



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

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**Review of the implementation of the United Nations
Convention against Transnational Organized Crime and
the Protocols thereto:**

Expert consultation on international cooperation

Catalogue of examples of cases of extradition, mutual legal assistance and other forms of international legal cooperation on the basis of the United Nations Convention against Transnational Organized Crime

I. Introduction

1. The Conference at its third session, in decision 3/2, requested the secretariat to compile a catalogue of examples of cases of extradition, mutual legal assistance and other forms of international legal cooperation on the basis of the Organized Crime Convention, to encourage States parties to improve their implementation of the Convention and the Protocols thereto. It also encouraged Parties to provide the secretariat with data concerning their reliance on provisions of the Convention and its Protocols to effect extradition, mutual legal assistance and other forms of international legal cooperation.
2. In the same decision, the Conference encouraged Parties to make greater use of the instrument as a legal basis for international legal cooperation, recognizing the broad scope of cooperation available under the Convention; and in particular to utilize the Convention when other bases for cooperation, such as bilateral agreements and domestic law, do not provide for effective international legal cooperation. It further encouraged Parties to promote awareness of the Convention among central authorities, judges, prosecutors, law enforcement officers and Interpol national central bureau officers engaged in international legal cooperation in the fight against transnational organized crime.
3. In the course of workshops and training activities, the secretariat emphasized the relevance and usefulness of the Convention's provisions on international cooperation in particular in an interregional context, where bilateral or regional



treaties are not available. Moreover in cases where bilateral treaties exist but are outdated and do not include a complete list of offences, those treaties are deemed, by virtue of article 16, as including Convention offences.

4. The secretariat also clarified the scope of application of the international cooperation provisions of the Convention: those provisions apply to offences established pursuant to the Convention (and the protocols) and to all serious crime.¹ Through its criminalization provisions, the Convention provides the basis for the dual criminality requirement to be fulfilled among the more than 145 States that have become parties to it. This constitutes a remarkable facilitation of the provision of international cooperation in the fight against organized crime. The condition that the offence be transnational in nature (set in article 3, para. 1 of the Convention) is partly lifted in the context of international cooperation: the transnationality requirement is met if “the person who is the subject of the request for extradition is located in the territory of the requested party” (article 16) or “if victims, witnesses, proceeds, instrumentalities or evidence of offences are located in the requested party” (article 18). These provisions facilitate the provision of evidence in support of extradition requests and allow mutual legal assistance to be requested at an early stage of the investigation where it may be difficult to prove that all requirements of article 3 are met.

5. It should be noted that article 16 of the Convention states that Parties that make extradition conditional on the existence of a treaty may consider the Convention as the legal basis for extradition in their relations with other parties. Sixty States² have notified the secretariat that they would take the Convention as legal basis. Parties (i.e. those that need a treaty basis for extradition) should be encouraged to avail themselves of the possibility set out in article 16 to consider the Convention as sufficient legal basis for cooperation on extradition and to notify the secretariat accordingly.

6. The secretariat endeavoured to collect from competent authorities and practitioners information on cases where the Convention had been used as a basis for cooperation, with a view to compiling the catalogue requested by the Conference. It appears that such specific information on cases is often scattered among the many practitioners involved in international cooperation and that even the central authorities do not necessarily have centralized data available on that matter. Information received so far is presented below. It is hoped that more Parties to the Convention will come forward with their experience in applying the international cooperation provisions of the Organized Crime Convention.

¹ Defined by article 2 as “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”.

² Algeria, Armenia, Azerbaijan, Belarus, Belgium, Belize, Bolivia, Brazil, Bulgaria, Burkina Faso, Cambodia, Cape Verde, Central African Republic, China, Cuba, Croatia, Cyprus, Czech Republic, Djibouti, Ecuador, Egypt, El Salvador, Estonia, Gabon, Guatemala, Guinea Bissau, Italy, Jamaica, Kazakhstan, Kuwait, Latvia, Lithuania, Macedonia (FYR), Madagascar, Malawi, Mali, Malta, Mauritius, Mexico, Moldova, Monaco, Morocco, Netherlands, Niger, Paraguay, Philippines, Poland, Romania, Russian Federation, Sao Tome and Principe, Slovakia, Slovenia, Switzerland, Tanzania, Togo, Tunisia, Turkey, Ukraine, Uzbekistan, Venezuela.

