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Review of implementation of the United Nations Convention against Corruption

Implementation chapters III (Criminalization and law enforcement) and IV (International cooperation) of the United Nations Convention against Corruption (review of articles 46-50)

Thematic report prepared by the Secretariat

Summary

The present thematic report contains information on the implementation of articles 46-50 of chapter IV (International cooperation) of the United Nations Convention against Corruption by States parties under review in the first and second years of the first cycle of the Mechanism for the Review of Implementation of the Convention, established by the Conference of the States Parties to the United Nations Convention against Corruption in its resolution 3/1.

* CAC/COSP/IRG/2013/1.

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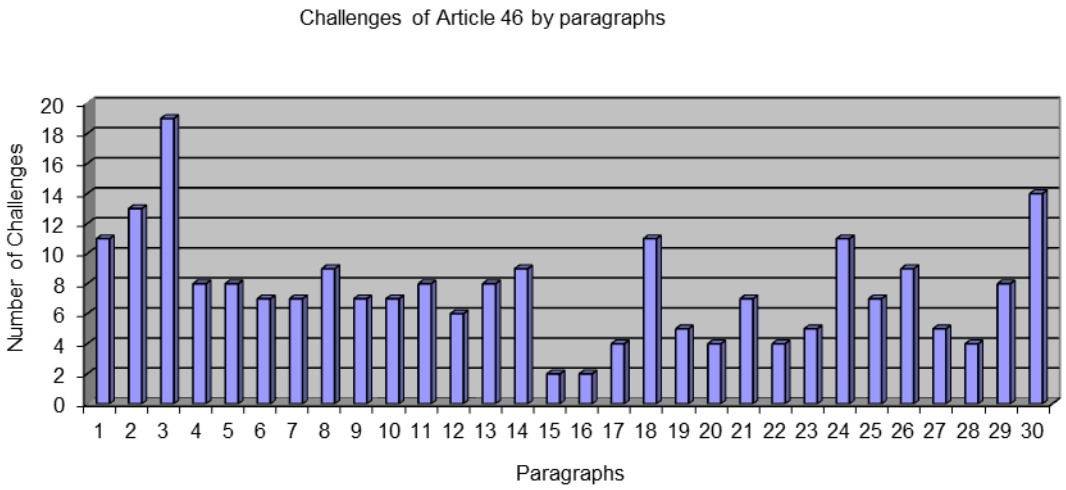
I. Implementation of chapter IV (International cooperation) of the Convention

A. Mutual legal assistance



1. The extent and scope of mutual legal assistance regimes varied significantly. Most States had adequate laws and measures in place to grant mutual legal assistance. However, some State parties had yet to enact relevant laws and to streamline the relevant procedures or remove the legal and practical obstacles to international cooperation. Fourteen States parties had adopted specific legal provisions, either as distinct laws or forming part of broader legislation such as the Penal Code or the Criminal Procedure Code. Most States parties had also concluded international treaties regulating international cooperation in criminal matters. Eleven States parties reported that, in the absence of comprehensive domestic legislation on the matter, mutual legal assistance was provided on the basis of multilateral and bilateral treaties. In most cases, mutual legal assistance could be afforded in the absence of treaties, based on the principle of reciprocity or on a case by case basis. While the majority of the States had ratified mutual legal assistance treaties and international conventions, and were committed to assisting investigative, prosecuting and judicial authorities, it was noted that it was difficult for them to provide statistics or examples of how mutual legal assistance provisions were practically implemented.

Box 1
Example of the implementation of article 46 (1)

One State party reported that its legislation on mutual legal assistance in criminal matters was complemented by specific regulations facilitating the submission and receipt of mutual legal assistance requests to and from States parties to the Convention and relating to offences established in accordance with the Convention.

Another State published a set of Mutual Legal Assistance Guidelines ("Guidelines"), which provide requesting States and executing authorities with the information they need to make a request to the Central Authority. This flow of information allowed the State to receive over 3,000 requests for mutual legal assistance each year, which include approximately 500 categorized corruption cases.

