

## Resolution 11/1

### **Implementation of the provisions on international cooperation of the United Nations Convention against Transnational Organized Crime**

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

*Noting* that international cooperation has a prominent place within the overall context of the United Nations Convention against Transnational Organized Crime<sup>1</sup> and that addressing related issues constitutes a fundamental part of the work carried out by the United Nations Office on Drugs and Crime to assist States parties in the effective implementation of the Convention and the Protocols thereto,<sup>2</sup>

*Recalling* its decision 2/2 of 19 October 2005, entitled “Implementation of the international cooperation provisions of the United Nations Convention against Transnational Organized Crime”, to establish, at its third session, an open-ended working group to hold substantive discussions on practical issues pertaining to extradition, mutual legal assistance and international cooperation for the purpose of confiscation,

*Reaffirming* its decision 3/2 of 18 October 2006, entitled “Implementation of the provisions on international cooperation in the United Nations Convention against Transnational Organized Crime”, under which an open-ended working group on international cooperation was to be a constant element of the Conference of the Parties,

*Recalling* its decision 4/2 of 17 October 2008 and its resolution 5/8 of 22 October 2010, both entitled “Implementation of the provisions on international cooperation of the United Nations Convention against Transnational Organized Crime”, its resolution 6/1 of 19 October 2012, entitled “Ensuring effective implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”, and its resolution 7/4 of 10 October 2014, entitled “Implementation of the international cooperation provisions of the United Nations Convention against Transnational Organized Crime”,

*Recalling also* its resolution 8/1 of 21 October 2016, entitled “Enhancing the effectiveness of central authorities in international cooperation in criminal matters to counter transnational organized crime”, in which the Conference urged States parties to afford one another the greatest measure of assistance, in accordance with the provisions of the Convention, as well as their domestic laws, and encouraged States parties, consistent with their national legal frameworks, to make the widest possible use of the Convention as a basis for international cooperation,

*Recalling further* its resolution 9/3 of 19 October 2018, entitled “Implementation of the provisions on international cooperation of the United Nations Convention against Transnational Organized Crime”, in which the Conference endorsed the recommendations adopted at the eighth, ninth and tenth meetings of the Working Group on International Cooperation,

*Recalling* its resolution 10/4 of 16 October 2020, entitled “Celebrating the twentieth anniversary of the adoption of the United Nations Convention

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<sup>1</sup> United Nations, *Treaty Series*, vol. 2225, No. 39574.

<sup>2</sup> *Ibid.*, vols. 2237, 2241 and 2326, No. 39574.

against Transnational Organized Crime and promoting its effective implementation”, in which the Conference, inter alia, invited States parties to make full and effective use of the Convention, in particular through the broad scope of application of the definition of “serious crime” enshrined in its article 2, paragraph (b), as well as its provisions on international cooperation, in particular article 16, on extradition, and article 18, on mutual legal assistance, to promote cooperation to prevent and counter new, emerging and evolving forms of transnational organized crime,

*Welcoming* the work of the Working Group on International Cooperation, taking into consideration in particular the discussions held at its twelfth meeting on, inter alia, the use and role of joint investigative bodies in combating transnational organized crime, international cooperation involving special investigative techniques and the impact of the coronavirus disease (COVID-19) pandemic on international cooperation in criminal matters and at its thirteenth meeting on the transfer of sentenced persons and, jointly with the Working Group of Government Experts on Technical Assistance, on matters pertaining to the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto,

1. *Endorses* the recommendations adopted by the Working Group on International Cooperation at its twelfth meeting, held on 25 and 26 March 2021, which are set out in annex I to the present resolution;

2. *Also endorses* the recommendations adopted by the Working Group on International Cooperation at its thirteenth meeting, held from 23 to 27 May 2022 in conjunction with the thirteenth meeting of the Working Group of Government Experts on Technical Assistance, which are set out in annex II to the present resolution.

