



# Conference of the Parties to the United Nations Convention against Transnational Organized Crime

Distr.: General  
18 November 2015

Original: English

## Report on the meeting of the Working Group on International Cooperation held in Vienna on 27 and 28 October 2015

### I. Introduction

1. In its decision 2/2, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime decided to establish 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. In its decision 3/2, the Conference decided that an open-ended working group on international cooperation would be a constant element of the Conference. The Working Group on International Cooperation, established pursuant to that decision, met in Vienna on 27 and 28 October 2015.

### II. Recommendations

2. The following recommendations were formulated by the Working Group:

(a) The Secretariat should continue to develop training material on the collection and sharing of electronic evidence under the framework of the United Nations Convention against Transnational Organized Crime, for further use in technical assistance activities;

(b) The Secretariat should continue to mainstream the topic of electronic evidence into existing and future tools on international cooperation in criminal matters and request States to provide relevant information and materials for inclusion in the knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC);

(c) Member States should enhance the efficiency of law enforcement cooperation mechanisms by, inter alia, developing effective systems of information-sharing, establishing channels of communication between their competent authorities and, if needed, concluding arrangements to foster operational assistance;



(d) Member States should consider examining ways and means to foster international cooperation involving, inter alia, the use of electronic evidence, the preservation of such evidence and, in particular, the examination of possibilities to expedite formal mutual legal assistance processes;

(e) Member States should consider encouraging practitioners, in appropriate cases, to consult informally prior to making a formal request for extradition or mutual legal assistance; in doing so, States parties should promote initiatives to make available clear guidance on their procedures and requirements for making such requests;

(f) Member States should consider supporting technical assistance efforts, including as undertaken by the United Nations Office on Drugs and Crime (UNODC), geared towards developing training programmes to improve the capacities of domestic law enforcement officers, including those who may serve as liaison officers, and of liaison magistrates, and enhance their knowledge on, inter alia, applicable international instruments and the domestic legal systems of host countries and their criminal procedure laws, including requirements on admissibility of evidence in courts;

(g) The Secretariat should continue the further development of tools for international cooperation in criminal matters, including the finalization of the revised Mutual Legal Assistance Request Writer Tool, and should report to the Conference of the Parties to the Organized Crime Convention at its eighth session on the pilot phase to test the use of this tool in practice as training material;

(h) The Secretariat should continue its work to collect and disseminate, including through the SHERLOC knowledge management portal, relevant national laws, guides and guidelines that can assist central authorities and practitioners in the preparation and expeditious submission of requests for mutual legal assistance;

(i) In order to strengthen direct contact between central authorities, the Secretariat should adjust the directory of competent national authorities under articles 6, 7 and 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and competent national authorities under the Organized Crime Convention by separating the directory into two parts, with one part containing information on central authorities designated under various treaty provisions related to mutual legal assistance, including contact information, accepted languages and acceptable forms of transmission of requests, and the other part containing information on other competent authorities and/or executing authorities, as appropriate, and on channels and information for informal cooperation;

(j) The Secretariat should invite States parties to update the notification requirement under article 16, paragraph 5 (a), of the Organized Crime Convention and consider making such updated information widely available;

(k) In view of some reports of parties not accepting the Organized Crime Convention as a basis for legal assistance under article 18, paragraph 7, of the Convention, States parties should take steps to enhance the use of the Organized Crime Convention as a legal basis for mutual legal assistance, bearing in mind its added value as an instrument that facilitates international cooperation for a wide range of offences and to the broadest extent possible; States parties should also

ensure that their domestic laws and practice conform with article 18 of the Convention;

(l) Member States should consider, with the assistance of the Secretariat and subject to the availability of extrabudgetary resources, the possibility of developing a global network, through a virtual environment, for the purpose of establishing and enhancing direct contact between central authorities;

(m) The Secretariat should undertake the updating, finalization and validation of the draft report of the informal expert working group on joint investigations, including its conclusions and recommendations, which was brought to the attention of the Conference of the Parties at its fourth session in conference room paper CTOC/COP/2008/CRP.5;

(n) States parties are invited to consider including in their delegations to future sessions of the working group practitioners in charge of matters related to the international cooperation provisions of the Convention and to encourage their active participation in the meetings of the Working Group;

(o) States parties, in coordination with the Secretariat, should consider scheduling future meetings of the Working Group in such a manner (such as back to back with other relevant meetings) so as to facilitate participation from practitioners and to make the best possible use of Government and Conference resources.

### **III. Summary of deliberations**

#### **A. Gathering and sharing electronic evidence**

3. At its 1st meeting, on 27 October 2015, the Working Group considered agenda item 2, entitled “Gathering and sharing electronic evidence”. With the Chair presiding, the discussion was led by panellist David Warner (United States of America).