2. Treaties, both multilateral and bilateral, were important components of the mutual legal assistance regime of the States Parties. Like in the case of extradition, mutual legal assistance frameworks were influenced by the nature of the legal system of each State. In States parties where the direct application of treaties was permitted, the self-executing provisions of the Convention would apply without the need for specific implementing legislation. In States where implementing legislation was required to enact international treaties, the provisions of the Convention would not be applicable without the adoption of enabling laws but would need to be transposed into national laws and practices. State parties showed significant differences in their mutual legal assistance provisions even where there was domestic legislation for mutual legal assistance in corruption related matters and even in similar legal systems. One common law State referred to difficulties with mutual legal assistance in coercive measures, even with other common law States. Those difficulties stemmed from a different appreciation of the coercive nature of some measures, for example of search warrants, that led to different requirements regardless of the similarity of legal systems.

3. A majority of States parties were able to grant assistance in relation to offences for which legal persons may be held liable, but only a small percentage provided examples of actual cases. In the domestic legislation of six States parties, the principle of criminal liability of legal persons was not established, but mutual legal assistance was possible to the extent that dual criminality was not required and based on reciprocity. Two State parties reported their intention to adopt legislation expressly regulating mutual legal assistance in relation to offences for which a legal person may be held liable. Five countries did not provide any information in this respect.

4. The purposes for which legal assistance may be requested according to article 46 (3) of the Convention were to a large extent covered by domestic legislation in fifteen States parties. Eight of them indicated that the purposes were specified or supplemented in the applicable bilateral or multilateral mutual legal assistance treaties. In most States parties, asset recovery in accordance with chapter V of the Convention was not explicitly listed. However, the legislation of some States parties contained provisions to facilitate assistance pertaining to the identification, freezing and confiscation of proceeds of crime, with a view to enabling the recovery of assets. In one case, the domestic law did not list any purpose for which mutual legal assistance could be obtained. As a result, any type of procedural action could be executed, upon request, provided that such action would be authorized in a similar domestic case. None of the States parties reported having received requests involving the alleged commission of corruption-related offences by legal persons.

Box 2
Example of the implementation of article 46 (3)

In one State party, where the Convention has direct application and serves as a legal basis for mutual legal assistance, including with regard to asset recovery, national authorities noted that once a mutual legal assistance request was executed, the investigation and prosecution authorities had all legal powers they would have under a national case, including relating to all measures with regard to seizure and forfeiture. For provisional measures, the level of proof would even be lower than in national cases (prima facie case).

5. The spontaneous transmission of information to foreign authorities, envisaged in articles 46 (4) and 46 (5) of the Convention has repeatedly been considered in international forums as a good practice that reflects the cooperation between States. This practice was generally not specifically regulated. Two State parties expressly regulated the spontaneous exchange of information between judicial authorities, and another one had even designated a specific authority empowered to transmit information without prior request. Several States parties reported that even if not foreseen, spontaneous transmission was possible to the extent that it was not explicitly prohibited, and noted that such transmission occurred frequently through informal channels of communication available to law enforcement authorities.

Box 3
Example of the implementation of article 46 (4 and 5)

One State party reported that no legislative basis was needed to pass on spontaneous information, which may be related to confidential and investigative data (including personal data) to foreign authorities. This could be done through the normal gateway provisions provided by the State party's Data Protection Act which allowed for exemptions to the regulations found elsewhere, and in particular, for the purposes of crime prevention and detection.

6. In most States, requests for legal assistance could not be declined on the ground of bank secrecy even if there was no explicit provision highlighted which would prohibit such denial. The vast majority of States parties under review confirmed that bank secrecy legislation did not constitute an obstacle to the provision of mutual legal assistance under the Convention, and several States parties reported that they regularly provided requesting States with information obtained from financial institutions. In some cases access to bank records had to be duly authorized by prosecuting or judicial authorities. One State party reported that it did not have any legislation which made banking information secret, but a person's banking and account information was confidential. For disclosing such information to law enforcement authorities, there were two laws which enabled authorities to provide the information for an overseas criminal investigation. On another case a request regarding business records or bank accounts of individuals would be submitted to the Prosecution Office which would decide based on a balance between the different rights and interests involved; including the individual rights under the

Constitution of the person whose records are sought.. It should be noted that a number of State parties applied the Convention directly on this issue.

