



Conference of the States Parties to the United Nations Convention against Corruption

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Open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption

Vienna, 6–10 September 2021

Item 3 of the provisional agenda*

**Implementation of chapter IV of the United
Nations Convention against Corruption: lessons
learned, good practices and challenges**

Statistical information on the use of the United Nations Convention against Corruption as a legal basis for extradition, mutual legal assistance and law enforcement cooperation

Note by the Secretariat

I. Introduction

1. In its resolution 7/1, the Conference of the States Parties to the United Nations Convention against Corruption requested the Secretariat to continue, within existing resources, to collect statistics or other relevant information on the use of the Convention as a legal basis for mutual legal assistance and to make the information available to the Conference.
2. Pursuant to the report of the eighth open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption ([CAC/COSP/EG.1/2019/4](#)), held in Vienna on 31 May 2019, in particular, the recommendations contained therein, States parties were encouraged to continue to provide to the Secretariat information on challenges and good practices in international cooperation and other topics outlined in the Conference's resolutions and the recommendations of the expert meetings, with a view to enabling the Secretariat to continue its analytical work with regard to challenges in international cooperation based on the Convention and relevant to the implementation of chapter IV.
3. Accordingly, on 4 May 2021, the Secretariat sent to States parties a note verbale in which it requested information on the use of the Convention as a legal basis for international cooperation, including on extradition (art. 44, para. 5), mutual legal assistance (art. 46, para. 7) and law enforcement cooperation (art. 48, para. 2). The Secretariat received a total of 30 responses.

* [CAC/COSP/EG.1/2021/1](#).



4. A summary of the information that had been received as at 18 June 2021 is also included in the note by the Secretariat on progress in implementing the mandates of the open-ended intergovernmental expert meeting to enhance international cooperation under the Convention (CAC/COSP/EG.1/2021/2), submitted to the tenth expert meeting.

5. In furtherance of the implementation of the mandate, the Secretariat also reviewed the information that had already been provided by States parties for the purposes of notifications under article 44, paragraph 6 (a), of the Convention, the information received in response to previous notes verbales sent in the framework of the expert meeting, and the information collected during the first cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption.

6. In the 173 executive summaries finalized under the first cycle of the Implementation Review Mechanism, 16 good practices in the use of the Convention as a legal basis were found under article 44, paragraph 5, on extradition; one was found under article 46, paragraph 7, on mutual legal assistance; and none was found under article 48, paragraph 2, on law enforcement cooperation (see figure I). As for recommendations, 28 were issued under article 44, paragraph 5, three were issued under article 46, paragraph 7, and seven were issued under article 48, paragraph 2 (see figure II).

Figure I

Good practices in the use of the Convention against Corruption as a legal basis

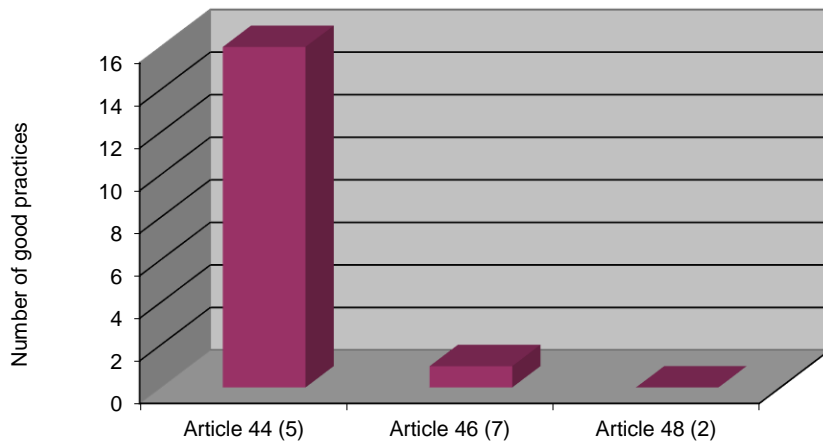
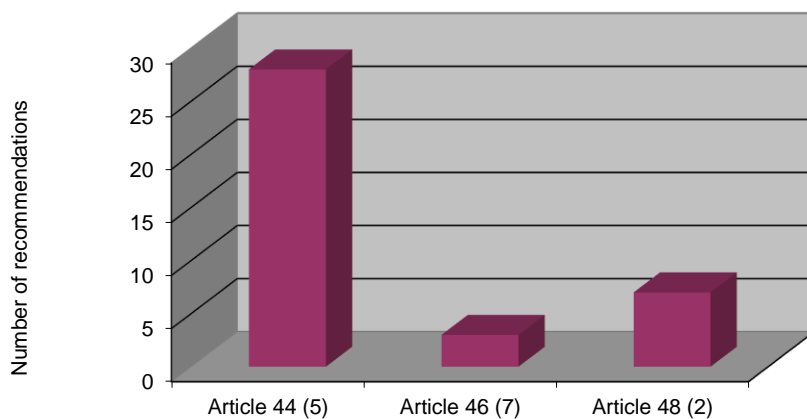


