

**Informal Expert Meeting on
International Cooperation in Criminal Matters**

**Vienna, Austria
23 – 25 October 2023**

Vienna International Centre

C Building, 7th Floor, Conference Room CR-4

Summary of the Chair

The United Nations Office on Drugs and Crime (UNODC), with the financial support of the Government of the People’s Republic of China, organized and conducted, from 23 to 25 October 2023, an informal expert meeting on international cooperation in criminal matters.

The meeting brought together 55 practitioners and experts, including experts from central authorities, from 15 countries (Algeria, Australia, Brazil, China, Colombia, France, Italy, Mexico, Morocco, Pakistan, Romania, Russian Federation, Thailand, Ukraine, United States) and 6 intergovernmental organizations (Commonwealth Secretariat, EUROJUST, European Judicial Network, Council of Europe, Interpol and West African Central Authorities and Prosecutors against Organized Crime (WACAP)). The participants represented different legal systems, coming from institutions and agencies directly dealing with practical problems and challenges encountered in the field of international cooperation in criminal matters.

The meeting was held in a hybrid format, with 19 in person participants and 36 experts attending the meeting online. There were 32 female experts and 23 male experts, so gender equity at the platform was reached. The interventions at the meeting were translated into all six United Nations official languages.

The participants engaged in dialogue and exchange of views and expertise/experience on practical aspects of international cooperation, as reflected in the agenda of the meeting.

Opening session

In her opening statement, Ms. Loide ARYEE, Chief, Organized Crime and Illicit Trafficking Branch, Division for Treaty Affairs, UNODC, expressed sincere gratitude for the financial support of the Government of People's Republic of China to prepare and organize the meeting, as well as many of its supporting features and materials. She underscored that international cooperation in criminal matters has been at the heart of UNODC's work for many years in its capacity as the guardian of several international conventions that deal extensively with international cooperation, and the Secretariat of various relevant inter-governmental bodies. She further noted that it is important, in order to further enhance the supplementary role of the informal expert meeting in facilitating the dialogue on practical aspects of international cooperation, to continue efforts towards convening such meetings on a regular basis in future with a view to accumulating information and good practices, keeping pace with new developments and brainstorming on new challenges.

The Chair of the meeting stressed the commitment of the Government of People's Republic of China to supporting and promoting further constructive dialogue among experts and practitioners in the field of international cooperation in criminal matters through such initiatives as this expert group meeting. He also highlighted the importance of sharing of experiences and information as a driving force for success and tangible results in this field. He further referred to and highlighted the Global Security Initiative, an initiative of China aiming, among others, at improving global security governance, and identifying as one of the priorities of cooperation the full and effective implementation of the UNTOC and the encouragement to all countries "to conclude or join international treaties, conventions or agreements or make institutional arrangements to fight transnational crimes"; and "to actively conduct law enforcement cooperation on the basis of respecting each country's sovereignty, so as to jointly improve law enforcement capacity and security governance; and further "to support the

establishment of a global training system to train for developing countries more law enforcement officers who are responsive to their countries' security needs.

Ms. Xiaohong LI, Chief, Conference Support Section, Organized Crime and Illicit Trafficking Branch, Division for Treaty Affairs, UNODC, moderated the opening session, stressing the nature of the expert group meeting as a non-intergovernmental meeting of practical orientation. She underlined that, in order to maximize the impact of this expert group meeting, its outcome - namely the salient points of the deliberations contained in the Summary of the Chair - will be brought to the attention, first of all, of the Commission on Crime Prevention and Criminal Justice. The Commission will devote the thematic discussion of its 2024 session to the topic of "Promoting international cooperation and technical assistance to prevent and address organized crime, corruption, terrorism in all its forms and manifestations and other forms of crime, including in the areas of extradition, mutual legal assistance and asset recovery"; secondly, the salient points will be brought to the attention of the Conference of the Parties to the UNTOC at its twelfth session in October 2024.

