



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

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## Working Group on International Cooperation

Vienna, 15, 16 and 18 October 2012

### Report on the meeting of the Working Group on International Cooperation held in Vienna on 15, 16 and 18 October 2012

#### I. Introduction

1. In its decision 3/2, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime decided that an open-ended working group of government experts on extradition, mutual legal assistance and international cooperation would be a constant element of the Conference. The Working Group on International Cooperation, established pursuant to that decision, holds substantive discussions on practical issues pertaining to extradition, mutual legal assistance and international cooperation for the purpose of confiscation. The Working Group held its fourth meeting in Vienna on 15, 16 and 18 October 2012.

2. In its resolution 5/7, entitled “Combating transnational organized crime against cultural property”, the Conference requested the Working Group of Government Experts on Technical Assistance and the Working Group on International Cooperation to examine the relevant recommendations and outcomes of the expert group on protection against trafficking in cultural property established by the Commission on Crime Prevention and Criminal Justice, and to make recommendations for consideration by the Conference. Accordingly, a joint discussion on cultural property of the two Working Groups was held on 18 October 2012. The recommendations emanating from the joint discussion on cultural property are included in section IV below.

#### II. Conclusions and recommendations

3. The following conclusions and recommendations were formulated by the Working Group:

(a) Regional networks of prosecutors and central authorities are important for facilitating international cooperation in criminal matters in the framework of the United Nations Convention on Transnational Organized Crime;



(b) The importance of police-to-police cooperation was highlighted and it was recommended that the Conference include in the agenda of the fifth meeting of the Working Group on International Cooperation an item on police-to-police cooperation and cooperation between police and prosecutorial or judicial officials;

(c) The value of effective coordination among investigative and law enforcement agencies at the national level for the purpose of improving capacity for international cooperation was considered, and it was recommended that the Conference consider including an item on this issue in the agenda of the fifth meeting of the Working Group;

(d) Consideration was given to several other issues, including the role of liaison magistrates, prosecutors and police attachés in foreign missions in facilitating international cooperation, and their continued utilization by Governments was recommended;

(e) In discussing the role of regional networks for international cooperation, the importance of establishing secure communication channels among networks was emphasized;

(f) An in-depth discussion on possible synergies between the Working Group and the expert meetings on international cooperation established by the Conference of the States Parties to the United Nations Convention against Corruption was held; no consensus was reached on the way forward on this matter.

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

#### **A. Possible synergies with the expert meetings on international cooperation established by the Conference of the States Parties to the United Nations Convention against Corruption**

4. Speakers noted that some form of coordination of the work of the two Working Groups could be beneficial. The commonalities between the mandates of the two bodies, as well as between the levels of representation, the many cross-cutting issues arising from the two Conventions and the fact that central authorities in many States dealt with international cooperation under both Conventions were discussed.

5. Several speakers stated that a joint meeting of the Working Group and the Convention against Corruption experts on international cooperation would be efficient and cost-effective and would provide for a more coordinated sharing of information.

6. Some speakers expressed concern regarding the nature of a report on such a joint meeting. The question of what relationship might exist between such a joint meeting and the Open-ended Intergovernmental Working Group on Asset Recovery, established by the Conference of the States Parties to the Convention against Corruption, whose work was closely related to that of the expert meetings, but not to that of the Working Group on International Cooperation, was also raised.

7. Some speakers raised the question of how those States that were parties to one Convention but not to the other could participate in a joint meeting of the two bodies. Another difficulty identified in relation to such a joint meeting was that, in

some countries, the central authority for the Convention against Corruption was different from that for the Organized Crime Convention.

8. Some speakers expressed concern regarding the practical and budgetary implications of having coordinated or joint meetings of the two bodies. The following questions were raised:

(a) What would be the consequences of merging the Working Group with the expert meeting?

(b) What would be the financial implications of holding joint meetings?

(c) Would the Working Group and the experts hold meetings jointly or consecutively?

(d) How would the work of the joint meetings be conducted, considering that the expert meeting established under the Convention against Corruption was expected to discuss the findings of its Mechanism for the Review of Implementation of that Convention, which included a review of the provisions on international cooperation, while the Conference of the Parties to the Organized Crime Convention had not yet adopted a review mechanism?

