on Mutual Legal Assistance and Extradition (2012);
4. An update on UNODC tools to promote international cooperation in criminal matters.

Item 1 – The use of the UNTOC as a legal basis for international cooperation in criminal matters - challenges and potential use

From the agenda: This session will offer the opportunity to participants to provide further information, and trigger discussion about it, on additional cases of international cooperation involving the competent authorities of their countries in which the UNTOC was used as a legal basis for such cooperation

Talking points

- Australia has comprehensive domestic frameworks which allow us to provide assistance in the investigation and prosecution of the offences covered by the Convention.
- Our **mutual assistance** legislation covers a board range of forms of assistance, including search warrants, access to lawfully obtained material, electronic surveillance, asset recovery and proceeds of crime action.
- We are able to provide mutual assistance on the basis of reciprocity, or under bilateral and multilateral treaty arrangements.
- **Extradition** is governed by our Extradition Act, under which we are able to receive requests from countries which have been designated as ‘extradition countries’ – typically this is on the basis of bilateral treaty arrangements.
- Multilateral instruments, such as the Convention, also provided a basis for extradition cooperation with other States Parties.

Case figures – matters where UNTOC was a basis for cooperation

- Since 2021, when we last provided figures for the UNODC’s digest of cases, Australia has received **17 incoming mutual assistance requests** where the Convention was stated as a basis for the request.
- These requests relate to a range of serious offences, including drug offences, murder, money-laundering and terrorism.
- The main categories of assistance sought are access to government or business records, access to lawfully obtained material, and witness statements (including via audio-visual link (AVL)).
- Of these requests, 7 have been resolved, and we provided assistance in 5 of those cases.
- Due to confidentiality provisions, we are not able to provide further detail on these matters.

- We have no records of any incoming or outgoing extradition requests where UNTOC was the basis.

Case study – spontaneous information sharing under UNTOC

- Earlier this year, Australia's central authority used the Convention as the basis for spontaneous information sharing, under paragraph 4 of Article 18.
- Australia was able to provide another Party to the Convention with information about suspected offending in relation to a drug-trafficking matter, and detail on the cooperation which Australia could provide to support any domestic investigation in the foreign country.
- The person of interest is known to be located in the other country.
- Australia has previously sought the person's extradition; however, the domestic law of the foreign country does not allow for the extradition of its nationals.
- We are continuing to work with the other country on this matter.
- In this case, the Convention provided a legal basis for us to share information with the other country.

Concluding remarks

- Australia's experience is that UNTOC has provided a supplementary basis for crime cooperation, although the primary bases of our cooperation continue to be bilateral treaties and reciprocity.
- We welcome the opportunity for this discussion, and to hear from other countries about their experiences.

Item 2 – Updating the UNODC Manual on Extradition and Mutual Legal Assistance

We are expecting further detail this week from the UNODC on this project.

The [Manual](#) was developed by UNODC in 2012 to provide a practical guide to facilitate the drafting, transmission and execution of requests for extradition and mutual legal assistance. The manual is intended for by central and other competent national authorities, policy makers and criminal justice practitioners involved international legal assistance.

Our initial views are that the Manual would benefit from updating to reflect the nature of cooperation in 2023, including the increase in electronic evidence (including from communication service providers) and requests for AVL appearances.

Item 3 – The impact of the COVID-19 pandemic in the field of international cooperation in criminal matters

From the agenda: The session 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.

Talking points

- We welcome the UNODC commissioning research on this topic.
- The COVID-19 pandemic posed unprecedented challenges for international crime cooperation.
- We met with Dr Hufnagel in Australia last week, and were able to discuss our experiences.
- In relation to **extradition**, international travel restrictions made surrenders more complex and extremely resource-intensive.
- There was a reduction in the number of surrenders made during the pandemic.
- The surrenders that did occur required significantly more resources, a multi-agency effort to organise and carry them out and time pressures were greater, for example with the additional consideration of quarantine timeframes.
- From the year 2019-20 to 2020-21, the number of outgoing extradition requests remained at similar numbers but the number of incoming requests almost halved, impacted significantly by Australia’s travel restrictions impacting potential fugitives being able to come to Australia.
- In relation to **international transfer of prisoners**, in the year 2020-21, both the number of incoming and outgoing requests halved in comparison to the previous year.
- All of our international prisoner transfers were paused during COVID-19.
- These challenges have now largely passed, and surrenders and prisoner transfers are returning to pre-pandemic processes and levels.
- In relation to **mutual assistance**, we have seen a significant increase in the use of audio-visual link (AVL) in proceedings following the pandemic.

- Throughout 2023, at any given time, we have had at least 100 active requests (incoming and outgoing) relating to AVL.
- Many countries require a mutual assistance request to be submitted in order for AVL evidence to be taken from their territory.
- Requirements in relation to AVL vary from country to country based on their legislative or policy requirements.
- Australia has begun developing a memorandum of understanding (MOU) with the United Kingdom to make the process of making a request in relation to AVL much more efficient and less time consuming.
- Even now that travel has resumed and it is possible for witnesses to attend to give evidence in person in another country, Australian courts are more aware of the requirements and process of mutual legal assistance in order to facilitate international AVL.
- In addition to the rise of AVL, as a result of the pandemic, more central authorities are willing to engage electronically, including the willingness to send and receive requests electronically with electronic signatures instead of requiring documents and requests to be physically signed as well as to more of a shift towards transmitting evidence electronically.