7. In contrast to the approach taken in relation to extradition, the majority of States parties provided that dual criminality was not a requirement for granting mutual legal assistance, In eight cases, in the absence of dual criminality, assistance would not be rendered for coercive measures. In three States parties the absence of dual criminality was an optional ground to refuse assistance. In three cases the reviewers were not provided with a clear response on the matter. Two States parties indicated that dual criminality was required, without specifying whether assistance would be granted when involving non-coercive measures. The scope and the types of assistance to be provided in the absence of dual criminality varied from one State to the other, also based on considerations regarding human rights.

Box 4
Examples of the implementation of article 46 (9)

In one State party, requests concerning coercive measures could be executed, in principle, on condition of dual criminality. However, even in the absence of dual criminality, mutual legal assistance involving coercive measures could exceptionally be granted if the request aimed at (a) the exoneration of a person from criminal responsibility; or (b) the prosecution of offences constituting sexual acts with minors.

Another State underlined the importance of flexibility on the application of double criminality requirements, consistent with domestic law, so as to be in line with the Convention. The principle of dual criminality was assessed by seeking equivalent criminal conduct, despite the fact that the criminal act may be named differently in the requesting State. A test was applied, relating to the conduct alleged, rather than any particular named crime or definition of the crime in the requested state.

8. Twelve States parties applied directly the provisions of articles 46 (10), 46 (11) and 46 (12) of the Convention on transfer of detainees for purposes of identification or testimony if the matter was not regulated by specific bilateral or multilateral treaties. Ten States parties confirmed that they regulated it in accordance with the requirements of the Convention, in particular with regard to safe conduct and the consent of the detainee for the execution of the transfer. One State party reported that it was party to a regional instrument on judicial cooperation which contained provisions on the matter.

Box 5
Example of the implementation of article 46 (10, 11, 12)

In one State, mutual legal assistance agreements provided for the transfer of persons in custody, in absence of relevant legislation.

Box 6

Statistics about the notification to the Secretary-General pursuant to article 46 (13)

The following analysis is based on the official notifications sent to the Secretariat by the States parties to the United Nations Convention against Corruption, pursuant to article 46, paragraph 13, of the Convention. This information is available on the following website: www.unodc.org/unodc/en/legal-tools/directories-of-competent-national-authorities.html.

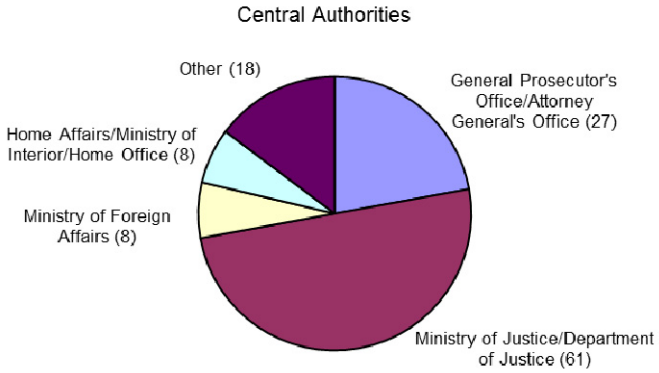
102[1] States parties have currently notified officially the Secretariat of their Central Authorities, responsible for receiving requests for mutual legal assistance. Although most States parties have nominated one central authority (89), some have notified of more than one central authority (13).

The Convention addresses the possibility of having more than one central authority by stating "*Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory*". In some States parties, it is clear that the nomination of more than one central authority was based on the reasons foreseen in the Convention. In some other cases, the distinction seemed to be based on other criteria. Such criteria would include the type of information required (whether it related to investigation or prosecution, or if it was related to extradition or to other types of assistance), the status of the case the information relates to (if the request was made previous to, or during the trial), the location of the requesting state (if the request came from the same region or not), or the existence of a bilateral treaty between the requesting and requested State.

Based on those States parties where only one authority was nominated, the following statistics can be drawn: 54 per cent of the States parties designated the Ministry of Justice or the Department of Justice as central authority. This was followed by the General Prosecutor's Office, or the Attorney General's Office (22 per cent of the States parties), and the Ministry of Foreign Affairs (8 per cent of the States parties).

38 per cent of the States parties designating more than one central authority have included the ministry of home affairs or interior as one of the central authorities. In countries that have only designated one central authorities, the same ministries only account for 3 per cent of designations.