9. A representative of the Secretariat provided a number of clarifications. Regarding questions (a) and (b) above, it was recalled that the expert meeting was mandated to be held during the fifth session of the Conference of the States Parties to the Convention against Corruption and to hold at least one intersessional meeting, whereas the Working Group met every two years, concurrently with the plenary sessions of the Conference of the Parties to the Organized Crime Convention. Yearly joint meetings of the two bodies would have financial implications for the Secretariat and would not generate cost savings for Member States. Furthermore, the question of whether the Working Group and the experts would hold meetings jointly or consecutively would have to be decided by the two Conferences.

## **B. Disposal, sharing and use of confiscated proceeds of crime**

10. With the Chair presiding, the discussion on agenda item 3 was led by the following panellists: Wilson Merino Sánchez (Ecuador) and Antonio Segovia Arancibia (Chile).

11. Loopholes in national legislation, which did not allow for the appropriate management of confiscated assets, as well as proposals to establish systems to manage and confiscate assets while ensuring that they did not lose their value and were properly disposed of, were discussed.

12. It was recalled that in its resolution 5/8 the Conference had encouraged States parties to dispose of confiscated proceeds of crime or property in accordance with the provisions of article 14 of the Organized Crime Convention, giving priority consideration to returning the confiscated proceeds to the requesting State party, for the purpose of compensating the victims of the crime or return to the legitimate owners.

13. The Working Group shared experiences on the confiscation of proceeds of crime and their use. Some speakers outlined national experiences and initiatives in

confiscating, managing and using criminal assets. The sharing of assets with other States, following successful collaborations in investigations, prosecutions and confiscation of the assets, was also noted. Some speakers stated that such sharing was based on ad hoc arrangements, such as memorandums of understanding, whereas others stated that the possibility of sharing was already part of the mutual legal assistance agreements under which the cooperation that led to the confiscations was carried out. Speakers also gave practical examples of successful cases of the return of proceeds of corruption to States, where the cases involved crimes against the public administration.

### **C. Fighting networks with networks: the role of regional networks and initiatives in tackling transnational organized crime**

14. With the Chair presiding, the discussion on agenda item 4 was led by the following panellists: Rosa Ana Morán Martínez, who spoke about the activities of the European Judicial Network (EJN), the Ibero-American Network for International Legal Cooperation (IberRed) and the Ibero-American Association of Public Prosecutor Offices (AIAMP); Ignacio de Lucas, a representative of the United Nations Office on Drugs and Crime (UNODC), who made a statement about the Central American Network of Organized Crime Prosecutors (REFCO); Mauro Miedico, a UNODC representative, who spoke about the regional judicial platform for the Sahel countries; and Karen Kramer, a UNODC representative, who made a statement about the regional judicial platform for the members of the Indian Ocean Commission.

15. The main characteristics of networks such as EJN, IberRed and AIAMP, and the principles of informality, complementarity, horizontality, flexibility and specialization, which guided the work of those networks, were presented.

16. It was noted that REFCO, which had been set up and was supported by UNODC in Central America, was composed of prosecutors from 10 countries who were specialized in organized crime and that REFCO aimed to improve the effectiveness of prosecutors and promote transnational joint investigations of organized crime.

17. The regional judicial platform of the Sahel countries and the regional judicial platform for the members of the Indian Ocean Commission (composed of focal points from Comoros, France (Réunion), Madagascar, Mauritius and Seychelles) were established under the auspices of the Terrorism Prevention Branch of UNODC for the purpose of strengthening the capacities of practitioners in those regions to better cooperate in order to fight terrorism and other transnational crimes.

18. It was noted that the planned establishment of a network of prosecutors and central authorities for the West Africa subregion was modelled on REFCO and that its main objective would be to facilitate cooperation in a diverse region with different legal traditions.

19. States were called upon to foster the development of networks in order to improve international cooperation and to better tackle organized crime. The importance of having flexible, informal, complementary judicial networks was also

stressed. Some speakers informed the Working Group about other judicial networks in their regions, such as the Southeast European Law Enforcement Center.

20. The issue of the security of communications among members of the networks was also discussed, and speakers gave examples of secure systems.

21. The importance of informal police networks was also noted and it was proposed that the next meeting of the Working Group should allow for a more in-depth discussion of that issue.

**D. Sharing of best practices and experiences in using the United Nations Convention against Transnational Organized Crime for international cooperation, taking into consideration article 16, article 18, with particular reference to videoconferencing, bank information, covert investigations and controlled deliveries, and article 21**

**Extradition (article 16)**

22. Speakers discussed experiences of handling cases of extradition based on bilateral agreements or regional conventions, challenges arising from differences in legal systems and extradition procedures and the fact that extradition remained a highly specialized and technical area of law.