Closing session

At the closing session of the meeting, Mr. WANG Xin, Deputy Director-General, International Cooperation Department, Ministry of Justice, China, in his capacity as Chair, summarized the salient points of discussion as follows:

Sessions 1 and 2: The use of the UNTOC as a legal basis for international cooperation in criminal matters - challenges and potential: an update

- 1) The UNTOC has an added value as a legal basis for international cooperation in criminal matters in light of its almost universal adherence (192 parties), its nature as

the only global legally binding instrument against transnational organized crime and its wide scope of application covering not only offences established in accordance with the Convention, but also offences established in accordance with its three supplementary Protocols and other serious offences, as defined by the Convention, which are of transnational nature and involve an organized criminal group.

- 2) The UNODC digest of cases of international cooperation involving the UNTOC as a legal basis (presented during the meeting) represents the first and most comprehensive study of the practical use of the international cooperation provisions of the Convention, as documented in actual cases (104 cases from 34 jurisdictions).
- 3) There is an obvious need to update the digest with additional cases and address the challenge of low reporting rate in certain countries/regions, which can be attributed to confidentiality reasons and different levels of capacity to collect statistical data, track requests and report cases, as well as to the lack – in many cases - of follow-up on the execution of requests.
- 4) During the meeting, some participants reported cases involving the use of the UNTOC, either as a stand-alone legal basis for international cooperation, or in conjunction with other bilateral, regional or international instruments. The added value of the use of the Convention was highlighted particularly in cases of existing bilateral treaties which were concluded long time ago, adopting a rigid “list-of-offences” approach that did not enable the provision of cooperation for a wider scope of offences. Furthermore, concrete examples of cases were reported where the Convention was used as a legal basis for such modalities of cooperation as the spontaneous transmission of information; mutual legal assistance and extradition, and involving a wide range of offences, including participation in an organized criminal group, money laundering, trafficking in persons, smuggling of migrants and drug trafficking.
- 5) The use of the Convention as a legal basis for international cooperation in transnational cases of cybercrime was mentioned through the presentation of relevant cases. In this regard, the complementary relationship between the UNTOC and the Budapest Convention on Cybercrime was mentioned by one participant, while some other participants noted that the definitions of “organized criminal group” and “structured group”, as contained in article 2 of the UNTOC, had not in practice posed challenges in applying the Convention in cases of loose networks of cybercriminals.
- 6) With regard to reciprocity, in particular, one participant reported a case where assistance was denied by her country due to lack of assurances of this requirement, although the requesting State cited the UNTOC as a legal basis for the request. The

same participant noted that her country may wish to review its legal position so that assistance on the basis of the Convention is provided regardless of the reciprocity requirement. Another participant was of the view that the status of being a party to the Convention was by definition an indication that the necessary assurances for reciprocity to analyse the request in question in good faith are in place. Other participants highlighted the fact that the principle of reciprocity is a formal requirement in the domestic legislation on international cooperation of many countries and therefore has to be considered accordingly by practitioners cooperating with those countries.

- 7) One participant noted the challenge that, despite relevant notifications of some States parties that they recognize the UNTOC as a legal basis for extradition, this recognition does not seem to be translated in practice in given cases. Therefore, there is a need for reviewing domestic legal frameworks to ensure consistency with notifications to the Secretary-General regarding the use of the Convention as legal basis for extradition. Another participant underlined the necessity of a clear statement by States parties on the use of the Convention as legal basis for mutual legal assistance as well, although article 18 of the Convention does not include a similar notification as that of its article 16.
- 8) The importance of ensuring the availability of information on legal requirements for international cooperation, as well as the use of available networks to facilitate communication, were identified as important factors for the efficiency of international cooperation mechanisms.
- 9) Some participants highlighted the flexibility offered by the UNTOC in relation to the use of various communication channels for the transmission of mutual legal assistance requests in addition to the use of diplomatic channels (direct transmission between central authorities and use of Interpol channels in urgent circumstances). Whereas one participant suggested the same degree of flexibility in the extradition practice as well, another participant presented his country's situation whereby the use of diplomatic channels is linked to the competences of the relevant executive authority involved in extradition proceedings and the need – in certain cases – for the provision of diplomatic assurances regarding the treatment of the person sought in the requesting State.
- 10) Some participants referred to the dual criminality requirement, its different impact and application in the fields of extradition and mutual legal assistance and the widely recognized interpretation of this requirement, which focuses on the underlying conduct and not the legal denomination or terminology of the offence in question.

