

Wednesday, 14 October 2020

INTRODUCTORY STATEMENT

Agenda item 4: 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

Distinguished delegates, ladies and gentlemen,

For its consideration of agenda item 4, the Conference has before it a report of the Secretariat on the activities of UNODC to promote the implementation of the provisions on international cooperation in the Convention (CTOC/COP/2020/6).

As you well know, informal and formal methods of international cooperation are essential for the coordination of efforts to prevent and combat organized and serious crime in its transnational manifestations. The provisions on international cooperation in criminal matters are at the heart of UNTOC because they provide States with mechanisms and tools to cooperate in addressing effectively cases involving transnational organized crime.

Since the last session of the Conference, UNODC has continued to promote the implementation of the Organized Crime Convention with a focus on fostering international cooperation as well as to support States parties in their efforts to enhance regional and interregional information exchange on organized crime and the effectiveness of international cooperation mechanisms to tackle transnational organized crime.

For example, UNODC has continued to work in the following areas related to international cooperation:

- Providing support for the work of the Working Group on International Cooperation (an issue that I will have the chance to briefly analyse in the last part of this statement);
- Providing advice to States to strengthen/upgrade laws on mutual legal assistance and extradition.
- Providing support for strengthening the work of central authorities dealing with international cooperation in criminal matters;
- Supporting the development of tools aimed at promoting the implementation of the provisions on international cooperation of the Convention; and
- Supporting the establishment and strengthening of networks of central authorities and other practitioners with the objective of facilitating direct but informal contacts and providing training to strengthen capacities to undertake international cooperation in criminal matters and the prosecution of different forms of organized and serious crime, including mainstreaming cybercrime, as well as facilitating international cooperation among States parties.

At this point, allow me, ladies and gentlemen, to make the following observations:

With regard to tools to facilitate cooperation between central authorities, UNODC expanded the SHERLOC (Sharing Electronic Resources and Laws on Crime) Knowledge Management Portal to include new databases and functionalities. The database on legislation currently contains a broad number of

pieces of legislation on different modalities of international cooperation. In particular, to give you an example:

There are 387 legislative entries from 141 countries on article 16 of the UNTOC on extradition; 323 legislative entries from 108 countries on article 18 of the Convention on mutual legal assistance; 130 legislative entries from 60 countries on article 13 of the Convention on international cooperation for the purpose of confiscation; 73 legislative entries from 40 countries on article 17 of the Convention on transfer of sentenced persons; 68 legislative entries from 29 countries on article 27 of the Convention on law enforcement cooperation.

Regarding the case law database, the breakdown, as it currently stands, is as follows:

- Article 13 (International cooperation for the purposes of confiscation) – 34 cases, from 14 countries.
- Article 16 (Extradition) – 69 cases, from 25 countries.
- Article 18 (MLA) – 94 cases, from 37 countries.
- Article 27 (Law enforcement cooperation) – 101 cases, from 31 countries.

During the reporting period, UNODC expanded the Directory of Competent National Authorities to also include central and competent authorities designated

under the Convention against Corruption. As a result, the overall number of authorities listed in the directory had increased to more than 1,500.

UNODC continued to use the redeveloped version of the Mutual Legal Assistance Request Writer Tool in training activities and workshops. Under the new reality that has emerged as a result of the COVID-19 pandemic, UNODC has been working towards integrating presentations on the tool into online courses and webinars in order to facilitate the dissemination of information about its use and the training of an expanded number of practitioners and experts in a virtual environment.

With regard to the mainstreaming of the topic of electronic evidence into the work of the UNODC in the field of international cooperation, let me remind you that in 2019, UNODC, the Counter-Terrorism Committee Executive Directorate and the International Association of Prosecutors jointly published the Practical Guide for Requesting Electronic Evidence Across Borders. Password-protected access to the guide was made available in March 2019 within the Directory of Competent National Authorities on the SHERLOC platform. The guide contains information to help identify the steps to be taken at the national level to gather, preserve and share electronic evidence, with the overall aim of ensuring efficiency in mutual legal assistance practices, also in relation to transnational organized crime.