4. Mention was made of the use of the terms “digital evidence” and “electronic evidence”, with some speakers pointing out that both terms were used in their jurisdictions. Some speakers referred to their national experiences in collecting and sharing electronic evidence, including the existence or updating of relevant laws and how, among others, such laws regulate the interception of communications.

5. Other speakers highlighted the transnational nature of cybercrime and the pertinent challenges for national sovereignty and the establishment of the most appropriate criminal jurisdiction. It was noted that the complexity of the legal and operational issues associated with cybercrime necessitated the development of additional tools to upgrade the capacity of law enforcement and judicial authorities of Member States, as well as the provision of technical assistance in support of the specialization of law enforcement agencies in dealing with cybercrime.

6. Speakers discussed the experience of their States in requesting information or requesting preservation of data from Internet service providers, and the relevant procedural and legal requirements for doing so. One particular challenge identified was how to make such requests to foreign Internet service providers present in a State’s jurisdiction, or when the data was stored in a server located in another

jurisdiction. The level of formality needed for such mutual legal assistance requests was addressed, as well as the importance of 24/7 points of contact in order to expedite requests. One speaker noted that further awareness-raising was needed on the part of central authorities to inform judges about the proper procedures for requesting information from another jurisdiction.

7. Some speakers underlined that issues pertaining to the gathering and sharing of electronic evidence were related not only to cybercrime but also to other forms of crime such as counterfeiting, trafficking in fraudulent medicines, financing of terrorism, trafficking in persons and child online abuse. One speaker noted that article 18 of the Organized Crime Convention, on mutual legal assistance, should be interpreted broadly to cover requests for mutual legal assistance involving the use or handling of electronic evidence.

8. Some speakers expressed the view that a universal legal instrument, within the context of the United Nations, was needed in order to effectively combat cybercrime and that such an instrument should address areas including effective international cooperation and criminal procedure law. Some other speakers expressed the opinion that, instead of a new instrument, States should focus on effectively implementing existing instruments, particularly the Organized Crime Convention, and on identifying national technical assistance needs. Some speakers also discussed the benefits of broader use of the Council of Europe Convention on Cybercrime. Some speakers looked forward to continuing the work of the Expert Group to Conduct a Comprehensive Study on Cybercrime and to considering further the UNODC *Comprehensive Study on Cybercrime*. Other speakers underscored that the Expert Group was the appropriate forum for discussing the merits of considering the need for a new universal legal instrument to combat cybercrime over continued reliance on the Organized Crime Convention and applicable regional instruments.

9. Some speakers noted that, in order to gather information on the state of implementation of the Convention in national legislation and to correctly identify technical assistance needs, a review mechanism for the Organized Crime Convention was needed. Other speakers noted that the Working Group on International Cooperation was not the appropriate forum for resolving the issue of a review mechanism.

## **B. Maximizing efficiencies, including the use of liaison officers and police sharing mechanisms**

10. At its 1st and 2nd meetings, on 27 October 2015, the Working Group considered agenda item 3, entitled “Maximizing efficiencies, including the use of liaison officers and police sharing mechanisms”. The discussion on the agenda item was facilitated by the panellists Ricardo Andrade Saadi (Brazil) and Cesar Mauricio Rodriguez Zarate (Colombia).

11. Speakers shared their experiences of the use of liaison officers and liaison magistrates posted in foreign law enforcement agencies or intergovernmental organizations, such as the International Criminal Police Organization (INTERPOL), the European Police Office (Europol) and the Europol European Cybercrime Centre, and of successful cases of international cooperation. Those cases included instances in which liaison officers or liaison magistrates had played a significant role in

conducting effective cross-border investigations, inter alia, by facilitating the preparation of mutual legal assistance requests to their States and providing information on what was required in extradition requests and proceedings. It was also noted that a liaison officer posted in one country could facilitate cooperation with other countries in the region and that the effectiveness of posting liaison officers or liaison magistrates would be enhanced by specialized training on the Organized Crime Convention and other applicable international instruments, as well as the legal system and national laws of the host country. It was stressed that a sine qua non condition for success in the practice of posting liaison officers or liaison magistrates in foreign jurisdictions or intergovernmental organizations was the existence of clear and well-defined mandates regarding their role and tasks. While highlighting the importance of the contribution of liaison officers or liaison magistrates, one speaker also referred to the need for ensuring judicial or prosecutorial involvement in relevant actions taken. One speaker noted the importance of establishing internal coordination mechanisms for combating money-laundering and other crimes, and shared the experience of his Government in that regard.