Session 3: 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 participants discussed elements and aspects for inclusion in a matrix identifying legal and practical issues that could arise in the implementation of article 19 of the UNTOC on joint investigations. This was the first step for follow-up work by UNODC to develop this tool, in accordance with COP-UNTOC resolution 11/1.

In support of the relevant discussion, the consultant working with UNODC, Prof. Andreas Schloenhardt, presented to the participants the outline of a report and its annexed matrix on legal and practical considerations regarding joint investigations.

Prof. Schloenhardt referred to available information and materials on joint investigations and confirmed his availability to work with national authorities in different regional groups after the expert group meeting to collect information on such issues as comments and input on the matrix and individual stages and elements of JITs; additional sources, reports, commentary in any language; samples of bilateral agreements addressing JITs; samples of JIT agreements; samples of national laws relating to JITs; or samples of cases, investigations etc. involving JITs.

A number of participants reported on cases of joint investigations conducted by their countries in cooperation with competent authorities of other countries. One participant referred to the coordinating role of Eurojust in this regard. The use of article 19 of the UNTOC was confirmed by a number of participants as basis and tool for such cooperation.

One participant referred to a number of legal considerations to be taken into account when planning and establishing joint investigative teams such as the need to confirm which laws are applicable in a given case; or the matter who bears civil and criminal liabilities for action in the context of JITs that cause damages (the foreign law enforcement officers or the authorities of the host country); or issues relating to the admissibility in court of evidence derived from the activities of JITs. Practical considerations raised by the same participant included issues of languages used, as well as the availability of financial resources to support the work of JITs.

Session 4: Updating of the UNODC Manual on Mutual Legal Assistance and Extradition (2012)

The participants also provided guidance and directions for further work on the updating, in accordance with resolution 10/4 (para. 15) of the COP-UNTOC, of the UNODC Manual on Mutual Legal Assistance and Extradition, originally released in 2012.

In support of the relevant discussion, UNODC prepared an outline of proposed elements for amendment/updating of the Manual, highlighting - through track changes in the table of contents of the original version of the Manual - proposed items for updating.

The participants suggested a series of recommended updates and adjustments, as follows:

- A more detailed analysis on challenges relating to the domestication of the provisions of the UNTOC in the legal systems of States parties, as well as on significant changes needed in a number of domestic legal frameworks to support the implementation of the UNTOC;
- Further explanations on specific requirements of common law systems, together with possible links providing access to relevant guidelines;
- A more comprehensive overview of applicable regional instruments in the areas of extradition and mutual legal assistance;
- References to article 4 of the UNTOC on the protection of sovereignty;
- A part dedicated to the need for case management in central authorities, including digitalization and electronic filing as factors to reduce paperwork, collection of statistical data, and use of electronic signature;
- (Further to the previous suggestion), also including an analysis on the challenges faced by small States or least developed countries with insufficient criminal justice systems, limited staff and significant delays and backlogs in the general administration of justice;
- Inclusion of references to the issue of the time determination of nationality of the person sought in extradition proceedings (time of commission of the offence v. time of commencement of extradition proceedings); dual nationality;
- An analysis on alternatives to denial of extradition requests (transfer of criminal proceedings and enforcement of foreign criminal sentences);

