



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

Distr.: General
30 October 2018

Original: English

Report on the meeting of the Working Group on International Cooperation held in Vienna on 16 October 2018

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 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 an open-ended working group on international cooperation would be a constant element of the Conference. The Working Group on International Cooperation, established pursuant to that decision, holds substantive discussions on practical issues pertaining to various forms of international cooperation, including extradition, mutual legal assistance and international cooperation for the purpose of confiscation. The Working Group convened its first meeting during the third session of the Conference, which was held in Vienna from 9 to 18 October 2006. Until 2014, it used to meet on a biennial basis, as well as during the regular sessions of the Conference. Since 2014, however, the meetings have been convened on an annual basis pursuant to resolution 7/1 of the Conference, in which the Conference encouraged the Working Group on International Cooperation and the Working Group of Government Experts on Technical Assistance to consider meeting on an annual basis, as needed, and to hold their meetings consecutively, in order to ensure the effective use of resources. The ninth meeting of the Working Group was held in Vienna from 28 to 31 May 2018, in conjunction with the eleventh meeting of the Working Group of Government Experts on Technical Assistance.

II. Recommendations

2. The Working Group on International Cooperation adopted the following recommendations for endorsement by the Conference:

(a) States parties to the United Nations Convention against Transnational Organized Crime are encouraged to continue their efforts to expedite extradition procedures and simplify evidentiary requirements relating thereto pursuant to article 16, paragraph 8, of the Convention and, in general, to trigger, where necessary, internal reviews for possible reform of their extradition regimes with a view to simplifying extradition procedures where the person sought consents to his or her surrender to the requesting State and trying to minimize opportunities for delays in the extradition process;



- (b) States are encouraged to build their extradition relations on mutual trust and confidence and to strengthen, for that purpose, communication and coordination, including by enhancing the practice of formal and informal consultations at various stages of extradition proceedings, in particular with regard to the exchange of information on legal requirements and the identity of the person sought;
- (c) States are encouraged, if they have not done so, to consider putting in place inter-agency coordination mechanisms to discuss practical aspects pertaining to the execution of incoming requests for extradition, as well as ways and means to expedite the execution of such requests;
- (d) States are encouraged to foster and further promote the cooperation of their central authorities, including in extradition cases, through networking and regular contacts;
- (e) States parties should continue their efforts to facilitate the active participation of central authorities in the relevant meetings of the Conference and its working groups, in particular the Working Group on International Cooperation;
- (f) Where necessary, States should benefit from the regular exchange of information about and best practices in the provision and enforcement of assurances and guarantees in extradition proceedings regarding the treatment of the person sought in the requesting State, including through the exchange of pertinent jurisprudence in the field of human rights in similar cases;
- (g) When refusal of an extradition request is a possible outcome, States are encouraged, in specific circumstances and for humanitarian reasons that are present at the time of the decision, to consider the option of postponing the surrender of the person sought instead;
- (h) Subject to the availability of extrabudgetary resources, the Secretariat should conduct research with a view to preparing a discussion paper that would map an overview of practical considerations and challenges that authorities encounter, as well as lessons they have learned and good practices they have identified, in reconciling the need for observing and protecting the human rights of the person sought with the effectiveness of extradition proceedings, and in addressing efficiently the interplay between, on one hand, refugee and asylum proceedings and, on the other, extradition proceedings;
- (i) States parties are encouraged to continue making use, where appropriate and applicable, of the Convention as a legal basis for international cooperation in criminal matters, including extradition;
- (j) States parties are encouraged to provide the United Nations Office on Drugs and Crime with updated legal frameworks and concrete cases in which the Convention has been used as legal basis for international cooperation with a view to expanding the information already available in the knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC) and, subject to the availability of extrabudgetary resources, preparing a digest of cases that incorporates accumulated knowledge on this issue and has the potential of being updated regularly.

III. Summary of deliberations

Challenges faced in expediting the extradition process, including addressing health and safety and other human rights issues, as well as litigation strategies utilized by defendants to delay the resolution of an extradition request

3. At its first and second meetings, on 16 October 2018, the Working Group considered agenda item 2, entitled “Challenges faced in expediting the extradition process, including addressing health and safety and other human rights issues, as well as litigation strategies utilized by defendants to delay the resolution of an extradition request”. The discussion on the agenda item was facilitated by the panellists Christian

Sager, Head of the International Treaty Unit of the Federal Department of Justice of Switzerland; Sun Xiaofei, Deputy Director of the Department of Treaty and Law of the Ministry of Foreign Affairs of China; and Haydee Chávez Sánchez, Director for Extradition of the General Directorate of International Proceedings at the General Prosecutor's Office of Mexico.

