9 October 2020

English only

**Tenth session**
Vienna, 12–16 October 2020
Item 4 of the provisional agenda*
**International cooperation, with particular emphasis on extradition, mutual legal assistance and international cooperation for the purpose of confiscation, and the establishment and strengthening of central authorities**

# Comments of States parties on the outcome of the eleventh meeting of the Working Group on International Cooperation (Vienna, 7–8 July 2020)

## Note by the Secretariat

## I. Introduction

1. The eleventh meeting of the Working Group on International Cooperation was held on 7 and 8 July 2020. At this meeting, the topics of joint investigations and special investigative techniques were the two substantive agenda items. In addition, under the agenda item “other matters”, the discussion revolved around the impact of the COVID-19 pandemic on the effectiveness of international cooperation in criminal matters.

2. The eleventh meeting of the Working Group on International Cooperation was held in a so-called hybrid/Chair format in view of the COVID-19 pandemic. Due to this format, with all delegates connected remotely via an interpretation platform and limited meeting times, it was not possible to follow established practice of negotiating the draft recommendations line-by-line during the Working Group and to adopt them as part of the final report. Some States also faced difficulties to fully attend the meetings of the WG due to technical issues of connectivity.

3. Instead, the draft recommendations were entitled discussion points for future consideration and became a part of the (non-negotiated) Chair’s summary of the deliberations in the Working Group. They were included in the final report of the meeting (CTOC/COP/WG.3/2020/4) which was published in September 2020 and is available on the relevant webpage of the Working Group. As per established practice, the report (including the Chair’s summary) has also been submitted to the Conference as part of the official documentation.

4. In order to facilitate the further consideration of the discussion points before the tenth session of the Conference, the extended Bureau approved by silence procedure on 31 July 2020, a process which had been negotiated by Member States in informal

* CTOC/COP/2020/1.

consultations under the guidance of the President of the ninth session of the Conference of the Parties.

5. This process foresaw a so called “reflection period” in which the Secretariat, on behalf of the Chair of the Working Group, circulated the draft recommendations in the form of a non-paper to the Permanent Missions of Member States which did register to participate in the Working Group, as well as to all the registered delegates, before the reports were published; and set a deadline (16 September 2020) for the submission of comments on the text of the discussion points “for future consideration”.

6. Within the aforementioned deadline, the following States parties (in alphabetical order) provided comments, either in the form of track changes in the text of the discussion points or through the submission of narrative information on national legislation and practices in the field of international cooperation in criminal matters: Canada, France, Israel, Lebanon, Morocco, Peru, Switzerland and United States of America. These comments are reflected below. Submissions received in other language than English (from Lebanon and Morocco in Arabic) were translated unofficially through the use of internal resources.

# II. Comments of States parties on the discussion points of the eleventh meeting of the Working Group on International Cooperation

## Agenda item 2
## Use and role of joint investigative bodies in combating transnational organized crime

### Discussion points for future consideration

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 (Morocco: The language used (“States parties are encouraged…” is non-binding. This means that States are not obliged to adhere to the recommended action, and the matter of compliance with it remains entrusted to each State according to its internal choices and orientations, as well as its available and allocated capacities),where possible and (appropriate, and in accordance with domestic procedure and practice (Israel), to use joint investigations or parallel investigations (Israel) as a modern form of international cooperation to increase the effectiveness of and expedite cross-border investigations for the broadest possible range of offences (Switzerland: in Switzerland, JIT is a MLA Measure. It is in any case based on a MLA request); in doing so, States parties are encouraged (Canada) to act quickly when engaging in international cooperation (Canada), 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 and in accordance with their domestic law (Switzerland: Article 19 is not self-executing in Switzerland and thus not a carrying legal basis for JIT), 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, where appropriate (U.S.A.), 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;

(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; (Israel: too general discussion point for this context);

(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.

## Agenda item 3
## International cooperation involving special investigative techniques

### Discussion points for future consideration

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 and in accordance with their domestic law (Switzerland: Article 20 is not self-executing in Switzerland and thus not a carrying legal basis for IC involving special investigative techniques), 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 where applicable (Switzerland), in extradition cases;

(e) In making use of special investigative techniques, States parties should, given the potential danger to the public, (Switzerland: this danger also exists with regard to other measures, therefore no need for controlled deliveries to be highlighted) 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, States should ensure that such use is (Switzerland) 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, reasonableness (U.S.A.) and proportionality, as well as safeguards for judicial or independent oversight;

(g) States parties are strongly encouraged to consider human rights appropriately, including privacy rights (Canada), 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;[1]

(h) Further efforts should be made to fully ensure that when appropriate (U.S.A.) the private sector can play a key role (U.S.A.) 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, 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

[1] 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.

techniques, or a set of legal, practical and operational guidelines on the implementation of article 20 (Switzerland: suggesting deletion of the discussion point because of lack of clarity and recollection whether this issue was discussed at the meeting. Further, there is a need to discuss applicable international e-evidence standards);

(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 2007[2] and the UNODC guide on Current Practices in Electronic Surveillance in the Investigation of Serious and Organized Crime developed in 2009,[3] 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.