Figure II

Recommendations on the use of the Convention against Corruption as a legal basis



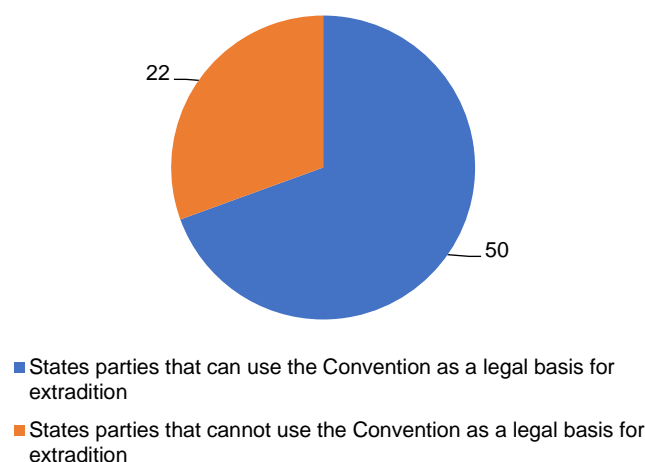
II. Extradition

7. In article 44, paragraph 5, of the Convention, it is provided that “If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.”

8. Regarding the use of the Convention as a legal basis for extradition, out of 30 States parties that replied to the questionnaire, 19 noted that they did not make extradition conditional on the existence of a treaty when receiving or sending extradition requests.¹ Nonetheless, the responses provided indicate that, in practice, most States parties rely on treaty-based agreements. Moreover, in the fulfilment of the notification obligation under article 44, paragraph 6, 50 States parties informed the Secretariat that they would take the Convention as the legal basis for cooperation on extradition, while 22 indicated the contrary (see figure III).

Figure III

Notifications on the ability to use the Convention against Corruption as a legal basis for extradition



9. Seventeen States parties explicitly confirmed their ability, in principle, to use the Convention as a legal basis for extradition, but in practice the number of cases in this regard was limited. Ten States parties reported having used the Convention as a legal basis for extradition. Half of the States parties reported that there were no official statistics on the number of cases that would make it possible to illustrate the use of the Convention as a legal basis. Six States parties provided statistics on cases that had arisen during the five-year reporting period. However, the Secretariat noted that the number of cases was not high.