The graphs below illustrate the type of central authorities nominated by the countries:



[1] As of 5 March 2013

9. With regard to the 34 States reports included in the current analysis, all State parties but one had designated central authorities to receive requests for mutual legal assistance. The notification to the Secretary-General was missing in four cases. In line with the above overall analysis of central authority notifications, in most States parties under review, the central authority was the Ministry of Justice; one State had designated the Ministry of Home Affairs, two States the Ministry of Foreign Affairs, and four States the Office of the Attorney-General. Several States had identified a specific department, or even a specific official, within the designated Ministry. Some State parties designated more than one central authority, and the division of labour was drawn according to the type of crime or to territorial divisions. There was also variation on the structure of the Central Authority and the composition as well as the hierarchy (reports to the Secretary of State or other body). Some countries also nominated different central authorities under different treaties; they generally informed that this did not in practice present any difficulties.

10. Eight States parties required that requests for mutual legal assistance be submitted through diplomatic channels. Two of those limited the use of diplomatic channels for requests submitted by States with which it had no treaty in force or in cases where a treaty envisaged such use. In four cases, requests could be addressed directly to the competent authority from which assistance was sought.

11. Most States parties reported that, in urgent circumstances, requests addressed through INTERPOL were acceptable, even though in some cases subsequent submission through official channels was required. Some States could agree to such urgent submissions subject to reciprocity.

Box 7
Examples of the implementation of article 46 (13)

One State party had designated the same Government department as being in charge, as the central authority, for all international treaties on cooperation in criminal matters. Within this central authority, a special unit had been created to handle all mutual legal assistance requests. This allowed the streamlining of the process and the timely identification of weaknesses in the system.

In another State party, the website of the central authority provided detailed information about how the central authority could assist foreign States in the provision of mutual legal assistance, links to domestic legislation and information about applicable bilateral and multilateral agreements.

12. Twenty one States parties had provided information on the languages acceptable for incoming requests. In nine cases, the official language of the State was the sole acceptable. Five States parties had notified the Secretary-General that requests for legal assistance would be accepted if submitted in the official language or in English. One State party indicated that it would accept requests translated into any of the official languages of the United Nations. Six States parties indicated that oral requests would be acceptable, and ten confirmed that so would be requests submitted by electronic mail; in most cases, subsequent formalization in writing was required. Most States parties confirmed that their legislation did not hinder the request for additional information subsequent to the receipt of the original request.

Box 8
Examples of the implementation of article 46 (14)

According to one State party, when foreign authorities submit letters rogatory by fax, e-mail or other expedited means of communication, the Ministry of Justice transfers the request to local authorities for execution before receiving the original copy of the requests. Besides, when examining the possibility of executing of coercive measures, the courts of that State party never require original materials as a precondition to make a decision.

13. The vast majority of States would endeavour to satisfy conditions or follow procedures stipulated by the requesting States, in particular regarding compliance with evidentiary requirements, insofar as such requirements were not in conflict with domestic legislation or constitutional principles.

14. Hearing of witnesses by videoconference was permissible under the domestic law of twelve States parties. In two cases, this channel for taking testimonies was considered admissible in that it was not explicitly prohibited and based on the direct application of the Convention. Only one State reported that this practice was not permitted according to the national legislation. Eight States parties had handled requests for mutual legal assistance involving a hearing through videoconference. Two of those regularly sought assistance from, and provided assistance to, foreign States in the form of taking testimony via video link. Another State party reported that it had concluded a regional convention regulating all aspects of the use of videoconferencing in international cooperation in judicial matters. In one case, the absence of domestic regulation was explained by the lack of the necessary infrastructure.

Box 9
Example of the implementation of article 46 (18)

Several States parties reported that they made extensive use of videoconferencing to take testimony, which allowed them to avoid lengthy procedures and high costs associated with transfer of witnesses.

15. The rule of specialty in the supply of information or evidence, established in article 46 (19) of the Convention, was respected in most national systems. Similarly, a majority of States parties indicated that they ensured confidentiality of the facts and substance of the request if the requesting State so required. If there was a need to use the evidence for any other proceedings, which were not outlined in the original request, the normal procedure was the communication between Central Authorities, in advance of the use of the material for those proceedings.