4. The panellist from Switzerland highlighted the importance for States of observing human rights obligations under international law when acting as requesting States in extradition proceedings. He made specific reference to the obligations under the European Convention on Human Rights, which was directly applicable in his country, as well as to the International Covenant on Civil and Political Rights. He focused on the standards under his country's national law, which stipulated that a request to cooperate in criminal matters, including extradition, was not to be granted if there were reasons to believe that proceedings in the other country would not meet the requirements of the above-mentioned international instruments. He noted that human rights guarantees under Swiss law made the granting of assistance subject to certain conditions. He also noted that, while human rights obligations could slow down extradition proceedings, delays could be addressed through mutual cooperation between the States involved. He underscored the importance of monitoring whether the treatment of the extradited person corresponds to the assurances provided by the requesting State.

5. The panellist from China presented his country's legal framework governing extradition and its extradition practice. He gave details of the applicable legal requirements, in particular dual criminality, the non-extradition of nationals, non-extradition on the basis of political offences, non-discrimination, the prohibition of torture and the principle of speciality. He noted the multiplicity of domestic authorities involved in the execution of extradition requests and addressed the way to ensure inter-agency cooperation, including with regard to human rights. He suggested that mutual respect and trust, strengthened communication and coordination, as well as improved domestic legal systems were key prerequisites to improving extradition practice and overcoming practical challenges. He also mentioned the need to strengthen political will, especially in relation to concluding bilateral treaties.

6. The panellist from Mexico presented the institutions responsible for handling extradition requests in her country and noted the challenges and opportunities the ongoing reform of the justice system presented in this context. She gave examples of extradition cases in which guarantees had been given that the death penalty would not be imposed or would be commuted to a life sentence.

7. During the deliberations, many speakers referred to the legal requirements regarding extradition and the steps to be followed in their countries' extradition practice. Most speakers' countries had two-tier systems that consisted of a judicial assessment and an executive decision. Speakers also noted the main challenges encountered in extradition proceedings that could cause delays and reduce the effectiveness of cooperation. Those challenges included differences between the legal systems of the requested and requesting States; varying evidentiary requirements for granting an extradition request; the identification of offenders, especially in cross-border cases involving cybercrime; humanitarian considerations, including the state of health of a fugitive; and prison conditions in the requesting State.

8. Some speakers drew attention to the time limits their countries applied to extradition proceedings and highlighted that simplified extradition requirements helped to expedite the process and make cooperation more effective. A number of speakers pointed out that their domestic laws restricted the detention of the person sought to the actual time frame needed to complete the extradition process. Other speakers noted that their domestic legislation imposed no such time limit. One speaker underlined the need to ensure that the person sought was present during extradition proceedings.

9. Many speakers underlined the importance of holding consultations among authorities and practitioners to expedite the extradition process. They highlighted the

usefulness of informal consultations as a means of exchanging information on legal requirements and standards, and on aspects specific to the extradition case, such as the identification of the person sought.

10. As was further pointed out, consultations also played a pivotal role in providing assurances and guarantees regarding the treatment of the person sought after his or her surrender to the requesting State. The discussion revolved around two basic types of assurances: those for which effective monitoring was straightforward and those for which it posed challenges. For example, monitoring was straightforward after assurances that the death penalty would not be imposed or executed, or that a retrial would be granted following in absentia proceedings. However, effective monitoring was more challenging in the case of assurances that the person sought would not undergo torture or other inhuman or degrading treatment or punishment in the requesting State. A number of speakers made reference to specific assurances sought on account of religious issues or to protect the human rights of persons who belonged to ethnic minorities or who had minority sexual identities and who, under certain conditions, could be at risk while in prison. Assurances may also be sought on humanitarian grounds such as the age or health of the person sought, but, as one speaker noted, seeking assurances of that sort may result in the postponement rather than the denial of the extradition request.