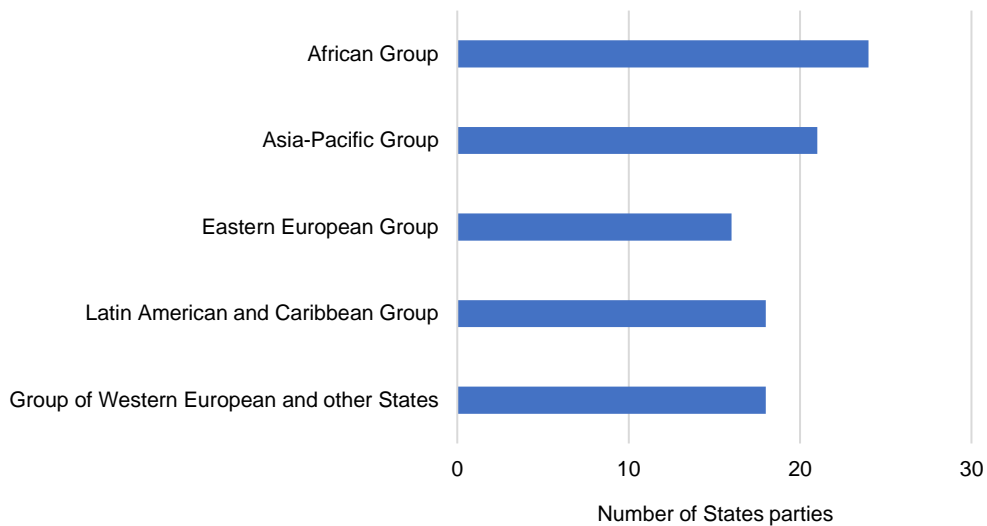
10. The responses confirmed that the most prevalent challenges to international cooperation exist at the legislative and practical levels. Some States parties still lack the basic tools for cooperation, including domestic legislation, and the ability to consider the Convention as a legal basis when extradition is conditional on the existence of a treaty, which may hinder their ability to cooperate.

¹ These results are in line with the findings and results emanating from the first cycle of reviews of the implementation of the Convention by 156 States parties (2010–2015), which are reflected in the second edition of the United Nations Office on Drugs and Crime (UNODC) study entitled *State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation*. According to that study, “With regard to the legal basis for receiving or sending extradition requests, in the majority of States, a treaty is not necessary. Paragraphs 5 and 6 of article 44 are not technically applicable to these States”.

11. According to the combined information gathered by the Secretariat, a total of 114 States parties explicitly confirmed their ability to use the Convention as a basis for extradition. From a geographical perspective, they are evenly distributed among the regional groups: 28 States belong to the African Group, 26 to the Asia-Pacific Group, 23 to the Eastern European Group, 18 to the Latin American and Caribbean Group and 19 to the Group of Western European and other States (see figure IV).

Figure IV

States parties that can use the Convention against Corruption as a legal basis for extradition, by regional group



12. As for suggestions in the context of using the Convention as a legal basis for extradition, six States parties proposed ideas on ways, including for a State party, to more effectively encourage extradition partners to provide draft requests directly to the central authority, which would significantly reduce processing time and render the process more efficient. One State party referred to the undeniable supporting role of the Convention in complementing or reinforcing pre-existing provisions, bearing in mind that several corruption offences were not listed in the bilateral agreements. One State party proposed that all States parties to the Convention be provided with a list of those countries that use the Convention as a legal basis for extradition for offences covered by the Convention and that educational seminars and training activities be organized and conducted to strengthen international cooperation under the Convention.

13. One State party reported that practitioners were generally unaware of the possibility of using the Convention as a specific legal tool for international cooperation. Those members of the judicial and prosecutorial services also needed to be aware of the possibility of applying the Convention in combination with bilateral treaties. To overcome that gap, the central authority of that State party regularly provided training workshops and information through its web page on the validity and usefulness of the treaty basis. Furthermore, the central authority's dissemination of information on the application of the Convention would be reflected in future extradition requests made by the State party to foreign authorities.

14. One State party argued that using the Convention as the basis for extradition was complicated because of the differences among legal systems, particularly between monist and dualist traditions. That challenge might be addressed through treaties with detailed provisions on extradition matters.

15. One State party requested technical assistance on the implementation of article 44, paragraph 5, of the Convention, as well as on the other two provisions covered in the present document (art. 46, para. 7, and art. 48, para. 2).

III. Mutual legal assistance

16. In article 46, paragraph 7, of the Convention, it is provided that “Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.”