Box 10
Example of the implementation of article 46 (19)

In one State party, although the domestic law on mutual legal assistance did not contain the specialty principle, it was applied based on the consideration that it was a generally accepted norm of international law.

Some States confirmed that they included the principle into their bilateral assistance agreements.

16. The majority of States parties had legislation in place providing for the same grounds for refusal listed in the Convention. Only in some cases did domestic law set forth different grounds for refusal, such as the prejudice to an ongoing investigation in the requested State, the excessive burden imposed on domestic resources, the political nature or the insufficient gravity of the offence and the possible prejudice to universally recognized rights and fundamental freedoms of the individual.

17. The vast majority of States parties indicated that a mutual legal assistance request would not be refused on the sole ground that the offence also involved fiscal matters. They would also provide the reasons for refusal.

18. Generally, laws did not contain a provision regarding the period in which requests were to be executed and did not specifically provide that information be given on the progress made with the execution of requests. However, Central Authorities were found to often have appropriate case handling measures for the organization of their work internally. This in some cases included guidelines. The average time needed to respond to a request ranged from one to six months. However, several States stressed that the time required would depend on the nature of the request, the type of assistance and the complexity of the case; some States also established that the time depended on the bilateral agreements used. In some cases, the processing of the request could take over one year. On the other hand, some States parties reported that where the requesting State indicated the need to address the matter urgently, the request would be responded to within a few days. One State affirmed that it would respond to all requests generally within two weeks, which was regarded as an exemplary performance. One State party confirmed its ability to execute certain measures, such as the freezing of bank accounts, within the shortest time, often within an hour. It was generally accepted that requests submitted by States sharing the same legal, political or cultural background as the requested State were responded to more rapidly. The use of case management systems within the central authorities was considered by a number of States parties as a successful example of implementation that allowed monitoring the length of mutual legal assistance proceedings for purposes of improving standard practice.

Box 11
Examples of the implementation of article 46 (24)

One State party reported that the staff of its central authority engaged in constant, nearly daily communication, with counterparts in States that had submitted a large number of mutual legal assistance requests. This central authority further sought to have regular annual consultations with the largest partners in the areas of extradition and mutual legal assistance.

Another State party followed the status of execution of mutual legal assistance requests using a specially designed casework database, which contained features enabling case officers to track each action taken on a matter and thus to identify delays in the execution of the request.

In one State party under review, despite the fact that its law did not contain specific deadlines for the execution of mutual legal assistance requests, a Prosecutor General's Decree, contained mandatory rules not only for the Prosecutors' offices, but also all other law enforcement agencies, which obliged competent territorial authorities to implement legal assistance measures within ten days, and the International Assistance Unit of the General Prosecutor's Office to send the required materials immediately.

The Central Authority of another State responded to urgent cases customarily within five working days, and routine cases within ten working days. However, the length of time that it took to execute a request depended on the complexity of the evidence required, and other factors, such as court time and availability of witnesses.

19. Most States would not prohibit consultations with the requesting State party before refusing or postponing a request, and some States referred to bilateral treaties expressly regulating the matter. However, only a limited number of examples of such consultations were provided. Although no concrete cases of postponement of execution of requests were reported due to interference with ongoing investigations, several States argued that such postponement might be envisaged in accordance with domestic legislation or by direct application of the Convention. Even where there were no specific legal provisions governing this matter, a number of states indicated that their Central Authorities complied with those requirements as a matter of practice and procedure.

Box 12
Examples of the implementation of article 46 (25)

Upon receipt of a mutual legal assistance request which did not contain the prescribed elements, the central authority of one State party would, as a standard practice, contact the Embassy of the requesting State in order to clarify conditions under which the request could be executed.

20. Safe conduct of witnesses, envisaged in article 46 (27) of the Convention, was addressed in the vast majority of States, either in multilateral or bilateral treaties or in domestic legislation. Some States stated that the Convention could be applied directly to this effect.

21. With respect to costs associated to mutual legal assistance requests, the general rule was that these would be covered by the requested State. Four States parties reported cases where extraordinary expenses were covered in part by the requesting State pursuant to an ad hoc arrangement. Further, the legislation of some States parties provided that the requesting State should cover some costs associated with the execution of specific requests, such as costs incurred by expert testimony or for transferring detained witnesses. In two State parties, the applicable law provided that costs would be borne by the requesting State, unless stipulated otherwise by the States concerned.

