



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

Distr.: General
22 July 2020

Original: English

Report on the meeting of the Working Group on International Cooperation held in Vienna on 7 and 8 July 2020

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. Since its first meeting, convened during the third session of the Conference, which was held in Vienna from 9 to 18 October 2006, the Working Group on International Cooperation has been the subsidiary body of the Conference used as a forum for holding substantive discussions on practical issues pertaining to the effective implementation of the provisions of the United Nations Convention against Transnational Organized Crime on international cooperation in criminal matters, including extradition, mutual legal assistance and international cooperation for the purpose of confiscation. The tenth meeting of the Working Group was held in Vienna on 16 October 2018.

II. Organization of the meeting

A. Opening of the meeting

2. As agreed by the extended Bureau of the Conference by silence procedure on 19 June 2020, the meeting was held in a hybrid format, with a very restricted number of participants (representatives of the Secretariat) present in the meeting room and all other participants remotely connected, using the interpretation platform procured by the United Nations.

3. The Working Group met on 7 and 8 July 2020, holding a total of four meetings. Two meetings were held on each day, from 12 to 2 p.m. and from 4 to 6 p.m., Central European Summer Time. Upon consultation with the Chair of the Working Group, the aforementioned schedule was decided to accommodate the different time zones of the Chair and the participants of the Working Group, while respecting and staying within the time frame usually set for meetings. Information about the new meeting times was made available on the relevant web page of the Working Group.



4. The meeting was chaired by Thomas Burrows (United States of America). Owing to the specific format of the meeting resulting from the coronavirus disease (COVID-19) pandemic, the Chair participated in the meeting remotely.

B. Statements

5. For the purposes of the meeting, the Secretariat used an interpretation platform, Interprefy, to provide interpretation into the six official United Nations languages. The platform allowed 300 participants to be assigned a speaking and listening role, while all other participants had a listening role only. Delegations had been requested to notify the Secretariat of the distribution of speaking and listening roles in each delegation when registering their delegates by note verbale.

6. Under agenda item 1, statements were made by representatives of the following States parties to the Convention: Brazil, Colombia, Egypt, Italy, Russian Federation, State of Palestine (on behalf of the Group of 77 and China), United Kingdom of Great Britain and Northern Ireland and United States.

7. Under agenda item 2, statements were made by representatives of the following States parties: Argentina, Brazil, Chile, China, Colombia, Honduras, Indonesia, Norway, Paraguay, United Kingdom and United States. The observer for the International Criminal Police Organization (INTERPOL) also made a statement.

8. Under agenda item 3, statements were made by representatives of the following States parties: Colombia, Ecuador, France, Honduras, Indonesia, Italy, Jordan, Kyrgyzstan, Mexico, Paraguay, Romania, Russian Federation, United Kingdom and United States. The observer for INTERPOL also made a statement.

9. Under agenda item 4, statements were made by representatives of the following States parties: Chile (the representative also spoke in his capacity as Chair of the Ibero-American Association of Public Prosecutors), Russian Federation and United States.

10. Under agenda item 5, statements were made by representatives of the following States parties: Colombia, Egypt, Russian Federation, Spain, State of Palestine (on behalf of the Group of 77 and China), Switzerland, United Kingdom and United States.

C. Adoption of the agenda and organization of work

11. The part of the report under section C was finalized by the Secretariat after the meeting, in close coordination with the Chair. The text below has taken into account some observations from participants but was not subject to negotiations and adoption during the meeting. It is also reflected in the report as summary by the Chair, as provided below.

12. At its 1st meeting, on 7 July, the Working Group considered agenda item 1, entitled “Organizational matters”, and discussed the proposed organization of work. Reference was made to the updated organization of work, which had been prepared by the Secretariat in consultation with the Chair and shared with the extended Bureau of the Conference. Some speakers expressed concern about that proposal, in particular the suggestion that, if it was not possible to achieve consensus on the text of the recommendations owing to time constraints, such recommendations, or the parts thereof that were not agreed on, would be compiled by the Chair for consideration by the Conference at its tenth session.

13. During the opening session, the State of Palestine, on behalf of the Group of 77 and China, referred to a letter dated 6 July 2020 from the Group of 77 and China to the President of the Conference of the Parties. In that letter, the Group of 77 and China had recalled their letter dated 27 May 2020 to the executive heads of the four main Vienna-based organizations, in which they had noted, inter alia, that meetings to be

conducted virtually or in a hybrid format should have clear rules of procedure and methods of work and allow for briefings, extended Bureau meetings or smaller group meetings. In the same letter, the Group of 77 and China had also highlighted the difficulties caused by virtual and hybrid meetings when there was a need to negotiate outcomes and decisions, as well as the need for States parties to have certainty on how business would be conducted.