12. Speakers discussed the usefulness of police-to-police cooperation and the issue of the admissibility of evidence collected through international cooperation. Speakers also discussed the importance of domestic authorities being aware of the legal and procedural requirements for collecting and using different types of evidence, for instance in which cases it could be obtained through informal police-to-police cooperation or where more formal channels needed to be used. Some speakers emphasized the utility of available technologies in facilitating international cooperation.

**C. Update by the Secretariat on its tools related to international cooperation, including with regard to the gathering of information on the implementation of the international cooperation provisions of the United Nations Convention against Transnational Organized Crime**

13. At its 2nd meeting, on 27 October 2015, the Working Group considered agenda item 4, entitled “Update by the Secretariat on its tools related to international cooperation, including with regard to the gathering of information on the implementation of the international cooperation provisions of the United Nations Convention against Transnational Organized Crime”. The discussion on the agenda item was facilitated by presentations by representatives of the Secretariat.

14. Speakers discussed the utility of the various tools produced by the Secretariat and by other intergovernmental organizations for facilitating international cooperation, for instance the UNODC Mutual Legal Assistance Request Writer Tool and the INTERPOL e-extradition initiative. It was noted that standard forms for requesting mutual legal assistance were necessary, but it was important for States to be aware of the particular standards of the requested States when it came to obtaining certain types of evidence.

15. One speaker suggested the more frequent use of new forms of technology, including, where appropriate, online platforms at the bilateral, regional and

international levels to enhance international cooperation as set out in the Organized Crime Convention, particularly in articles 16 and 18. One speaker noted the issue of security of such communication (encryption) and authentication requirements in that regard.

16. The Working Group discussed the UNODC directory of competent national authorities under the 1988 Convention and the Organized Crime Convention, with speakers deliberating on whether it would be more useful to separate the directory in two parts, with one part containing information on central authorities designated under various treaty provisions relating to mutual legal assistance, and the other part containing information on other competent authorities and on channels and information for informal cooperation. Many speakers supported the proposal of creating two separate components as described above to avoid confusion and facilitate both formal and informal cooperation.

#### **D. Use of the United Nations Convention against Transnational Organized Crime as a legal basis for international cooperation against all forms of transnational organized crime**

17. At its 3rd meeting, on 28 October 2015, the Working Group considered agenda item 5, entitled “Use of the United Nations Convention against Transnational Organized Crime as a legal basis for international cooperation against all forms of transnational organized crime”. The discussion on the agenda item was facilitated by panellist Dana Maria Roman (Romania).

18. Speakers shared their experiences of using the Organized Crime Convention as a legal basis for cooperation in mutual legal assistance, extradition, confiscation of the proceeds of crime, transfer of sentenced persons, special investigative techniques and joint investigations, among others. Speakers noted that the Convention was used to deal with both traditional and new and emerging forms of crime, including drug trafficking, corruption, cybercrime, wildlife crime and trafficking in cultural property. In that regard, speakers emphasized the added value of the Convention and its great potential to be used as the legal basis for international cooperation, and made particular reference to certain provisions of the Convention that were aimed at advancing such use (for example, article 16, paragraphs 3 and 6; and article 18, paragraphs 3 and 7). It was noted that potential conflicts of jurisdiction or breaches of the *non bis in idem* principle could be avoided by using the European Convention on the Transfer of Proceedings in Criminal Matters when national legislation allowed it. Evidence was also presented to the Working Group, through specific cases and statistics, regarding the increasing use of the Convention as a legal basis to foster international cooperation in cybercrime cases and in relation to other offences such as corruption.

19. The Working Group further discussed the “interplay” of the Organized Crime Convention with other bilateral or multilateral treaties used as legal bases for international cooperation. It was noted that not all States accepted the Convention as a legal basis for extradition and that bilateral, regional and multilateral treaties and reciprocity could have a complementary relationship in enhancing and facilitating international cooperation. Speakers provided examples of cases where the selection of the applicable legal instrument had been made on the basis of certain criteria,

such as the facilitation and effectiveness of international cooperation. Speakers provided examples of national legislation and practice allowing, in certain cases, the use of the Organized Crime Convention for extradition purposes.

20. The Working Group discussed article 18 of the Convention, on mutual legal assistance. One speaker underlined with concern that the practice of foreign counterparts in certain cases of consultations with his own country to reject the use of the Convention as a legal basis for mutual legal assistance and opt, instead, for the negotiation of bilateral treaties, was posing significant challenges in view of the labour-intensive process of negotiating bilateral treaties and the consequent resources required for that purpose, but also because of the differing standards that could emerge as a result in international cooperation practice. Some speakers concurred that the lack of compliance with article 18 on the part of some States parties was a matter of concern. The Working Group focused on paragraph 30 of article 18, with delegations offering various interpretations regarding the meaning of “bilateral or multilateral agreements or arrangements”. Irrespective of the differing interpretations, it was noted that paragraph 30 of article 18 should not be interpreted as undermining the obligation of States parties to afford one another the widest measure of mutual legal assistance. Instead, it should be treated as a supplementary provision, to be read in conjunction with paragraph 7 of article 18.