Box 13
Example of the implementation of article 46 (28)

Assistance requests suffered delays due to the lack of provisions that regulate the issue of costs:

One State party reserved for itself the decision whether to charge the costs completely or partially to the requesting State. The review recommended that this practice be changed by introducing an obligation to consult beforehand with the requesting State on the issue of costs.

Another State party had borne the costs of execution of all relevant requests and had not consulted with requesting States regarding extraordinary costs.

Yet another State party solved the cost issue on bilateral agreements through the stipulation that each part assume their own costs.

22. Most States parties indicated that documents available to the general public would be provided to the requesting State. On the issue of non-publicly available Governmental records, one State party affirmed that it often provided such records, which included police and law enforcement reports, to requesting States. In another case, all documents in possession of the authorities were by virtue of the law public, and thus potentially available to requesting States. Finally, one State party distinguished between various types of non-public information: “classified information”, which could be provided to a requesting State, “secret information” and “confidential information”, which could be shared on a case-by-case basis, and “absolutely secret information”, which could never be provided. In one State, there were no specific legislative requirements covering this provision; however, this material could be provided in any format that was admissible in the requesting State, so that relevant evidentiary requirements could be met.

23. At the practical level, although some States indicated they faced significant challenges with respect to effective mutual legal assistance, States generally reported that cooperation was continuously improving. Among the strategies for strengthening cooperation were the development of modern tools and mechanisms to enhance information-sharing. The sharing of experiences among State parties had also been proven a beneficial practice. Several reports indicated that State parties

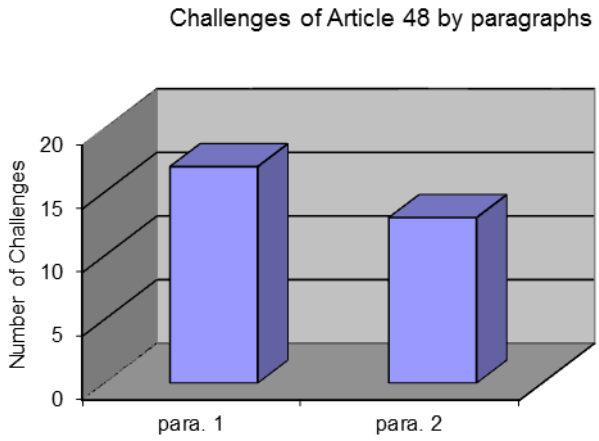
had strengthened their international cooperation mechanisms and networking, inter alia, through the membership and active participation in regional bodies aimed at facilitating interstate judicial assistance within the region. Along those lines, some State parties referred to effective and advanced regional instruments and mechanisms for facilitating mutual legal assistance and made reference to advanced judicial cooperation networks. Regional organizations were also recognized as having contributed greatly to the improvement of judicial cooperation.

B. Transfer of criminal proceedings

24. Fifteen States parties noted that their legal system did not contain any provision regulating the international transfer of criminal proceedings. However, some of these States parties reported that such transfer can take place on the basis of an ad hoc arrangement. Further, the possibility of transferring criminal proceedings was addressed in the European Convention on the Transfer of Proceedings in Criminal Matters, which one of the States parties used in cases of transfer of proceedings. Further, it was addressed in general terms in a regional instrument signed, but not yet ratified, by one State party. In twelve cases the possibility to transfer proceedings was foreseen in domestic legislation or bilateral or multilateral treaties in general terms, but in some of them no such transfer had taken place. The domestic legislation of another State party provided for such possibility within the framework of a regional international organization in relation to money-laundering offences. One State party was found to make rather extensive a use of this form of international cooperation, especially with neighbouring countries, by reporting a total of fifty-nine incoming requests and forty-seven outgoing requests in the period 2009-2011. Another State party reported that since January 2010 it had received over 750, mostly fraud-related, requests to transfer proceedings into its jurisdiction, although it could not be confirmed how many of those proceedings were ultimately accepted.

25. In one case it was argued that transfer of criminal proceedings was a routine practice, without concrete examples of implementation. No information was provided as to whether States parties considered the possibility of transferring proceedings to one another for the prosecution of Convention offences. Another State party argued that for cases in which extradition was rejected on the grounds of nationality of a person, the transfer of proceedings was considered part of the obligation to “extradite or prosecute”; in all other cases, the transfer of criminal proceedings could be conducted through arrangements on a case-by-case basis.