14. In their letter of 6 July 2020, the Group of 77 and China had also referred to the annex to the message of 30 June 2020 sent by the Secretariat to the members of the extended Bureau of the Conference. While recognizing the complexity and limited time frame for consideration of the organization of work for the July 2020 meetings of the subsidiary bodies of the Conference in view of restrictions resulting from COVID-19, the Group of 77 and China was of the view that timely information and consultations with States parties would have been necessary to better understand the proposed organization of work. The Group of 77 and China emphasized that timely, transparent and inclusive consultations with all States parties were essential, in particular when the decisions taken might have implications for the established practices and rules of procedure of the meetings. Accordingly, they requested that, before future meetings took place, States parties be informed and consulted on the organization of work at least two weeks in advance of the meetings.

15. Moreover, the Group of 77 and China found that there was lack of clarity on how the process would be followed and insufficient information on how the recommendations would be distributed among States parties during sessions, and that there was no assurance that there would be sufficient time for their proper, inclusive and transparent consideration. The Group of 77 and China considered that negotiated recommendations were at the core of the mandated tasks and one of the most important contributions of subsidiary bodies of the Conference. Therefore, they could not support the proposed compilation of recommendations by the Chair. Instead, they proposed that the report and recommendations of each session be circulated to all States parties and adopted by silence procedure or, alternatively, that a short and decision-oriented meeting of the subsidiary bodies dedicated solely to the adoption of the report and recommendations be held. Such a meeting could take place after informal consultations to find consensus on recommendations, should that be necessary, and when in-person meetings with at least one person per delegation could be held at the Vienna International Centre.

16. Finally, the Group of 77 and China expressed their concern about the serious technical problems encountered by participants in previous virtual or hybrid meetings organized by the United Nations Office on Drugs and Crime (UNODC). The challenges created by the communication and interpretation system used in the previous meetings reinforced, according to the Group of 77 and China, their position on the difficulties in achieving negotiated outcomes and decisions in virtual settings. The Group of 77 and China reiterated their request to the Secretariat to provide solutions to the technical issues and ensure that the systems would be working well before conducting any virtual or hybrid meetings.

17. Representatives of the Secretariat informed the Working Group about the challenges that the aforementioned alternate proposal on the organization of a short and decision-oriented meeting of the subsidiary bodies dedicated solely to the adoption of the report and recommendations could pose to the organization and scheduling of future work, owing to existing resources and meeting entitlements.

18. One speaker was of the view that the report on the meeting of the Working Group should not contain recommendations, but only the summary of deliberations by the Chair. Another speaker supported necessary temporary adaptations of working methods to debate and take decisions without physical meetings (by consensus or vote) and suggested as a compromise or pragmatic solution that recommendations be discussed virtually at the experts' level and then circulated by silence procedure; should there be any objection breaking the silence procedure, a physical meeting of one representative per State party be convened for decision-making. Other speakers

expressed the view that these organizational issues should have been appropriately discussed within the framework of the extended Bureau of the Conference and not in the context of deliberations of the Working Group.

19. Against this background, the Working Group agreed on a compromise proposal by the Chair and adopted the agenda below and the proposed organization of work,¹ with the exception of the part of the organization of work relating to the adoption of the report and the recommendations of the meeting. It was agreed that this part would be revisited at the 4th and last meeting, on the afternoon of 8 July, in the light of the discussions held, with a view to making final decisions on the outcome of the meeting and related follow-up processes.

1. Organizational matters:
 - (a) Opening of the meeting;
 - (b) Adoption of the agenda and organization of work.
2. The use and role of joint investigative bodies in combating transnational organized crime.
3. International cooperation involving special investigative techniques.
4. Other matters.
5. Adoption of the report.

D. Attendance

20. The following parties to the Convention were represented at the meeting, participating remotely owing to the specific format of the meeting resulting from the COVID-19 pandemic: Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Bolivia (Plurinational State of), Brazil, Burkina Faso, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Czechia, Dominican Republic, Ecuador, Egypt, El Salvador, European Union, France, Germany, Greece, Guatemala, Honduras, India, Indonesia, Iraq, Israel, Italy, Japan, Jordan, Kuwait, Kyrgyzstan, Lebanon, Libya, Malaysia, Malta, Mexico, Morocco, Myanmar, Nigeria, Norway, Oman, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Singapore, Slovakia, Slovenia, South Africa, Spain, State of Palestine, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela (Bolivarian Republic of) and Yemen.

21. The following signatory State to the Convention was represented by observers, also participating remotely: Islamic Republic of Iran.

22. The following intergovernmental organizations were represented by observers, also participating remotely: Council of Europe, European Border and Coast Guard Agency, INTERPOL, League of Arab States and Organization of the Islamic Cooperation.