II. Cases from Brazil

7. Brazilian authorities have indicated using extensively and successfully the international legal cooperation provisions of the Organized Crime Convention to obtain assistance from other Parties. The Convention has also been the basis for several decisions by the Brazilian judiciary granting international cooperation in criminal matters to foreign States, in situations where similar requests had in the past been denied. The Brazilian Superior Courts have in many cases held a traditional approach to international legal cooperation, leading to Brazil's inability to fully cooperate in relation to foreign requests for coercive action within the Brazilian territory. Ratification of the Organized Crime Convention has brought forth a change in this respect in the decisions of the Brazilian Superior Courts.

8. The cases below have been selected by Brazilian authorities, among many others, for the purpose of the catalogue, because they are recent and best exemplify the use of the Convention in Brazil. For the sake of confidentiality, information pertaining to the identity of individuals and locations has been removed.

Requests for Assistance from Brazil

Case 1 – Asset recovery in a drug trafficking/money-laundering case

9. Investigations in Brazil uncovered a major money-laundering scheme designed to transfer proceeds of crime from Brazil to foreign banks, in a manner that would disguise the true beneficiary and the source of the money. Most of the assets laundered were proceeds of drug trafficking.

10. Brazil transmitted requests for mutual legal assistance – hearing of witnesses, transmission of bank documentation, and freezing of bank accounts – to 23 different countries. Thirteen of these requests were based on the Organized Crime Convention. Many are still pending but none of those that were based on the Convention were denied. Five of those Convention-based requests were fully executed.

11. The Organized Crime Convention was fundamental in this case. Through transferring proceeds to so many jurisdictions, criminals are usually able to hide a considerable portion of their assets. However, based on the Convention, the Brazilian authorities were able to transmit mutual legal assistance requests directly to the Central Authorities, avoiding the bureaucracy and time consumption of the diplomatic channels, and improving the communication with foreign jurisdictions. Out of the 13 requests based on the Convention, only one had to be transmitted through diplomatic channels. Out of the other ten (non Convention-based) requests, only three were transmitted directly through Central Authorities.

12. Mutual legal assistance obtained thanks to the use of the Convention has led to the collection of essential evidence for the proceedings in Brazil, as well as to the freezing of millions of dollars abroad. This result was enabled by the direct communications established with requested States, on the basis of the Convention.

Case 2 – Extradition in a fraud/corruption case

13. This case relates to the extradition of a Brazilian banker accused of fraudulent administration of a financial institution and corruption. During the investigations, the banker fled Brazil and was able to avoid criminal prosecution.

14. After years of hiding, the banker was identified in a hotel in Monaco and arrested through an Interpol red notice. Brazil then transmitted an extradition request based on Monaco's legislation and on the Organized Crime Convention. After several appeals by the defence, the Brazilian request was approved and the banker successfully extradited to Brazil.

15. Although the Brazilian authorities had to follow the requirements of Monaco's legislation, reference to the Convention made the Brazilian argument stronger and was essential for the prompt execution of the extradition.

Case 3 – Mutual legal assistance in a drug trafficking/money-laundering case

16. Investigations of the Brazilian Federal Police led to suspicions that the notorious leader of a Mexican drug trafficking cartel was living in Brazil with a fake identity. The judiciary needed proof that the passport used to enter Brazil was fake, as well as confirmation of information about the drug trafficker and his activities in Mexico.

17. For that purpose, Brazil transmitted to Mexico a request for mutual legal assistance based on the Organized Crime Convention. The request was transmitted directly through Central Authorities, supported by e-mail communications with the Mexican Central Authority. Evidence and documents were promptly transmitted by Mexico in recognition of the urgency of the matter in Brazil.

18. This is another case where the Convention was a useful tool to expedite the execution of a request for mutual legal assistance. The most important evidence arrived prior to the judgment in Brazil. The judge in charge of the case found that the evidence compiled was sufficient to determine that the person living in Brazil was indeed the Mexican drug trafficker and the defendant was convicted for money-laundering.