C. Law enforcement cooperation



26. Channels of communication between competent anti-corruption and law enforcement authorities were reported to be frequent, both at the regional and the global level. A number of States parties had domestic legislation to enable such cooperation. Cooperation was also rendered on the basis of treaties, under the regulatory framework of regional international organizations (including the European Union, the Organisation of American States, the Organization of the Islamic Conference, the OSCE, the Commonwealth of Independent States, or within regional networks (such as ASEANAPOL, the Camden Asset Recovery Inter-agency Network (CARIN) or CARIN-style networks). In the context of regional cooperation, tools such as secure databases for the sharing of information among law enforcement authorities had been developed. Some States parties could also provide law enforcement cooperation on the basis of ad hoc arrangements without either a specific domestic legislation or a treaty base.

27. Membership to INTERPOL was generally regarded as a condition to facilitate law enforcement cooperation at the international level. Reference was made to INTERPOL's I-24/7 global police communications system as a means to share crucial information on criminals and criminal activities worldwide. At the same time, it was noted that INTERPOL could not replace direct channels of communication with law enforcement authorities of other States. The scarcity of such channels beyond the regional context was a common feature among States parties under review. Some States parties reported on their status of participation in the StAR/INTERPOL Focal Point Initiative.

28. The exchange of information appeared to be a common feature among Financial Intelligence Units (FIUs), as the majority of States parties indicated actual or developing engagement between their units and foreign FIUs, mainly through conclusion of Memoranda of Understanding or membership to the Egmont Group.

29. Some countries further reported on their cooperation through the World Customs Organization and through the Schengen Information System.

Box 14
Examples of the implementation of article 48 (1)

With regard to effective coordination between authorities, agencies and services, one State party, together with other countries of the same region, had set up a joint network of liaison officers, enabling police officers of any one of those States to act on behalf of the police of any of the others.

One State party reported that its police had engaged in several joint activities with States of the same region in the areas of capacity-building, coordination and collaboration against transnational crime, including corruption-related offences. These activities were undertaken through a regional transnational crime network, funded by this State party, which had developed a series of multi-agency (law enforcement, customs, immigration) units against transnational crime, active across several countries of the region.

The high volume of international cooperation requests in law enforcement matters and the impressive level of execution was highlighted in one State party. These operations were carried out both by regular law enforcement authorities, but also through the effective use of specialized agencies to deal with requests involving particularly complex and serious offences, including offences covered by the Convention. This unique organizational structure was considered specifically as a success and good practice under the Convention. In addition, the operations of aid-funded police units directed at illicit flows and bribery related to developing countries constituted a good practice in promoting the international cooperation goals of UNCAC. Similarly, efforts made at assisting law enforcement authorities in developing States in capacity building to enable them to investigate and prosecute corruption offences was also mentioned.

One country had since 1995 negotiated over 30 police to police cooperation agreements. 12 of these agreements contained provisions focussing specifically on corruption, four of them contained cooperation in special investigative techniques.

30. With respect to measures of cooperation in inquiries concerning offences covered by the Convention, most States parties provided an overview of the general legal framework within which such measures could be taken. Seven States parties provided information on inquiries that had been effectively conducted in cooperation with other States. Three States parties provided information on specific measures or legislation regarding supply of items or substances for analytical purposes and means or methods used to commit offences covered by the Convention.

31. Regarding coordination through exchange of personnel or experts, twelve States parties had confirmed the posting of police liaison officers to other countries or international organizations, and four had deployed liaison officers to 20 or more foreign countries. One State party had posted more than 130 liaison officers in 40 countries. Officials from law enforcement agencies frequently participated in joint training activities with international counterparts. Two States parties explained that its police attachés were posted with some of its embassies abroad. While

possessing diplomatic status, their activities were conducted under the supervision of the Police Office. The period of deployment was generally four years.