23. A list of participants is contained in document CTOC/COP/WG.3/2020/INF/1/Rev.1.

E. Documentation

24. The Working Group had before it the following documents:

- (a) Annotated provisional agenda ([CTOC/COP/WG.3/2020/1](#));

¹ See www.unodc.org/documents/treaties/International_Cooperation_2020/WG_IC_website/Organization_of_work_Working_Group_on_International_Cooperation.pdf.

(b) Background paper prepared by the Secretariat on the use and role of joint investigative bodies in combating transnational organized crime (CTOC/COP/WG.3/2020/2);

(c) Background paper prepared by the Secretariat on international cooperation involving special investigative techniques (CTOC/COP/WG.3/2020/3).

III. Summary of deliberations: summary by the Chair

25. The summary of deliberations in the present section was prepared by the Secretariat after the meeting, in close coordination with the Chair. As it was neither debated nor submitted for adoption during the meeting, it is provided as a “summary by the Chair”.

A. Use and role of joint investigative bodies in combating transnational organized crime

26. At its 1st and 2nd meetings, on 7 July, the Working Group considered agenda item 2, entitled “The use and role of joint investigative bodies in combating transnational organized crime”. Discussion of the item was facilitated by two panellists: Daniela Buruiana, Prosecutor, National Member of the European Union Agency for Criminal Justice Cooperation for Romania; and Stefano Opilio, Public Prosecutor, Directorate General of International Affairs and Judicial Cooperation, Ministry of Justice of Italy.

27. The panellist from Romania highlighted the importance of joint investigative teams as a modern and valuable tool to expedite cross-border investigations and ensure more efficient gathering and exchange of information. She underlined the added value of joint investigative teams in simplifying communication, coordination and cooperation among participating States, facilitating the development of common strategies or clear objectives, thus avoiding duplication of efforts and waste of resources, strengthening mutual trust and interaction among team members from different jurisdictions and working jointly on the collection of evidence.

28. The panellist noted the increasing and successful use of joint investigation teams by Romanian authorities, which had adopted a proactive approach by setting up such teams at an early stage of investigations or requesting the opening of parallel investigations in the relevant countries. She also identified the admissibility in court of evidence derived from joint investigations as a crucial element for improving the effectiveness of the work of investigative bodies in cross-border organized crime cases.

29. The panellist highlighted the role of the European Union Agency for Criminal Justice Cooperation and its assistance to its members in identifying suitable cases, supporting coordination meetings for the setting-up and functioning of joint investigation teams, providing legal advice on conflicts of jurisdictions and admissibility of evidence, and providing funds for the functioning of joint investigation teams, including for travel and accommodation, interpretation and translation.

30. The panellist shed light on recent trends regarding the use of joint investigation teams, including the legal bases involved (from bilateral to multilateral instruments), the range of cooperating States (from European Union member States to third States) and the range of offences covered (from trafficking in persons and drugs to fraud, economic crime, other common offences and cybercrime). She referred to examples of joint investigations in cases of online sexual abuse of children and online fraud.

31. The panellist identified as most common challenges in this field the variety in legal systems and procedural provisions on evidence gathering and disclosure requirements, the different stages of investigation in the States involved, delays

caused by lengthy signature processes and issues pertaining to the languages used and the need for the translation of documents.

32. In terms of best practices, the panellist stressed the significance of cooperation and communication among members of the joint investigation teams to address practical, legal and operational issues during the prosecution phase, the continuous communication to clarify the requirements of legal systems and address jurisdictional issues (e.g., agreement on the venue of prosecution and transfer of criminal proceedings) and the use of common or shared investigative methods and tools among participating countries.

33. The panellist from Italy characterized joint investigation bodies as an innovative tool representing a quantum leap in the field of judicial cooperation, a leap that was primarily cultural rather than judicial. He pointed out that the potential of such bodies was impressive but still largely unexplored and that, at a time when traditional mechanisms of international cooperation were no longer adequate to ensure efficient and real-time judicial cooperation, a coordinated investigative approach for carrying out operations in real time could only be undertaken in the context of such teams.

34. The panellist noted that joint investigation teams might be considered most useful when proceedings related to serious offences of a transnational nature required difficult and demanding investigations in collaboration with other States (major cross-border investigations), and when the circumstances of the case necessitated coordinated, concerted action in the States involved (connected investigations requiring coordination).

35. The panellist also referred to some practical considerations to bear in mind when assessing the need for setting up a joint investigation team, including the complexity and sophistication of the criminal network or activities to be investigated, the number and complexity of the investigative measures to be adopted in the States concerned and the level of connection between the investigations in those States. He also stressed the importance of establishing an operational plan and having in place shared modalities to take evidence. In this regard, he explained that the flexibility offered by joint investigation teams allowed investigators to anticipate – already at the stage of collection of evidence – any question of admissibility and to find appropriate solutions.