Ladies and gentlemen,

Article 18 paragraph 13 of UNTOC establishes that direct communication between central authorities is, or should be, the normal way to transmit the requests, but this is without prejudice to the right to require the use of diplomatic channels¹. The law and procedure of many states require the transmission of MLA requests through diplomatic channels. For the requested state, this method ensures that the request has been signed by the competent authority in the requesting state. The downside of using this chain of transmission is that it may result in delay and there is a risk of loss of documentation. The chain of transmission is much simpler when the central authorities communicate directly. The other issue is the need to have the request and any accompanying documents authenticated.

As a result of the COVID-19 pandemic, related criminal activity increased in certain areas such as, cybercrime, child online sexual abuse, fraud and the distribution of falsified medical products. These offences are forms of transnational organized crime for which it is may necessary to have the cooperation of other states to rapidly obtain information and evidence. At the same time, the pandemic has required many states to impose restrictions of

¹ “...Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels...”.

movement on their populations that impacted the work of criminal justice systems generally, including central authorities dealing with international cooperation in criminal matters. As a result, many central authorities had to employ emergency measures in their work.

In response, the UNODC Global Programme to Strengthen the Capacities of Member States to Prevent and Combat (Transnational) Organized and Serious Crime (GPTOC) began collecting information on emergency measures being taken by central authorities for international cooperation in criminal matters as a way to overcome the difficulties created by COVID 19. This information was developed into a tool called “Communications from central authorities regarding working and emergency measures as a result of the health crisis caused by COVID-19.” It should be highlighted that some countries did not have emergency measures until receiving this document and now the tool contains information from 74 central authorities and 155 central authorities regularly receive updates.

With regard to the promotion of informal consultations and the facilitation of engagement among central authorities *in person*, including through regional networks, (see operative paragraphs 10 and 11 of the Conference), GPTOC

continued to act as a global facilitator for international cooperation in criminal matters, particularly through support to regional judicial cooperation networks. The networks of contact points, supported by UNODC who act as their secretariat, aim to enhance judicial cooperation by facilitating informal consultations, complementary to formal channels. In 2019-2020, UNODC continued to support the West African Network of Central Authorities and Prosecutors against Organized Crime (WACAP), the Judicial Cooperation Network for Central Asia and Southern Caucasus (CASC) and the Great Lakes Judicial Cooperation Network (GLJCN). Further, in 2019 UNODC began work to support the establishment of a judicial cooperation network in Southeast Asia, with the informal collaboration of the ASEAN MLAT Secretariat. As a result of three regional meetings held in 2019 and 2020, the South East Asia Justice Network (SEAJust) was established on 30 March 2020 with eight countries (Brunei Darussalam, Cambodia, Lao PDR, Myanmar, Singapore, Thailand, Timor-Leste and Viet Nam). Other countries and territories may join the network.

Let me refer to a concrete example of impact of these networks: : by the end of 2019, the CASC Network had facilitated through the provision of contacts and or advice, 14 inter-regional judicial cooperation requests (mutual legal assistance and extradition requests) and two bi-lateral meetings where central authority officials from one country were able to meet with their counterparts in

another country to discuss and resolve operational challenges. In 2020, this network facilitated cooperation for 13 inter-regional requests. In addition, the CASC Network began coordination with the Central Asian Regional Information Coordination Centre (CARICC). Since this pilot experience started in March 2020, alerts have been launched in 5 cases. The goal is to permit the CASC members to check, at an early stage, the state of the investigation and find out if judicial cooperation for obtaining evidence abroad or cross-border coordination of investigations needs to be established. If necessary, means for bilateral or multilateral coordination are provided by the CASC Network.

Since 2018, the WACAP network, enhanced knowledge on MLA, particularly as to offenses involving human trafficking and migrant smuggling, through training and by creating a pool of trainers on international cooperation in criminal matters. In 2019, advice was provided also to Burkina Faso and Mali to update laws on mutual legal assistance. Further, the WACAP team supported the negotiation of treaties on mutual legal assistance and the transfer of prisoners between Italy and Mali, and the negotiation of treaties on mutual legal assistance, extradition, and the transfer of prisoners between Italy and Niger. In March 2019, advice and support was provided to ensure the smooth transition of a Nigerian liaison magistrate deployed to Spain to expedite the processing of mutual legal assistance requests.