17. Unlike in the case of extradition, a substantial majority of States parties (21 out of 30) that responded to the note verbale reported having used the Convention as a legal basis for mutual legal assistance.² Whereas 11 of those States parties provided statistics, several indicated that specific statistics on the number of cases were not systematically collected or available.

18. Regarding the scope of mutual legal assistance regimes and the use of other legal instruments, several States parties have also acceded to regional and/or international conventions regulating mutual legal assistance in criminal matters, together with the Convention, as a way to overcome the obstacles that hamper the provision of assistance, especially in cases involving States parties with different legal systems and traditions, and to improve the effective exchange of information. Specifically, the Inter-American Convention against Corruption and the European Convention on Mutual Assistance in Criminal Matters were cited. Two States parties explicitly indicated that the United Nations Convention against Corruption could be used as a legal basis only when the principle of reciprocity was invoked, contradicting the considerable degree of flexibility among States parties in the implementation of article 46 of the Convention.

19. Regarding swift and effective compliance with mutual legal assistance requests, two States parties underscored the importance of including all the information required under domestic law. Moreover, one State party underlined the importance of informal consultations before formally requesting mutual legal assistance in respect of corruption-related offences as a way to ensure the completeness of such requests.

20. Four States parties underlined the importance of delivering training activities and information sessions for relevant personnel on the applicable international legal instruments, as well as on the content and requirements of mutual legal assistance requests. In that regard, one State party explained that the lack of such training may have reduced the use of the Convention, as the responsible public officials might not have been aware of its applicability as a legal basis for mutual legal assistance.

21. The lack of uniformity in the designation of focal points for mutual legal assistance under different international instruments, the delay in their response and the frequent change of such designations were mentioned as obstacles to cooperation. One State party explained that the decision on whether to apply an international agreement was based on the central authority designated as responsible for that agreement.

22. During the first review cycle, out of the 204 good practices identified under article 46, the effective use of or the possibility of using the Convention as a legal basis for mutual legal assistance was identified as a good practice for nine States parties (see figure V). In their responses to the note verbale sent by the Secretariat, two of those States parties confirmed that they continued to use the Convention as a legal basis for that purpose. Moreover, out of 1,060 recommendations issued with

² These results are also in line with the findings and results reflected in the second edition of the study *State of Implementation of the United Nations Convention against Corruption*, according to which “More States confirmed the possibility of relying on the Convention itself as a legal basis for mutual legal assistance than is the case for extradition. Nonetheless, bilateral assistance treaties are usually considered to have priority and are expected to be invoked first (or at least in parallel to the Convention) if they apply to a corruption-related request.”

regard to article 46, 11 were related to the use of the Convention as a legal basis for mutual legal assistance (see figure VI).