36. The panellist focused on the basis for setting up joint investigation teams, namely an agreement between interested parties regulating such issues as the composition of the team, the object and purpose of the investigation, applicable laws, the period covered by the agreement and other matters, including the use of arms, the languages of communication and the incurred costs. He referred to the joint investigation team model agreement available on the website of the European Union Agency for Criminal Justice Cooperation, which used as a common non-binding baseline that practitioners could tailor to the specific needs of a case. He stated that the model had proved sufficiently flexible to serve as a basis for discussions with non-European Union States with some adaptation to the different legal bases. The importance of the Network of National Experts on Joint Investigation Teams was also emphasized.

37. Both panellists made reference to relevant provisions of applicable instruments in this field, both at the regional and international levels (art. 13 of the European Convention on Mutual Assistance in Criminal Matters; art. 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters; Council Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA); art. 19 of the Organized Crime Convention; art. 9, para. 1 (c), of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988; and art. 49 of the United Nations Convention against Corruption).

38. In the ensuing debate, some speakers referred to national legislative approaches to joint investigations, ongoing reforms to cover related aspects and bilateral and regional agreements or arrangements on joint investigations. While the importance of

the joint implementation of articles 18 and 19 of the Organized Crime Convention was acknowledged, the use of model agreements at the bilateral and regional levels, adjusted as appropriate to existing needs, was also identified as good practice. Reference was made to the framework agreement for cooperation of States parties to the Southern Common Market and associated States for the creation of joint investigation teams, approved on 2 August 2010 and in force since 22 May 2020.²

39. Examples of successful operations and joint investigations were shared during the meeting, including cases that had resulted in the extradition of drug traffickers to the requesting State. One speaker mentioned as good practices the standardization of investigative practices at the regional level and the establishment of special units to coordinate regional operations against gangs and organized criminal groups. Another speaker confirmed the usefulness of spontaneously exchanging information through legal cooperation channels, especially in cases of parallel investigations. One speaker referred to the support that the International Association of Prosecutors offered to prosecutors in his country in the fight against organized or other serious crime.

40. Speakers referred to practical considerations to bear in mind in all phases of joint investigations. In this context, the inclusion of clauses on financial arrangements in related agreements establishing a joint investigation team was highlighted. Speakers also stressed the importance of evaluating and measuring the impact of joint investigation teams at their closure. It was noted that the evaluation should be carried out in a structured manner, based on the lessons learned by, and the findings of, the joint investigation teams.

41. One speaker referred to ways and means by which INTERPOL could support joint investigative teams and facilitate international cooperation involving special investigative techniques. In this connection, he noted that INTERPOL, as a member of joint investigation teams, could assist national and foreign liaison officers of participating countries, including through the provision of specific expertise and investigative support, tailored to the specific nature of the crime and the requirements of the requesting country; the deployment within 24 hours of specialized staff; and the best possible use of the INTERPOL databases. Furthermore, he stated that INTERPOL facilitated real-time exchange of messages and police data among countries, including fingerprints, photographs, wanted person notices and data on stolen and lost travel documents and stolen motor vehicles.

Discussion points for future consideration

42. Stemming from the meeting, discussion points for future consideration were identified by the Chair and were not discussed and negotiated by the participants. Some delegations expressed the wish to be able to make comments at a subsequent stage on these discussion points for future consideration, which were as follows:

(a) States parties are encouraged, where possible and necessary, to use joint investigations as a modern form of international cooperation to increase the effectiveness of and expedite cross-border investigations for the broadest possible range of offences, as an alternative or complement to requests for mutual legal assistance; in doing so, States parties need to be able to act quickly, bearing in mind that information or evidence to be obtained may be available only for a limited period of time;

(b) States parties are also encouraged to make further use, where appropriate, of article 19 of the Organized Crime Convention, as well as other applicable instruments at the international, regional and bilateral levels, as a legal basis for joint investigations; in doing so, they may wish to develop model agreements, or use existing ones at the regional level, on the setting-up of joint investigative bodies and further disseminate them to competent judicial, prosecutorial and law enforcement authorities;

² www.mercosur.int/en/.

(c) States parties are further encouraged to exchange best practices and lessons learned in the field of joint investigations, especially those on the implementation of article 19 of the Convention; in this regard, emphasis should be placed on evaluating the results of joint investigations in a structured manner, as well as measuring the success and overall effectiveness of such investigations;

(d) States parties are encouraged to facilitate training activities for judges, prosecutors, law enforcement officers or other practitioners engaged in joint investigations;

(e) States parties should promote mutual trust and confidence among their competent authorities from the initial phase of planning the deployment of a joint investigation team or body;

(f) States parties should ensure that communication channels are properly maintained in all phases of joint investigations to proactively identify competent authorities in the cooperating States; address practical, legal and operational issues; facilitate the provision of clarifications on applicable legal and disclosure requirements; and overcome practical or substantive challenges, such as those associated with different investigative structures and principles or relating to jurisdictional issues, the *ne bis in idem* principle and the admissibility in court of evidence obtained from joint investigations;