In the context of Covid-19, the WACAP network convened virtual meetings with the network's contact points to assess the impact of the pandemic on the criminal justice response and elaborate proposals to support the efficient functioning of their work. The discussions underlined the urgency to review and potentially simplify the transmission of mutual legal assistance requests by introducing electronic means.

Cooperation between judicial cooperation networks to provide advice and to facilitate contacts for mutual legal assistance requests has increased substantially in 2019 and 2020. Moreover, different networks (whether managed by UNODC or other entities) are frequently invited to participate in the UNODC network meetings. For example, the Secretariats of the European Judicial Network and Iber-Red participated in the first official meeting of the SEAJust network held in September 2020. Additionally, UNODC participated in an informal meeting of regional judicial cooperation networks organized by the Council of Europe in 2020 to share experiences.

Further information on the promotion of law enforcement networking to combat transnational organized crime will be provided when introducing agenda item 5 on "Technical assistance".

On the occasion of the present session of the Conference, a side event on “A Virtual Tour of the UNODC Networks on International Cooperation in Criminal Matters” will be held on 14 October from 10.10 to 10.50.

UNODC continues to look to Member States for funding that would ensure the ongoing support to these networks and to the UNODC MLA facilitation team serving as the secretariat of the networks, as well to the development and sustainability of practical tools supporting this key area of the Convention.

Ladies and gentlemen,

Upon consultation with the Chair of the Working Group on International Cooperation, Tom Burrows (United States of America), allow me now to briefly refer, as mentioned before, to the support provided by UNODC to the work of the Working Group on International Cooperation. As you know, the Conference of the Parties to the Organized Crime Convention endorsed in 2018, in its resolution 9/3, a series of recommendations adopted by the Working Group on International Cooperation at its eighth, ninth and tenth meetings.

The topics of joint investigations and special investigative techniques were the agenda items at the eleventh meeting of the Working Group on International Cooperation, held on 7 and 8 July 2020. It was the first time in its 14-year

history that the Working Group discussed these issues, focused on the implementation of articles 19 and 20 of the Convention respectively, enabling further dialogue on good practices and challenges encountered in these fields.

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.

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 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 COP as part of the official documentation.

In order to facilitate the further consideration of the discussion points before the tenth session of the COP, the extended Bureau approved by silence procedure on 31 July 2020, a process which had been negotiated by Member States in Informal Consultations under the guidance of the President of the ninth session of the Conference of the Parties.

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 are published; and set a deadline (16 September 2020) for the submission of comments on the text of the discussion points “for future consideration” (I will explain further what this “future consideration” means).

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 were made available through a Conference Room Paper issued for this session of the Conference.

Due to the circumstances and the fact that there were other resolutions tabled for negotiation in informals and further adoption by the Conference, it was not possible this year to follow the established practice in previous sessions of the Conference, namely to ensure the endorsement of the recommendations by the Conference through the adoption of a resolution, with those recommendations annexed to it, introduced by the Chair of the Working Group while opening this agenda item of the session of the COP.

Instead, the Secretariat, in consultation with the Chair and with his agreement, has prepared a proposal for the consideration of the Extended Bureau to continue the discussion at the next meeting of the Working Group, scheduled according to the proposal for the 2021 meetings plan for the Conference of the Parties to UNTOC and its subsidiary bodies, as approved via silence procedure on 11 September 2020, on 25-26 March 2021, with the following reasoning:

- There is a need to give more time to such discussion, which will correspond to the very constructive exchange of views on the respective agenda items in July;
- The agenda items under discussion (JITs and special investigative techniques) are very important and were discussed for the first time in the context of the WG. Hence, they deserve a proper framework and sufficient time to be discussed;

- The meeting in March 2021 can also give an opportunity to discuss these agenda items in conjunction with a “stock-taking” session on the “impact of COVID-19 in the field of international cooperation in criminal matters: a one-year overview” (July 2020 meeting focused under “Other matters” on the pandemic and related impact on international cooperation);
- In essence, the agenda of next March meeting will revolve around the two substantive agenda items (with the indication in the annotations that this is a continuation of the discussion of July meeting) + the item on COVID-19.
- The basis for the discussion will be the report of July meeting and the CRP that the Secretariat has presented to the Conference at the present session containing the comments received during the “reflection period”.

Ladies and gentlemen, I wish you fruitful deliberations.

Thank you.