## Agenda item 4
## Other matters

### Discussion points for future consideration

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, the use and acceptance of electronic signatures (U.S.A.) and, to the extent feasible, the paperless administration of work in central and other competent authorities, in relation to cooperation with their foreign counterparts (Switzerland);

(c) States are encouraged to further explore and consider how the Convention can help them respond to new and emerging forms of organized crime, such as environmental crime, the illicit trafficking in falsified medicines and medical products and cybercrime (France).

# III. Comments of States parties in the form of narrative information on national legislation and practices in the field of international cooperation in criminal matters

### Lebanon

The Public Prosecution office at the Court of Cassation plays a fundamental role in cooperation between States and in combating cross-border crimes and actively participates in investigations by foreign countries. This is because it undertakes, by itself or through the competent authority, the implementation of the foreign judicial assistance or rogatory letters, including the investigation work involved in the implementation of the rogatory letters. Foreign rogatory letters are sent through the

[2] www.unodc.org/pdf/legal_advisory/Model%20Law%20on%20MLA%202007.pdf.
[3] United Nations publication, Sales No. E.09.XI.19.

usual diplomatic methods to the Minister of Justice, then to the Public Prosecution Office at the Court of Cassation, which is responsible for implementing them.

Also, when the Lebanese judiciary requests judicial assistance from the foreign judiciary, this is done through the Public Prosecution office. It must be emphasized that no national judge can correspond with a foreign judge regarding the sending or the implementation of Lebanese rogatory letters abroad. Instead, such rogatory letters are sent by the public prosecutor at the appeal court to the public prosecutor at the Court of Cassation, who studies them before referring them to the Minister of Justice, so that they can take the necessary diplomatic paths, and reach the competent foreign authority. In cases of extreme urgency, rogatory letters can be sent via INTERPOL. The Public Prosecutor at the Court of Cassation has issued a circular on the principles that must be adopted in the drafting of rogatory letters by the Lebanese judges, in order to ensure the proper conduct of work and to prevent the non-implementation by the foreign authorities.

The Public Prosecution at the Court of Cassation also plays a fundamental role in extradition cases. The Lebanese Penal Code is the main source for extradition rules in accordance with articles 30ff., in addition to some provisions contained in the Lebanese Code of Criminal Procedure in this regard.

The competent authority to examine whether the legal conditions for extradition is the Public Prosecutor at the Court of Cassation, who also examines the extent to which the accusation is proven, and submits a report to the Ministry of Justice, according to which he proposes extradition or not. The request for extradition is decided by a decree taken upon the proposal of the Minister of Justice, and accordingly, the report of the Public Prosecutor at the Court of Cassation is not binding for the Minister of Justice. On the other hand, when the Lebanese State is requesting the extradition of the suspected or convicted person, the request is submitted in this case by the Public Prosecutor at the Court of Cassation to the requested State through diplomatic channels.

The extradition is regulated either by a treaty between Lebanon and the States concerned, or by the provisions of the domestic law of the State from which the extradition is requested.

Lebanon has signed several conventions that address the issue of extradition, including nine bilateral conventions with other countries.

In the absence of an international treaty or convention, the provisions of articles 20 to 36 of the Lebanese Penal Code apply. It also needs to be noted that, when examining the conditions for extradition, the Public Prosecution Office at the Court of Cassation relies on the provisions of Article 3 of the Convention against Torture (to which Lebanon acceded on 22/12/2008), which stipulates the following: “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

It is inferred from the aforementioned text that it does not explicitly state that refugees may not be extradited. Rather, the phrase “persons who are believed that they would be in danger of being subjected to torture” is interpreted as including, on one hand, refugees, and on the other hand, persons who prove to the public prosecutor at cassation that they are in danger by any means of evidence. As for refugees, in order to reject the extradition, it is not sufficient to have submitted an asylum application in a country. Rather, an asylum card must be obtained, which means that the application has been accepted. Consequently, when the person requested to be extradited has obtained a refugee card, his extradition is rejected. As for other persons, the following means of evidence are not sufficient by themselves to prove exposure to danger unless they are corroborated by other means, and according to the public prosecution's absolute discretion.