- Highlighting the need to avoid abuses of the extradition process in the name of human rights considerations and how to address challenges posed by multiple appeal proceedings in the extradition practice that prolong the duration of the relevant process for many years (in some cases);
- References to applicable deadlines in the provisional arrest phase of the extradition proceedings;
- Highlighting more prominently the importance of law enforcement cooperation in the pre-extradition phase and the unique tools that Interpol can offer to assist in the detection and provisional arrest of fugitives;
- References to postponement of extradition and temporary surrender of the person sought;
- A more expanded list of types of mutual legal assistance to also include, for example, measures of cooperation requiring judicial scrutiny and supervision (i.e., the use of special investigative techniques);
- A more detailed analysis on the issue of confidentiality in handling mutual legal assistance requests;
- In the context of describing the various channels of communication for transmission of mutual legal assistance requests and, in particular, the use of Interpol channels, the revised Manual should provide for a broad interpretation of the term “urgent” (circumstances) to include time-sensitive legal needs, in addition to more extreme situations such as imminent threat of life;
- Inclusion of references to informal communication networks such as, for example, the Framework for the Commonwealth Network of Contact Persons;
- A more detailed analysis of the role of videoconferencing and Audio Visual Link (AVL) appearances for purposes of evidence gathering;
- Inclusion of standardized form of an extradition request.
- The issue of including asset recovery aspects in the Manual was discussed in detail. In response to a relevant proposal for inclusion of such aspects in the revised Manual, it was argued that a) the term “asset recovery” relates to a distinct regime of international cooperation, as defined separately in the United Nations Convention against Corruption, and therefore caution is necessary when using specific terminology in the Manual; and b) the issues relating to international cooperation for purposes of confiscation are addressed in a separate UNODC Manual.

Session 5: The impact of the COVID-19 pandemic in the field of international cooperation in criminal matters: the practitioners' perspective – New challenges and opportunities

In this session, the participants took stock of lessons learned from the impact of the COVID-19 pandemic in the field of international cooperation in criminal matters and further exchanged views on their countries' experiences in dealing with related challenges.

In support of the discussions, the consultant working with UNODC, Prof. Saskia Hufnagel, presented to the participants an outline of a research paper that UNODC is elaborating 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”.

Some participants referred to a range of challenges encountered in different fields of international cooperation (extradition, mutual legal assistance, transfer of sentenced persons) as a result of the impact of the COVID-19 pandemic on the work of central and other competent authorities. Such challenges included, among others, the limitations of flights to third countries and the closure of borders, as well as resource-intensive procedures, reduction in the number of surrenders and delays in the provision of assistance. A number of participants also referred to initiatives and measures taken to address these challenges and some of them reported on the progress made by their countries' authorities to adjust to the new situation in a timely manner.

Many participants reported that, in relation to mutual legal assistance, a significant increase in videoconferencing and the use of audio-visual (AVL) has been experienced. One participant mentioned that the rising number of videoconferences, the enhanced mobility of people and modern technical solutions are the main reasons to further consider and analyse in future aspects relating to security, identity, confidentiality, admissibility of evidence, sovereignty and applicable rules.

Many participants stressed the importance of the wider use of electronic signature and the digitalization of case management systems in authorities involved in international cooperation as an emerging good practice and as a “legacy” of the pandemic in the field of international cooperation, which also helped authorities to reduce paperwork and the time needed for the execution of requests.

Some participants referred to the electronic transmission of international cooperation requests as an emerging good practice. They underlined that the conditions created by the pandemic had reinforced the idea that international cooperation requests could be sent and answered in a safe and timely manner by electronic means.

Some participants also mentioned that a result of the COVID-19 pandemic was the drastic increase of cybercrime and generally crimes involving electronic evidence. Consequently, the pandemic offered an additional reminder of the acute need to streamline current methods of international cooperation involving electronic evidence.

Some participants made specific reference to the instrumental role of networks in facilitating communication among central authorities during the crisis caused by the pandemic. The examples of Eurojust, SeaJUST Network and the Judicial Cooperation Network for Central Asia and Southern Caucasus (CASC) were specifically mentioned.

Session 6: An update on UNODC tools to promote international cooperation in criminal matters

UNODC briefed the participants on different UNODC tools to promote international cooperation in criminal matters (the Directory of Competent National Authorities; the SHERLOC Electronic Evidence Hub; the international cooperation component in the SHERLOC database; and future plans on the development or upgrading of UNODC tools on international cooperation in criminal matters).

In the context of presentations of future plans, UNODC referred to ongoing work for the technical upgrade of the UNODC Mutual Legal Assistance Request Writer Tool, as well as the plan to develop a secure communication platform to facilitate central authorities in MLA casework. In this connection, one participant referred to the IberRed platform for exchange of information among competent authorities in the Ibero-American region and proposed that this platform could also be taken as point of reference and example of good practice.