(g) States parties are strongly encouraged to make use of the resources and facilities provided by regional bodies or mechanisms, including the European Union Agency for Criminal Justice Cooperation, as well as existing judicial and law enforcement networks, to enhance coordination for joint investigations at all stages, from planning to setting-up, and from operation to closure and evaluation;

(h) States parties are encouraged to include provisions or clauses on financial arrangements in their agreements regarding joint investigations, where appropriate in a flexible manner to allow for adaptations, with a view to having a clear framework for the allocation of costs, including translation and other operational expenses incurred in joint investigations;

(i) The Secretariat should continue its work to collect and make available on the knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC) information on applicable laws or arrangements at the national and regional levels regulating aspects relevant to joint investigations; and further promote the use of the redeveloped Mutual Legal Assistance Request Writer Tool, which contains, inter alia, guidance on how to draft a request for mutual legal assistance for conducting a joint investigation, where necessary;

(j) Building on previous recommendations contained in Conference resolution 5/8 and on 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 “sanitized” examples of arrangements or agreements concluded between States parties for that purpose, or a set of legal, practical and operational guidelines on the implementation of article 19.

B. International cooperation involving special investigative techniques

43. At its 3rd meeting, on 8 July, the Working Group considered agenda item 3, entitled “International cooperation involving special investigative techniques”. Discussion of the item was facilitated by the panellist Stephen McGlynn, Minister Counsellor, Department of Home Affairs, Australia.

44. The panellist made reference to the experience that his country had gained in controlled deliveries to combat transnational crime. He noted that this experience had

been consistent over the years, involving law enforcement officers at the federal and state or territorial levels, but also border control and customs authorities. This field of cooperation involved a variety of cooperating authorities, which might be criminal law or customs enforcement authorities. Moreover, in addition to typical agreements on mutual assistance in criminal matters, there were also customs mutual legal assistance agreements that provided for cooperation and the sharing of documents or evidence on transborder shipments.

45. The panellist explained that controlled deliveries were seen as an important modality of international cooperation to disrupt the activities of organized criminal groups and share lessons learned from cooperation with foreign authorities, in particular with regard to illicit trafficking in tobacco. In this context, he stressed the importance of cooperation and information-sharing, especially in the light of the increasing sophistication of organized criminal groups and their efforts to avoid detection.

46. The panellist placed emphasis on the efficient management of controlled deliveries, with a focus on shared goals to target the benefits of organized criminal groups despite the so called “asymmetric criminality” in the case of illicit trafficking in tobacco, given that this commodity was not subject to the same regulations and limitations in all countries.

47. The panellist pointed out that timely responses in urgent circumstances were of utmost importance and that, therefore, good coordination was a prerequisite for better results. He stressed the need to go beyond operational arrangements and accord priority, in a more holistic manner, to mutual trust and confidence, in particular among investigators. He also acknowledged the importance of ensuring the admissibility of evidence derived from controlled deliveries in subsequent criminal proceedings, given the different legal and disclosure requirements in each country.

48. In the ensuing discussions, speakers stressed the usefulness of special investigative techniques, especially controlled deliveries, noting at the same time that international cooperation for the investigation of such crimes as drug trafficking might necessitate coordinated legal frameworks and arrangements in view of the investigative or intelligence-gathering tasks of operating bodies, the mandates and legal powers of which might differ from country to country. Other speakers reported on the legislation of their countries on special investigative techniques or legislative framework to update both the form and type of admissible evidence and regulate issues of protection of personal data.

49. Many speakers acknowledged the added value of the use of special investigative techniques in the detection, prevention, investigation and prosecution of serious crime, including child sexual exploitation and abuse. One speaker referred to the use of the Convention to address new emerging trends in organized crime, such as environmental crime, illicit trafficking in falsified medicines and medical products and cybercrime. Another speaker highlighted the importance of intercepting communications and decrypting encrypted communications to address the links between transnational organized crime and terrorism effectively. One speaker underlined that special investigative techniques should be seen as one of the criminal justice and law enforcement responses to the challenges posed by the high level of organizational and financial development of organized criminal groups and the interlinkages between organized crime and other crimes, such as the financing of terrorism or illegitimate influence on public bodies. One speaker reaffirmed the importance of the Convention for combating trafficking in firearms, but also referred to the risks associated with controlled deliveries in this field, stressing the importance of distinguishing the responsibilities of the authorities involved and respecting national sovereignty.

50. One speaker referred to General Assembly resolution [74/247](#) on countering the use of information and communications technologies for criminal purposes, in which, inter alia, the Assembly had established an open-ended ad hoc intergovernmental committee of experts, representative of all regions, to elaborate a comprehensive

international convention on countering the use of information and communications technologies for criminal purposes. In this context, reference was made to ongoing efforts for the convening, in accordance with the aforementioned resolution, of an organizational session of the ad hoc committee to agree on an outline and modalities for its future activities.