Finally, the Public Prosecution Office at the Court of Cassation plays a fundamental role in international crimes of money laundering and terrorist financing. This is

because on 24/11/2015 Law No. 44, the Anti-Money Laundering and Terrorism Financing Law was issued, according to which, the framework of Law No. 318/2001 was expanded to include, on one hand, the crimes of terrorist financing, and on the other hand, to add new crimes to those that are considered a source of illicit funds (which now includes 21 different crimes enumerated in article 1). The law established the Special Investigation Commission, which conducts investigations into operations suspected to constitute crimes of money laundering or terrorist financing, and takes decisions regarding the temporary precautionary freezing of the account for periods of time indicated in article 6 para 2 of the same law. According to Article 6 para 3, it is exclusively for the Commission to decide on the definitive freezing of the account, and/or to lift banking secrecy for the benefit of the competent judicial authorities and for the benefit of the higher banking authority about accounts or operations suspected of being related to money laundering or terrorist financing. The Commission, pursuant to the provisions of article 8, sends an authentic copy of its decision to the Public Prosecutor at the Court of Cassation.

If the Public Prosecutor at the Court of Cassation decides not to proceed with the public case, the frozen accounts and all the funds shall be deemed released.

Based on the foregoing, the decisions to lift bank secrecy and/or to freeze bank accounts on suspicion of money laundering or terrorist financing, are referred exclusively to the Public Prosecutor at the Court of Cassation, who could, in accordance with the provisions of Law 44/2015 as well as the Code of Criminal Procedure, either not proceed with the case, or send the case to the competent public prosecution, knowing that the Public Prosecutor at the Court of Cassation does not have the right to prosecute. The importance of the aforementioned competence becomes apparent when foreign countries submit requests for legal assistance to access the accounts of a specific person who is being prosecuted abroad for the crime of money laundering and terrorist financing. The Public Prosecutor at the Court of Cassation refers the request to the Special Investigation Commission to conduct the necessary action. And then he communicates the results of the investigations to the foreign country (according to the procedures followed by the Commission and the decisions taken by it in accordance with the provisions of Law No. 44/2015).

**Morocco**

Concerning the draft recommendations related to the establishment of joint investigative bodies according to article 19 of the United Nations Convention against Transnational Organized Crime, it is noted that this mechanism is not currently provided by the Moroccan legislation (Code of Criminal Procedure), however the draft law of the Code of Criminal Procedure, which is now in the legislative process, includes and organizes this mechanism, and therefore in the event of its approval, the provisions of article 19 will not present any problem at the level of implementation, as well as the recommendations emanating from it.

Concerning the part related to the adoption of special investigative techniques stipulated in article 20 of the United Nations Convention against Transnational Organized Crime, the Moroccan Criminal Procedure Law organized the mechanism of controlled delivery and how to activate it within the framework of international judicial cooperation, and this mechanism has also been stipulated in some Bilateral agreements on judicial cooperation in the criminal field that our country concluded with other countries, as this presidency has always responded positively to many requests for cooperation received from other countries in this regard. As for the rest of the other technologies such as the electronic surveillance, they were not regulated by the code of criminal procedure, and the draft law of the code of criminal procedure regulated these special techniques for investigation, the adoption of which remains dependent on the approval of the draft currently presented to the General Secretariat of the Government, which, in the event that it is adopted legislatively, will make the national law in this regard compatible with the requirements of article 20 of the Convention, and accordingly the draft recommendations relating to them will not pose any problem in practice.

With regard to the discussion raised about the need for legal and judicial systems to keep pace with modern digital technologies in line with the urgent necessity imposing the use of these media in combating transnational organized crime, it should be noted that in the framework of implementing requests for international judicial cooperation, the Moroccan legislation does not allow the implementation of requests for judicial assistance aiming at hearing witnesses and experts via video technology, but the draft law on criminal procedure allows this possibility, which requires ratification of the draft law on criminal procedure, in order to allow the implementation of requests for judicial assistance aiming at hearing witnesses and experts through video technology.

**Peru**

We consider it important to encourage the formation of joint investigation teams, since it allows an effective fight against transnational organized crime.

In this regard, on 28 August 2020, the Prosecutor of Peru and the National Prosecutor of Chile signed an Agreement on the Creation of the First Joint Investigation Team between the Public Ministries of Peru and Chile. The legal basis of this agreement is found in the UNTOC and in the Inter-American Convention on mutual assistance in criminal matters whose purpose is to coordinate binational actions within the framework of the crime of migrant smuggling.

Also, in relation to the strengthening of capacities in the field of international judicial assistance, as well as for obtaining evidence and preservation of stored computer data, it is necessary to specify that within the framework of the new management of the “international judicial cooperation and extraditions unit”, priority is given to the realization of training activities with the school of the Public Ministry for the various justice operators, in order to disseminate the benefits of the multilateral agreements; including the UNTOC.

Finally, we consider it necessary to strengthen the channels of international judicial cooperation, as well as encouraging the use of electronic media as valid mechanisms to share information between the various central authorities. This practice has been very useful during the COVID-19 pandemic.