Foreign Requests for Assistance transmitted to Brazil

Case 4 – Italian request for mutual legal assistance

19. An Italian Letter Rogatory was forwarded to the Brazilian Superior Court of Justice for a ruling on its admissibility. The Court referred in its decision to the Organized Crime Convention as one of the considerations leading to the partial execution of the request.

20. The objective of the Italian request was to obtain bank documentation, the hearing of witnesses and the freezing of property in Brazil. The defence filed a petition soliciting denial of the request on the following grounds: (a) the Italian Letter Rogatory was invalid because it was not issued by a judicial authority; (b) the compulsory acts requested by the Letter Rogatory could only be executed upon recognition of an Italian judicial decision; (c) the Letter Rogatory could not be executed prior to summons and manifestation of interested parties.

21. The arguments put forward by the defence reflected the traditional position of Brazilian Superior Courts in the past. In that case, however, the Superior Court of Justice pointed out that the Organized Crime Convention enabled Brazil to proceed with the measures requested by Italy. The only obstacle identified by the Court related to the proper venue to decide upon the lifting of bank secrecy and freezing of property. This decision created in Brazil a very positive precedent for international cooperation based on multilateral treaties.

Case 5 – Belgian request for mutual legal assistance

22. The Belgian authorities transmitted a Letter Rogatory to Brazil requesting the hearing of witnesses, the transmission of bank documentation and the seizure of assets located in Brazil. The Letter Rogatory was presented to the Brazilian Superior Court of Justice for a ruling on its admissibility. The defence had requested denial of the request on the ground that coercive action may only be undertaken in Brazil through the enforcement of a foreign judicial decision.

23. Once again the Court authorized the execution of the request stating that the ratification of the Organized Crime Convention had opened the possibility of executing diligences such as those requested by Belgium prior to the enforcement of a foreign judicial decision.

Case 6 – Extradition request from the Netherlands

24. The Netherlands transmitted an extradition request based on the Organized Crime Convention. The request related to a Dutch citizen accused of conspiracy and extortion through the use of e-mails. The request was transmitted to the Brazilian Supreme Court, which has jurisdiction on issues of extradition.

25. The defence argued that the extradition should be denied because of lack of transnationality of the alleged offences. The Supreme Court considered the concept of transnationality under articles 5 and 3 of the Convention and found that the offences were indeed transnational. The extradition request was granted.

Case 7 – Swiss request for mutual legal assistance

26. In this case, the Brazilian Central Authority was consulted by a Swiss prosecutor who needed a witness, resident in Brazil, to be urgently interrogated, so as to instruct a criminal case in Switzerland. The Brazilian Central Authority advised the Swiss prosecutor to transmit a request for assistance based on the Organized Crime Convention, in order to eliminate bureaucratic delays and speed up the process within Brazil.

27. The request based on the Convention was transmitted by fax to the Brazilian Central Authority and immediately forwarded to the Public Prosecutor's Office for execution. Once the original documentation arrived in Brazil, the necessary formal measures were taken and the request for assistance was executed within the time limit required by Switzerland.

III. Cases from Canada

28. The secretariat was informed that Canada is using the Organized Crime Convention as the legal basis for international judicial cooperation when specific offences, in particular offences under the Protocols supplementing the Convention, were not included in the scope of application of existing bilateral treaties.

IV. Cases from the United States of America

29. The secretariat was also informed that in the United States of America thirteen extradition requests and five mutual legal assistance requests had been made on the basis of the Convention. Such cases, ranging from large-scale fraud to illegal arms dealing, involved ten Parties to the Convention, from South America, Central America, Eastern Europe and Western Europe. The extradition or assistance was granted in numerous cases and no case was refused on a ground related to the scope of the Convention or any shortcoming linked to the use of the Convention as the legal basis.

V. Cases from Venezuela

30. The Secretariat found through its own research decisions of the Supreme Court of Venezuela, in which the Convention had been considered as a valid legal basis for extradition, in relation to requests from Lithuania (the request for extradition, related to the offence of organizing and directing a criminal group, had however been refused, on grounds not related to the Convention) and Austria (the extradition had been granted).