51. Some speakers stressed the need for having in place the legal basis, rooted in human rights, necessary for carrying out undercover investigations. In this regard, it was noted that good practices in the use of special investigative techniques should be centred around and based on the protection of human rights and respect for the rule of law, including the consideration of the principles of legality, subsidiarity and proportionality. Moreover, it was underscored that investigations should, where appropriate, be subject to conditions and safeguards that provided for the appropriate protection of human rights and liberties, including mechanisms for judicial or independent oversight, redress and appropriate data protection and privacy for individuals.

52. One speaker stressed the need for planning and coordination in the early phases of investigations, to ensure that competent authorities were aware of restrictions and limitations stemming from human rights protection and due process, including judicial oversight mechanisms. It was noted that such awareness had proved to be conducive to the efficient use of evidence derived from undercover operations or the use of other special investigative techniques in subsequent criminal and extradition proceedings.

53. Without neglecting the various techniques used in investigations, some speakers referred to the specific nature of those used to gather electronic evidence. This topic was reported as increasingly sophisticated and highly complex, given the fragile nature of electronic evidence and the special measures and precautions that should be taken to document, collect, preserve and share it. Challenges in this regard included the difficulty in finding a balance between the production of such evidence and its admissibility in court, the differences between intelligence and its treatment in order to be classified as electronic evidence, and the need to always take into account the protection of human rights and procedural guarantees.

54. One of the challenges posed by special investigative techniques was the different stages at which countries were in terms of use of information and communications technology and development of relevant legislation. This diversity included variations in applicable legal requirements across different legal systems, hence, investigative techniques that had proved useful in one State might not be allowed in another; a wide range of penalties, especially for offences committed in the digital environment; a plethora of criminal or investigative procedures in place and their impact on human rights and fundamental freedoms; and the existence of different law enforcement structures, coupled with varying levels of necessary resources involved, that hampered joint work in cross-border investigations.

55. Discussions also revolved around the role of the private sector in the field of international cooperation in criminal matters, in particular when using special investigative techniques. Two particular examples were mentioned: the involvement of bank and financial institutions in cross-border financial investigations and mutual legal assistance and, in that context, the need for them to comply with the requirements of applicable treaties and domestic laws regarding their cooperation with investigative and prosecutorial authorities; and the role of communication service providers in securing electronic evidence for the detection, investigation and prosecution of crimes, and how that role had an impact on international cooperation, either through direct cooperation with those providers or through the central authorities of States involved.

56. Many speakers underlined the need for the exchange of best practices in terms of special investigative techniques, in particular in the context of international cooperation, and reaffirmed the importance of improving the capacities of national authorities in that area. In this connection, the central role of UNODC in providing

technical assistance was highlighted. One speaker also referred to the future impact of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, established in resolution 9/1 of the Conference, on the identification of technical assistance needs of reviewed States parties, as well as ways and means to address them, in the field of international cooperation in criminal matters.

Discussion points for future consideration

57. Stemming from the meeting, discussion points for future consideration were identified by the Chair and were not discussed and negotiated by the participants. Some delegations expressed the wish to be able to make comments at a subsequent stage on these discussion points for future consideration, which were as follows:

(a) States parties are encouraged to make further use, where applicable, of article 20 of the Convention as a legal basis for international cooperation involving special investigative techniques; and use other applicable regional instruments and bilateral agreements or arrangements or, in the absence of such agreements or arrangements, use special investigative techniques on a case-by-case basis, to foster cooperation in this field;

(b) States parties are also encouraged to exchange best practices and lessons learned in the field of special investigative techniques, especially those relating to the implementation of article 20 of the Convention;

(c) States parties are further encouraged to facilitate training activities for judges, prosecutors, law enforcement officers or other practitioners engaged in the conduct or oversight of special investigative techniques, bearing in mind the complexity of issues relating to the use of such techniques, in particular for obtaining electronic evidence, and also taking into account the various stages of development at which countries are in terms of use of information and communications technologies;

(d) States parties are encouraged to promote communication and coordination at an early planning stage of their cooperation in order to ensure that evidence is used effectively, including in extradition cases;

(e) In making use of special investigative techniques, States parties should, given the potential danger to the public, in particular with regard to controlled deliveries, devote particular attention to accountability issues and the need to respect national sovereignty considerations;

(f) With a view to ensuring the admissibility in court of evidence derived from the use of special investigative techniques, such use should be subject, both at the national level and in the context of international cooperation, to human rights guarantees, including respect for the principles of legality, subsidiarity and proportionality, as well as safeguards for judicial or independent oversight;

(g) States parties are strongly encouraged to consider human rights appropriately, including the right to privacy, when deploying joint investigative teams and special investigative techniques to combat transnational and organized crime, as doing so may contribute to the effective use of those methods;³