11. One speaker underlined that, in certain cases, assurances may be sought not within the bilateral extradition relations between the requested and the requesting State, but in relation to deportation to a third State. The speaker referred to a case where the law in the requesting State did not allow for assurances regarding the death penalty. Therefore, the requested State chose to seek executive clemency with regard to the treatment of the person to be extradited.

12. Another speaker suggested that, once an extradition request had been granted, an international review body could be involved where necessary and appropriate to monitor the treatment of the person extradited, for example the International Committee of the Red Cross or the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Such a body could apply consistent standards and monitor treatment after the granting of extradition requests efficiently and reliably. Discussions on the issue were ongoing in other forums, in particular the Council of Europe. The same speaker mentioned that, in other discussions, it was taken for granted that assurances on the treatment of the person sought were a matter for the cooperating States within their bilateral relationship and that only in exceptional cases they might resort to the International Committee of the Red Cross because of its wide experience in addressing issues relating to access to prisoners.

13. Another speaker referred to Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.¹

14. Some speakers underscored that, in certain extradition cases, the Organized Crime Convention had successfully been used as a legal basis for international cooperation. Other speakers reiterated that there was a continued need to use the Convention for international cooperation to combat the types of crime falling within its scope of application.

15. One speaker was of the view that States that did not extradite their nationals should, when possible under their domestic law, consider surrendering their nationals to the requesting State for the sole purpose of standing trial and on the condition that, if convicted, they were returned to the country of origin to serve the sentence resulting from the trial or the proceedings for which the extradition or surrender had been

¹ *Official Journal of the European Union*, L 294, 6 November 2013, pp. 1–12.

requested. This course of action was provided for in article 16, paragraph 11, of the Organized Crime Convention.

16. Another speaker referred to specific challenges encountered in extradition practice, such as the absence of bilateral treaties, the lack of uniformity in extradition arrangements and problems relating to the principle of *aut dedere aut judicare*. He discussed the latest developments in extradition law and practice, pointing in particular to the wider context of reforms of the criminal justice and penitentiary systems in his country, and to developments in the digitalization of criminal justice data. He also presented new methodologies followed by the national authorities of his country in asset recovery cases and in drafting requests related to those.

Other matters

17. The Working Group considered agenda item 3, entitled “Other matters”, during the afternoon meeting of 16 October 2018.

18. The Secretariat informed the working group about the outcome of the seventh open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption, which had been held in Vienna on 8 June 2018.

19. The Secretariat further informed the working group about the work of the United Nations Office on Drugs and Crime in the field of international cooperation in criminal matters, with particular reference to technical assistance activities, the development and updating of relevant tools and the promotion and fostering of judicial cooperation networks and cooperation among them.

IV. Organization of the meeting

A. Duration of the meeting

20. The Working Group on International Cooperation met on 16 October 2018, holding a total of two meetings. The meetings were chaired by Thomas Burrows (United States of America).

B. Statements

21. Under agenda item 2 of the Working Group on International Cooperation, statements were made by representatives of the following States parties to the Organized Crime Convention: Austria, Canada, Chile, Egypt, France, Gambia, Indonesia, Israel, Kazakhstan, Norway, Romania, Russian Federation, South Africa, United Kingdom of Great Britain and Northern Ireland and Venezuela (Bolivarian Republic of).

22. Under agenda item 3, a statement was made by the representative of the following State party to the Convention: Italy.

23. Under agenda item 4, statements were made by representatives of the following States parties to the Convention: Brazil and Czechia.

C. Adoption of the agenda and organization of work

24. At its 1st meeting, on 16 October 2018, the Working Group on International Cooperation adopted the following agenda:

1. Organizational matters:
 - (a) Opening of the meeting.
 - (b) Adoption of the agenda and organization of work.

2. Challenges faced in expediting the extradition process, including addressing health and safety and other human rights issues, as well as litigation strategies utilized by defendants to delay the resolution of an extradition request.
3. Other matters.
4. Adoption of the report.

D. Documentation

25. The Working Group on International Cooperation had before it the following:
 - (a) Provisional agenda and annotations ([CTOC/COP/WG.3/2018/4](#));
 - (b) Challenges faced in expediting the extradition process, including addressing health and safety and other human rights issues, as well as litigation strategies utilized by defendants to delay the resolution of an extradition request ([CTOC/COP/WG.3/2018/5](#)).

V. Adoption of the report

26. On 16 October 2018, the Working Group adopted the present report on its meetings, as orally amended.
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