Figure V
Number of good practices identified

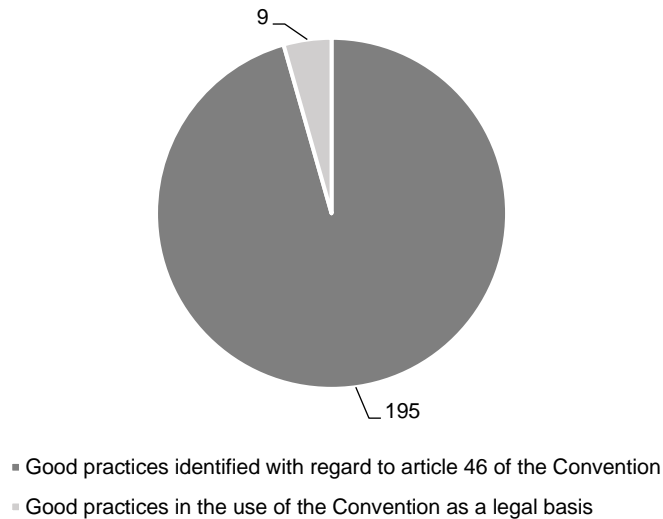
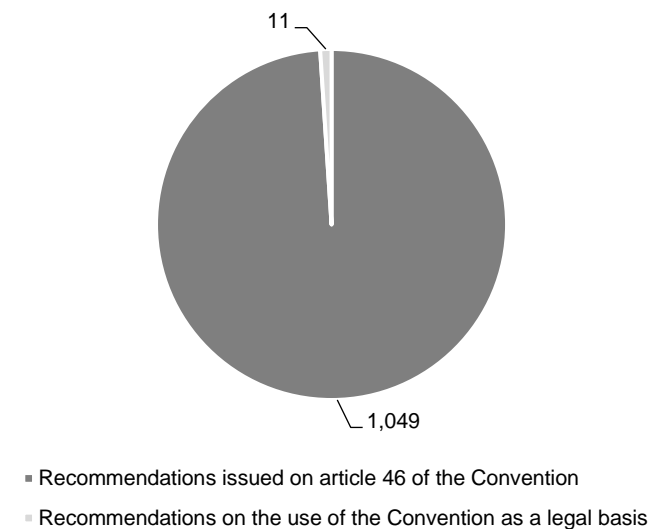
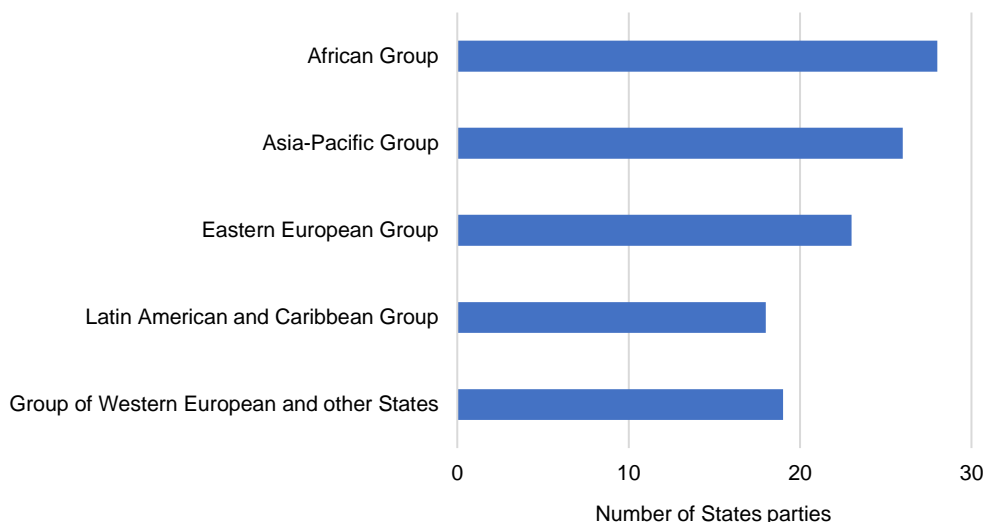


Figure VI
Number of recommendations issued



23. The situation with regard to mutual legal assistance is comparable to that of extradition. According to the combined information gathered by the Secretariat, a total of 97 States parties reported that they could use or had used the Convention as a legal basis for mutual legal assistance. They are evenly distributed among the regional groups: 24 States belong to the African Group, 21 to the Asia-Pacific Group, 16 to the Eastern European Group, 18 to the Latin American and Caribbean Group and 18 to the Group of Western European and other States.

Figure VII
States parties that can use the Convention against Corruption as a basis for mutual legal assistance, by regional group



IV. Law enforcement cooperation

24. Under article 48, paragraph 2, of the Convention, it is provided that “With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention.”

25. Seventeen States parties indicated that they had not used the Convention as a legal basis for law enforcement cooperation. While five States parties had used the Convention as a basis for such cooperation in respect of offences covered by the Convention, one State party explicitly excluded that possibility.³ Among the affirmative responses, one State party indicated that it cooperated with the competent authorities of other States to search for, locate and detain international wanted persons and to obtain other relevant information in criminal cases by submitting requests for law enforcement assistance.