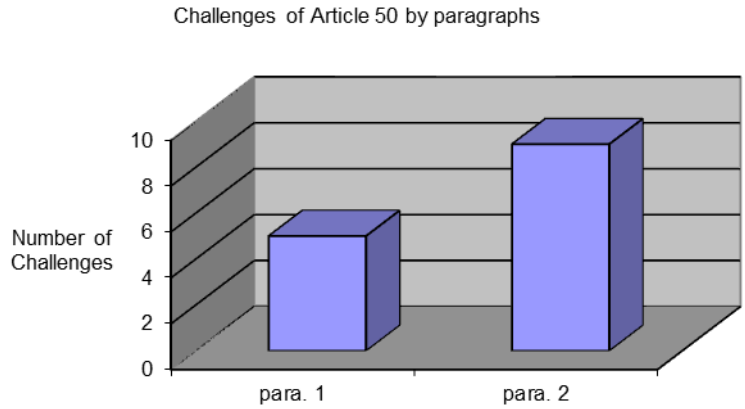
32. Conclusion of bilateral or multilateral agreements or arrangements on direct cooperation between law enforcement authorities appeared to be part of the practice of a majority of States parties, as most countries indicated that they had entered or were considering entering into such agreements, both from the same region or language community and globally. While nine States parties could use the Convention as basis for mutual cooperation in respect of offences covered by the Convention, one State party explicitly excluded this possibility. Some countries also applied specific provisions of their mutual legal assistance treaties. Only two States parties had no bilateral or regional treaties on law enforcement currently in place.

33. The country reviews did not provide one uniform interpretation about possible modalities of cooperation to respond to offences committed through the use of modern technology. A number of States parties were not able to provide any information on the topic. A number of States parties referred to their legislation on cybercrime and their ratification of the Convention against Cybercrime of the Council of Europe mentioned as a means of cooperation the establishment of a permanently available focal point in the framework of a regional treaty addressing all forms of cybercrime, whereas another State party referred to a bilateral treaty addressing the issue.

D. Joint investigations

34. Fourteen States parties had adopted agreements or arrangements allowing for the establishment of joint investigative bodies. Another eight mentioned that their legal systems and practice enabled them to conduct joint investigations on a case-by-case basis, and six of them confirmed that they had done so on a number of occasions. Eleven States parties had neither concluded bilateral nor multilateral agreements with a view to carrying out joint investigations nor had undertaken such investigations on an ad hoc basis; however, one of these States parties indicated that draft legislation was under consideration at the time of the review. One of these countries had opted out of the provision of joint investigation teams of a regional Convention. The police of one State party had established such teams with foreign law enforcement authorities in more than 15 cases relating to organized crime, drugs and Internet-based crimes. Only one State party mentioned the formation of a team in relation to a Convention offence. The investigative authorities of one country made frequent use of joint investigation teams to bridge the problems of receiving intelligence and investigative cooperation that could rise between countries from civil law and common law systems.

E. Special investigative techniques



35. Special investigative techniques and their admissibility in court were regulated in the legislation of the majority of the States parties under review. However, in two cases the utilization of such techniques was authorized solely with respect to specific criminal offences which did not include corruption-related offences. Most commonly used techniques included controlled deliveries, interception of telephone communications and undercover operations, and could normally be authorized only by court order. The investigative authorities of one State party had only limited authority for surveillance and no powers for further special investigative techniques. One State party mentioned the recent introduction of a new technique, namely the monitoring of Internet activity, which could be initiated upon the request of a foreign country. Seven States parties did not make use of special investigative techniques, but two of them noted that such techniques would be allowed under draft legislative provisions under discussion at the time of the review.

36. International agreements or arrangements mentioned in article 50 (2) of the Convention had been concluded by ten countries, usually involving counterparts in the same region or members of the same regional organization. Among the States parties that had not concluded such agreements, one reported that it would be possible to use special investigative techniques if requested by States with which a treaty on mutual legal assistance in criminal matters had been concluded.

37. The information provided further suggested that special investigative techniques could be used at the international level in the absence of relevant international agreements and on a case-by-case basis in twelve States parties. Among those, two States parties would use such techniques only on condition of reciprocity.

Box 15
Examples of the implementation of article 50 II

In 2009, one State party received a request to implement certain investigation measures from the investigation authorities of another State party. Although there was no treaty or agreement in force between the agencies of the two countries, the request was implemented in compliance with the requirements of the legislation of the requesting jurisdiction, provided that it did not contradict the legislation of the implementing country.