(h) Further efforts should be made to fully ensure that the private sector can play a key role in some cases in the field of international cooperation when using special investigative techniques, bearing in mind the challenges in cooperating with communication service providers to secure electronic evidence for the detection,

³ This point was not included in documents [CTOC/COP/WG.3/2020/L.1/Add.1](#) and [CTOC/COP/WG.3/2020/L.1/Add.2](#). Its inclusion was suggested during the meeting by a speaker after the circulation of those in-session documents. The Chair proposed that the point be inserted in the list, and no objection was raised.

investigation and prosecution of crimes; and the requirements of domestic laws and treaties on mutual legal assistance involving bank and financial institutions;

(i) Building on previous recommendations contained in Conference resolution 5/8, and on 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 20 of the Convention and the use of special investigative techniques, as well as possible solutions to those issues, including by collecting examples of arrangements or agreements among States parties on the use of such techniques, or a set of legal, practical and operational guidelines on the implementation of article 20;

(j) Subject to the availability of resources, the Secretariat should undertake the updating of the UNODC model law on mutual assistance in criminal matters developed in 2007⁴ and the UNODC guide on *Current Practices in Electronic Surveillance in the Investigation of Serious and Organized Crime* developed in 2009,⁵ with the aim of including provisions and updated material, respectively, on the use of special investigative techniques to gather electronic evidence and on international cooperation to share such evidence.

C. Other matters

58. At its 3rd and 4th meetings, on 8 July, the Working Group considered agenda item 4, entitled “Other matters”.

59. A representative of the Secretariat referred briefly to the work of the Working Group and its future role within the Implementation Review Mechanism.

60. A representative of the Secretariat informed the Working Group about the work of UNODC in the field of international cooperation in criminal matters, with particular reference to the planning and development of relevant tools geared towards ensuring secure communication among the authorities listed in the Directory of Competent National Authorities.

61. Another representative of the Secretariat referred to the work of UNODC and its Global Programme for Strengthening the Capacities of Member States to Prevent and Combat Organized and Serious Crime to facilitate international cooperation in criminal matters by supporting the development and implementation of regional judicial cooperation networks. She reported that the Global Programme had supported the establishment of four judicial cooperation networks: the Judicial Cooperation Network for Central Asia and Southern Caucasus, the West African Network of Central Authorities and Prosecutors, the Great Lakes Judicial Cooperation Network and, most recently, the South-East Asia Justice Network.

62. The same representative of the Secretariat informed the Working Group that, on 20 March 2020, the Global Programme had begun collecting information on emergency measures taken by central and other competent authorities involved in international cooperation in criminal matters during the COVID-19 pandemic. The information, which had been compiled in the form of a list, had been obtained through the secretariats of regional judicial cooperation networks or through regional organizations, such as the Council of Europe, or had been directly provided by the central authorities themselves. At the time of the meeting, 49 countries had adopted extraordinary measures to accept requests sent by electronic means, while 17 had provided email addresses or phone numbers for coordination. Some of the 17 countries clarified that they were able to accept requests by email or means other than paper, under ordinary rules. The list was regularly updated and further disseminated. At the time of the meeting, more than 145 central authorities had

⁴ www.unodc.org/pdf/legal_advisory/Model%20Law%20on%20MLA%202007.pdf.

⁵ United Nations publication, Sales No. E.09.XI.19.

received the list and updates to it. The Global Programme also took advantage of the opportunity to explore, together with central authorities, the use of electronic signatures and the direct transmission of requests for international cooperation.

63. The representative of Chile, speaking also in his capacity as Chair of the Ibero-American Association of Public Prosecutors, referred to the experience and practices of international cooperation during the COVID-19 pandemic, both from the national and regional perspectives. He noted that the COVID-19 pandemic had led many central authorities, as well as judicial and investigative bodies, to switch to either remote work or the temporary closure of service. As a result, the execution of requests for mutual legal assistance had been delayed, in particular in countries that did not allow the electronic transmission of requests. Requests had also been delayed in countries with a limited number of operative personnel.

64. The speaker added that the central authorities of some countries members of the Ibero-American Association of Public Prosecutors had enabled the electronic transmission of requests, by email, and prioritized those requests that were marked as urgent. In some countries, electronic extradition requests were also enabled between central authorities and embassies, while extradition hearings were held by videoconference. Moreover, the closure of borders in the wake of the pandemic had led to problems with the surrender of extradited persons, such as the lack of flights or land transportation to or from the requesting State or the lack of adequate sanitary conditions. The suspension of surrenders, together with the risks of infection inside prisons, had led to an increase in the number of hearings or requests of release of sentenced persons, which, in turn, increased the risk of escape.