26. The conclusion of bilateral or multilateral agreements on direct cooperation between law enforcement authorities and interregional platforms seemed to be part of the practice of several States parties (8 out of 30), which indicated that they had entered into such agreements. Those agreements regulate cooperation between the competent authorities of the parties and generally provide for the following forms of cooperation: exchange of intelligence and legislative information; assistance in locating persons suspected of having committed crimes; assistance in carrying out investigative measures; exchange of experience and specialists; and training of

³ According to the second edition of the study *State of Implementation of the United Nations Convention against Corruption*, “The conclusion of bilateral or multilateral agreements or arrangements on direct cooperation between law enforcement authorities, which is encouraged in paragraph 2 of article 48, appears to be the practice of a large majority of States parties, even if it is not necessarily considered a prerequisite for law enforcement cooperation with other countries. ... While 81 States parties confirmed that they could use the Convention as a basis for law enforcement cooperation in respect of corruption-related offences, it appears that, in most countries, this possibility is mostly theoretical.”

members of the competent authorities. At the same time, the forms of cooperation may vary from one agreement to another.

27. Some States parties noted the difficulties encountered with regard to maintaining statistics on the use of the Convention as a basis for law enforcement cooperation and in the description of challenges in that regard. One State party referred to an institutional change that may bring about a consolidation of data on this means of cooperation.

28. Regarding the suggestions for further improving the use of the Convention as a legal basis for law enforcement cooperation, some States parties referred to the importance of cooperation between law enforcement authorities and the importance of regional cooperation networks.

V. Conclusion

29. The Secretariat continues to collect additional information from States parties on the use of the Convention as a legal basis for international cooperation, including extradition, mutual legal assistance and law enforcement cooperation; however, certain observations may be drawn from the information already available:

(a) Although the Convention can be used for the purposes of extradition and mutual legal assistance by many States, few cases of its effective use were reported in response to the request for information sent by the Secretariat. This observation highlights the importance of conducting further research on the use of the Convention as a legal basis for extradition and mutual legal assistance and enhancing awareness among practitioners of the benefits of using the Convention as a legal basis;⁴

(b) Additional information is required on the use of the Convention as a legal basis for international cooperation in order to draw comprehensive conclusions, especially with regard to law enforcement cooperation. Such information might become more readily available once the Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE Network), recently established under the auspices of UNODC, becomes fully operational;

(c) It is recommended that States parties actively apply the Convention to carry out bilateral law enforcement cooperation, especially to carry out basic cooperation activities, such as intelligence exchange and information requests, so as to effectively make up for the lower efficiency of criminal cooperation, and at the same time lay the foundation for the development of cooperation in criminal matters and extradition;

(d) States parties are encouraged to consider establishing means for collecting statistical data to be able to assess and strengthen the implementation of the Convention, including data on its use as a legal basis for international cooperation;

(e) With a view to overcoming some of the obstacles to international cooperation mentioned in the responses to the note verbale, the Secretariat encourages States parties to make full use of available tools, such as the online directory of competent national authorities, the Mutual Legal Assistance Request Writer Tool, model laws and treaties and the recently launched GlobE Network, among others;

⁴ However, when it comes to mutual legal assistance, “Article 46 ... has been invoked and has served as the legal basis for providing assistance on numerous occasions. Twenty-one States parties reported at least one request made and/or received using the Convention as the legal basis. For example, during the period 2010–2011, one country received 427 requests, of which 18 related to corruption offences; 11 of them were made on the basis of the Convention or with specific reference to the Convention.” (UNODC, *State of Implementation of the United Nations Convention against Corruption*, 2nd ed. (Vienna, 2017)).

(f) States parties are encouraged to continue to provide updates on their policies regarding the use of the Convention as a legal basis for international cooperation.

30. The Secretariat will continue to collect and analyse relevant information and provide it to future open-ended intergovernmental expert meetings to enhance international cooperation under the Convention.