## **Annex I**

### **Recommendations adopted by the Working Group on International Cooperation at its twelfth meeting, held on 25 and 26 March 2021**

The Working Group on International Cooperation, at its twelfth meeting, held on 25 and 26 March 2021, adopted the following recommendations<sup>3</sup> for endorsement by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime:

#### **Use and role of joint investigative bodies in combating transnational organized crime**

(a) States parties are encouraged, where possible and appropriate, and in accordance with domestic laws and regulations and applicable international agreements, to use joint, including coordinated, investigations as a modern form of international cooperation to increase the effectiveness of and expedite cross-border investigations for the broadest possible range of offences covered by the Organized Crime Convention. In doing so, States parties are encouraged to act in a timely manner when responding to requests to establish such joint investigations, bearing in mind that information or evidence to be obtained may be available only for a limited period of time;

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<sup>3</sup> [CTOC/COP/WG.3/2021/3, paras. 2–4.](#)

(b) States parties are also encouraged to make further use, where appropriate and consistent with national legal frameworks, of article 19 of the Convention, as well as other applicable instruments at the international, regional and bilateral levels, as a legal basis for joint investigations. In doing so, they may, where appropriate, develop model agreements, or use existing agreements at the regional level, on the setting up of joint investigative bodies, with full respect for the sovereignty of the participating States, taking into account possible particularities of bilateral cooperation, and further disseminate them to their 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 in the implementation of the Convention, especially its article 19. In this regard, emphasis should be placed on successful and effective cases;

(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 are also encouraged to ensure that communication channels are properly maintained and that competent authorities are identified in all phases of joint investigations in order to efficiently address practical, legal, substantive and operational issues, including the provision of clarifications on applicable legal and disclosure requirements. States parties are also encouraged to make efforts to overcome challenges arising from differences between 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, in accordance with the basic principles of their legal systems;

(f) States parties are further encouraged to make use of the resources and facilities provided by regional bodies or mechanisms, as well as existing judicial and law enforcement networks, such as the International Criminal Police Organization (INTERPOL), to enhance coordination among the competent authorities for joint investigations at all stages, from planning to setting up, and from operation to closing and evaluation;

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

(h) 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;

(i) In accordance with the mandates contained in Conference resolution 5/8 and 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 examples of arrangements or agreements concluded between States parties for that purpose, and, upon

request, should assist States parties in developing a set of legal, practical and operational guidelines for the implementation of article 19;

#### **International cooperation involving special investigative techniques**

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

(k) 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;

(l) 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 investigations involving 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 of countries in terms of the use of information and communications technologies;

(m) States parties are encouraged to promote expedited communication and coordination at an early stage of planning their cooperation in order to ensure that evidence is found, seized and shared effectively, in accordance with their domestic law, including by electronic means;

(n) In making use of special investigative techniques, States parties should devote particular attention to safeguarding the public, so as not to do harm, while respecting national sovereignty;

(o) States parties are encouraged to give appropriate consideration to human rights when deploying joint investigative bodies and special investigative techniques to combat transnational and organized crime, as doing so may contribute to the effective use of those methods;

(p) In accordance with the mandates contained in Conference resolution 5/8 and relevant guidance stemming from the deliberations of the Working Group, the Secretariat should develop, subject to the availability of resources, a matrix identifying legal and practical issues that could arise in the implementation of article 20 of the Convention and the use of special investigative techniques, as well as possible solutions to those issues, including by collecting examples of arrangements or agreements among States parties on the use of such techniques, and, upon request, should assist States parties in developing a set of legal, practical and operational guidelines on the implementation of article 20;

#### **Impact of the coronavirus disease (COVID-19) on international cooperation in criminal matters: a one-year overview**

(q) States are encouraged to provide funding on a consistent and sustainable basis to enable the United Nations Office on Drugs and Crime (UNODC) to provide 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 coronavirus disease (COVID-19) pandemic that may have a lasting impact

on the work of central and other competent authorities involved in such cooperation;

(r) 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 videoconferencing in mutual legal assistance, the electronic transmission of requests for international cooperation, the use and acceptance of electronic signatures and, to the extent feasible, the paperless administration of work in central and other competent authorities relating to cooperation with their foreign counterparts;

(s) States parties are strongly encouraged to develop effective strategies to combat transnational and organized crime, in accordance with the fundamental principles of their domestic law, with a focus on enhancing international cooperation, as well as on ensuring that human rights, gender perspectives and socioeconomic vulnerabilities are considered when developing strategies and crime interventions, so as not to cause harm, particularly in the light of wider socioeconomic impacts caused by the COVID-19 pandemic;

(t) States parties should engage in the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, so as to promote examples of good practice in implementation, and should identify gaps, challenges and capacity-building requirements in the implementation of the Convention and its Protocols;

(u) States parties are encouraged to strengthen efforts to share best practices and lessons learned on the use by competent authorities of information and communications technologies when dealing with different forms of international cooperation requests in criminal matters, and to facilitate access to appropriate information and communications technologies for developing countries, with a view to strengthening international cooperation to combat transnational organized crime;