21. It was noted that some States had ample information on their use of the Convention as a legal basis for international cooperation; however, the Secretariat noted that it had no concrete statistics on the topic, as no structured reporting had been carried out since 2008. The ongoing discussions in the open-ended intergovernmental meeting to explore all options regarding an appropriate and effective review mechanism for the Organized Crime Convention and the Protocols thereto were also noted.

## **E. Other matters**

22. At its 3rd meeting, on 28 October 2015, the Working Group considered agenda item 6, “Other matters”. The Chair noted that the Secretariat would facilitate the reporting of the salient points emanating from the deliberations of the Working Group, as well as its recommendations, to the fourth open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption, to be held in St. Petersburg, Russian Federation, on 2 and 3 November 2015, in parallel with the sixth session of the Conference of the States Parties to the United Nations Convention against Corruption. The purpose, as noted, would be to continue fostering the interrelationship and exchange of information between the two expert bodies.

## **IV. Organization of the meeting**

### **A. Opening of the meeting**

23. The Working Group met on 27 and 28 October 2015, holding a total of four meetings.

24. The meetings were chaired by Thomas Burrows (United States).

## **B. Statements**

25. Under agenda items 2 to 7, statements were made by representatives of the following States parties to the Convention: Afghanistan, Argentina, Brazil, Canada, China, Colombia, Costa Rica, Cuba, Czech Republic, Ecuador, Egypt, France, Ghana, Guatemala, India, Italy, Kenya, Mexico, Morocco, Netherlands, Oman, Pakistan, Peru, Portugal, Romania, Russian Federation, South Africa, Spain and United States.

26. The observers for Japan and the Republic of Korea, signatory States to the Convention, also made statements.

27. Representatives of the Secretariat gave presentations under agenda items 2, 3, 4 and 5.

## **C. Adoption of the agenda and organization of work**

28. At its 1st meeting, on 27 October 2015, the Working Group adopted by consensus its provisional agenda and organization of work. The agenda read as follows:

1. Organizational matters:
  - (a) Opening of the meeting;
  - (b) Adoption of the agenda and organization of work.
2. Gathering and sharing electronic evidence.
3. Maximizing efficiencies, including the use of liaison officers and police sharing mechanisms.
4. Update by the Secretariat on its tools related to international cooperation, including with regard to the gathering of information on the implementation of the international cooperation provisions of the United Nations Convention against Transnational Organized Crime.
5. Use of the United Nations Convention against Transnational Organized Crime as a legal basis for international cooperation against all forms of transnational organized crime.
6. Other matters.
7. Adoption of the report.

## **D. Attendance**

29. The following States parties to the Convention were represented at the meeting: Afghanistan, Algeria, Angola, Argentina, Austria, Bahrain, Bolivia (Plurinational State of), Brazil, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Dominican Republic, Ecuador, El Salvador, Finland, France, Ghana, Guatemala, Holy See, Hungary, India, Indonesia, Iraq, Ireland, Italy, Kenya, Lebanon, Madagascar, Mexico, Morocco, Myanmar, Netherlands, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland,



Portugal, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Slovakia, South Africa, Spain, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Arab Emirates, United States, Uruguay, Venezuela (Bolivarian Republic of) and Yemen.

30. The European Union, a regional economic integration organization that is a party to the Convention, was represented at the meeting.

31. Japan and the Republic of Korea, signatory States to the Convention, were represented by observers.

32. The following specialized agency of the United Nations system was represented by observers: United Nations Educational, Scientific and Cultural Organization.

33. The following intergovernmental organizations were represented by observers: Asian-African Legal Consultative Organization, European Judicial Network, Europol, League of Arab States, Organization for Security and Cooperation in Europe and Organization for Economic Cooperation and Development.

34. A list of participants is contained in document CTOC/COP/WG.3/2015/INF/1/Rev.1.

## **E. Documentation**

35. The Working Group had before it the following documents:

(a) Provisional agenda and annotations (CTOC/COP/WG.3/2015/1);

(b) Background paper prepared by the Secretariat on gathering and sharing electronic evidence (CTOC/COP/WG.3/2015/2);

(c) Background paper prepared by the Secretariat on the use of the United Nations Convention against Transnational Organized Crime as a legal basis for international cooperation against all forms of transnational organized crime (CTOC/COP/WG.3/2015/3).

## **V. Adoption of the report**

36. On 28 October 2015, the Working Group adopted the report on its meeting.

---