65. The speaker underscored that the Ibero-American Association of Public Prosecutors had been collecting and analysing the experiences of international cooperation during these unprecedented circumstances. A good practice that had been identified in this regard had been the increase of direct inter-institutional cooperation between competent authorities irrespective of whether those authorities had been designated as central authorities. This inter-institutional cooperation was not aimed at overriding formal cooperation among central authorities, but complemented it and, in some cases, mainly in accusatorial or adversarial systems, provided a direct source for the collection of evidence located abroad.

66. The speaker noted that the experience described above also reinforced an idea that prosecutors in Ibero-America had strongly supported and reiterated, namely, that the offices of public prosecutors performed the functions of central authorities for purposes of international cooperation in criminal matters. It was argued, in this regard, that those offices were, as a general rule, autonomous and independent institutions performing their functions without political considerations, which allowed assistance to be granted even in investigations directed against the Governments in office, thus granting greater guarantees of impartiality and respect for due process to all the parties involved.

67. The speaker shared with the Working Group a number of lessons learned from the COVID-19 pandemic and recent developments in the field of international cooperation. The first one related to the electronic transmission of international cooperation requests: the conditions created by the pandemic had reinforced the idea that international cooperation requests could be sent and answered in a safe, timely, agile and valid manner by electronic means. In this connection, reference was made to the Treaty on the Electronic Transmission of Requests for International Legal Assistance among Central Authorities, concluded and signed by some countries at the twenty-first Plenary Assembly of the Conference of Ministers of Justice of the Ibero-American Countries, held in Medellín, Colombia, in July 2019. The Treaty provided for the secure and real-time transmission of communications for mutual legal assistance among authorities, facilitated electronic signature for international procedures and protected personal data, among others.

68. The second lesson learned identified by the speaker was that the conditions created by the pandemic had further promoted the use of videoconferencing. He noted

that this development had enormous advantages for international cooperation, as it allowed for the use of technology for the delivery of testimonies of witnesses remotely, with full respect for the rights of those involved, as well as for conducting extradition hearings in an effective and valid manner.

69. In general, the speaker underlined that, 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.

70. Lastly, the speaker highlighted the increased use of the Internet in general, and of social media and networks in particular, and the consequent increase in cybercrime or crimes committed through the Internet or electronic means. This development also increased the need for international cooperation to obtain electronic evidence located abroad, and attention should therefore be devoted to specific cooperation mechanisms and tools in that field, such as those provided for in the Convention on Cybercrime, including the direct cooperation with Internet service providers and the use of “24/7” networks.

Discussion points for future consideration

71. Stemming from the meeting, the following discussion points for future consideration were identified by the Chair and were not discussed and negotiated by the participants. Some delegations expressed the wish to be able to make comments at a subsequent stage on these discussion points for future consideration, which were as follows:

(a) States are encouraged to provide funding on a consistent and sustainable basis for the provision by UNODC of technical assistance for capacity-building in the area of international cooperation in criminal matters; in doing so, particular attention should be devoted to emerging challenges posed by the COVID-19 pandemic that may have a lasting impact on the work of central and other competent authorities involved in such international cooperation;

(b) States are encouraged to make use of technology in the field of international cooperation to expedite related proceedings and address in particular challenges encountered in this field as a result of the COVID-19 pandemic. This may include the more frequent use of videoconferences in mutual legal assistance practice, the electronic transmission of requests for international cooperation and, to the extent feasible, the paperless administration of work in central and other competent authorities, in relation not only to cooperation with their foreign counterparts but also to domestic inter-institutional cooperation.

IV. Adoption of the report

72. At its 4th meeting, on 8 July, the Working Group considered agenda item 5, entitled “Adoption of the report”. The Working Group adopted the present report with the following understanding:

(a) The summary of deliberations would be prepared after the meeting as a “summary by the Chair”, covering agenda items 2, 3 and 4 (see sect. III) and the adoption of the agenda and organization of work (see sect. II.C);

(b) No recommendations were adopted during the meeting, as there was no consensus on whether the Working Group should issue recommendations in view of time constraints and the fact that many experts did not have the possibility of participating, or fully participating, in the meeting, owing to connectivity issues. Nor was there any agreement on a silence procedure. Although this issue was extensively discussed, no consensus was reached, owing to time constraints and other challenges;

(c) The recommendations emanating from the deliberations at the meeting of the Working Group (and contained in documents [CTOC/COP/WG.3/2020/L.1/Add.1](#) and [CTOC/COP/WG.3/2020/L.1/Add.2](#)) would be renamed “discussion points for future consideration” and would be part of the summary by the Chair, but placed separately below the narrative text on each substantive agenda item presented in the summary by the Chair;

(d) The discussion points for future consideration would be put on hold until States parties had an opportunity to meet with the President of the Conference of the Parties and reach consensus on the organization of work of the Working Group in view of restrictions resulting from COVID-19;

(e) In his summary, the Chair should mention that some delegations had expressed the wish to be able to make comments at a subsequent stage on the discussion points for future consideration.