(v) Acknowledging that the COVID-19 pandemic has had a profound impact on the way in which criminal justice systems operate globally and that comprehensive physical distancing measures put in place worldwide as a response to the pandemic have led to a considerable increase in the use of electronic tools, Member States are encouraged to allow flexibility regarding the acceptance of official documents bearing electronic or digital signatures;

(w) Acknowledging that the conditions created by the pandemic have led to an increase in the electronic transmission of international cooperation requests and that those conditions have demonstrated that such requests can be sent and answered in a safe, timely, agile and valid manner using electronic means, Member States are encouraged to further strengthen their ability to use electronic means for the transmission of mutual legal assistance requests and for seeking, in response to such request, clarifications and acceptance of relevant materials in electronic form, in accordance with the fundamental principles of their domestic law, including with a view to improving their capabilities in the post-COVID-19 era;

#### **Other matters**

(x) States are encouraged to further explore and consider how the Convention can help them to respond to new, emerging and evolving forms of organized crime in the context of international cooperation.

## **Annex II**

### **Recommendations adopted by the Working Group on International Cooperation at its thirteenth meeting, held from 23 to 27 May 2022**

The Working Group on International Cooperation, at its thirteenth meeting, held from 23 to 27 May 2022 in conjunction with the thirteenth meeting of the Working Group of Government Experts on Technical Assistance, adopted the following recommendations<sup>4</sup> for endorsement by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime:

#### **Transfer of sentenced persons (article 17 of the Organized Crime Convention)**

(a) States parties are encouraged to have in place a solid legal basis for the implementation of article 17 of the Organized Crime Convention, through bilateral or multilateral agreements or arrangements and/or through national legislation that gives effect to such agreements or arrangements or can alternatively be used to facilitate transfers, and to adopt flexible approaches, in appropriate cases, to support a combined use of available legal tools;

(b) In the absence of a specific legal basis for the transfer of sentenced persons, and where authorized by domestic law, States are encouraged to consider making use of the principle of reciprocity as well as other available legal bases in prisoner transfer cases, when appropriate;

(c) States are encouraged to consider, where permitted by domestic law and any applicable treaty, any potential close links of sentenced persons to the administering State as a key requirement of their transfer, and as an alternative to the requirement of their nationality, with a view to facilitating their social reintegration and rehabilitation;

(d) States are encouraged to take into account law enforcement interests as well as the best prospects for rehabilitation when determining whether or not to grant a request for the transfer of a sentenced person;

(e) States are encouraged to consider establishing a minimum remaining period of a sentence to be served as a requirement for carrying out transfers of sentenced persons in order to facilitate the social rehabilitation and reintegration of prisoners and make best use of available resources in this field;

(f) States are encouraged to seek technical assistance pertaining to transfers of sentenced persons and, in this regard, the United Nations Office on Drugs and Crime (UNODC) is encouraged to facilitate, upon request, training activities and to enhance training for domestic authorities or personnel involved in the field of transfer of sentenced persons, including, as appropriate, prosecutors, judges, prison officials, consular officials and lawyers;

(g) States are encouraged to strengthen communication and coordination, including by promoting direct contacts between competent

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<sup>4</sup> [CTOC/COP/WG.2/2022/4-CTOC/COP/WG.3/2022/4](#), paras. 7 and 10.

authorities as a way to streamline the process of transfer of sentenced persons;

(h) States are encouraged to enhance the practice of consultations prior to the actual transfer of sentenced persons on such issues as conditional release, duration of procedures, possibilities of social reintegration and rehabilitation, detention conditions and medical treatment and, during the process of transfer, on such issues as dual criminality, partial recognition of sentences and adaptation of punishment, taking into account, as appropriate, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);

(i) States are encouraged to utilize, as feasible, software that makes it possible to identify prisoners who are eligible for transfer at an early stage;

(j) States are encouraged to actively promote cooperation in the field of transfer of sentenced persons and to participate in relevant networks or organizations;

(k) States parties having received requests from other States parties for the transfer of a prisoner who has consented to the transfer are encouraged to give due consideration to the request and to provide the requesting State with a timely response as to whether the request is granted or not;

**Matters pertaining to the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto**

(l) Parties under review are encouraged to share their progress in the country reviews with the Conference of the Parties at its future sessions in order to align the advancement of the reviews with the timetable contained in the procedures and rules for the functioning of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, annexed to Conference resolution 9/1, and the guidelines for conducting the country reviews, annexed to Conference resolution 10/1;

(m) UNODC is encouraged to organize informal meetings, on the margins of the meetings of the working groups of the Conference of the Parties, for interested parties to share their experiences in conducting the country reviews.