23. Some speakers stated that, while in practice States frequently relied on regional conventions as legal bases for extradition requests, the Organized Crime Convention remained a strong legal basis for extradition in cases involving transnational organized crime, and emphasized the importance of continuing to promote its use for extradition requests. The need for continuous discussion among States parties with a view to improving their understanding of the application of that Convention and the differences in legal systems in terms of extradition practice were also underlined.

**Videoconferencing (article 18, paragraph 18)**

24. Some speakers outlined their experiences in using videoconferencing in the context of international cooperation based on national legislation, regional cooperation frameworks or other treaty provisions, and highlighted the effectiveness of the use of videoconferencing in the context of mutual legal assistance.

25. Some speakers indicated that videoconferencing could be a useful method not only for giving evidence or hearing the testimony of witnesses who cannot be physically present at a hearing, but also for the protection of witnesses who may be exposed to danger by testifying directly and openly in court. They also pointed out that for videoconferencing to be a useful tool in international cooperation, both logistical and administrative cooperation and coordination and technical assistance for some Member States would be required.

**Bank information (article 18, paragraph 8)**

26. Some speakers stated that, over the years, the principle of bank secrecy had been eroded owing to the overriding need to fight organized crime and to prevent

the funding of organized crime and terrorism, as well as by the enactment of national legislation and regulatory frameworks requiring banks to provide information to relevant authorities.

27. Some speakers reflected on the complexity of the procedures and systems for obtaining bank information that existed in some jurisdictions. The importance of discussing and developing means of cooperation with banks and of fostering further cooperation with other States with a view to better means of exchanging financial information held by banks and other financial institutions was also noted.

#### **Special investigative techniques (article 20)**

28. A number of speakers recalled the experiences of their States in conducting covert investigations and controlled deliveries in the context of international cooperation based on bilateral agreements or ad hoc arrangements in order to detect organized crime networks, mechanisms and operations, including with regard to drug trafficking and credit card fraud committed by organized criminal groups.

29. Some speakers stated that their national authorities faced challenges in conducting covert investigations and controlled deliveries in the territory of other States. The common causes of such challenges included differences in laws and regulations on the use of such techniques, the diversity of law enforcement systems and the multiplicity of agencies dealing with different aspects of organized crime. In addition, speakers provided examples of cooperation challenges in relation to investigations, including in situations where investigations were simultaneously conducted in more than one State, or where part of the investigation in one of the States had to be conducted under judicial supervision.

30. It was underlined that international cooperation was essential in facilitating the smooth conduct of covert investigations and controlled deliveries, since such operations frequently required cooperation and collaboration among law enforcement agencies of different countries.

31. Some speakers also mentioned experiences in using other special investigation techniques for combating transnational organized crime, such as interception of telephone and Internet communications and covert surveillance.

32. Some speakers stressed the importance of cooperation and stated that technical assistance in the area of specialized investigative techniques using advanced technology was necessary, given the fact that criminal groups used the Internet and other advanced technology to commit transnational organized crime.

33. The importance of bilateral consultations between requesting and requested countries, as well as coordination and cooperation with regional governmental organizations for promoting the effectiveness of investigative cooperation, was also noted.

#### **Transfer of criminal proceedings (article 21)**

34. Several speakers outlined the experiences of their States in transferring criminal proceedings to another competent authority on the basis of regional arrangements or on a case-by-case basis.

35. Speakers also indicated some of the challenges encountered in the transfer of cases to other jurisdictions, including where persons with dual nationality were involved, or there was an issue of the admissibility of evidence gathered abroad in the national court, and difficulties arising from differences in legal systems. The question of whether article 21 provided a sufficient legal basis for the transfer of criminal proceedings was also raised.

36. Some speakers stated that, since transnational organized crime usually involved multiple suspects operating or residing in different countries, the issue of resources was a major factor for States in determining whether or not to transfer or receive a case of transfer of proceedings. It was noted that there could be instances in which it was effective for each State to target suspects on the basis of their presence or the presence of victims on its territory, and that States should share information and evidence as necessary in order to prosecute individuals within their respective jurisdictions.

#### **IV. Outcome of the joint discussion on cultural property**

37. During the joint discussion on cultural property, held on 18 October 2012, the Working Group on International Cooperation and the Working Group of Government Experts on Technical Assistance made the following recommendations:

(a) Bearing in mind the central authorities referred to in article 18, paragraph 13, of the United Nations Convention against Transnational Organized Crime, the Working Groups invite Member States that had not yet done so to designate contact points to facilitate international cooperation in the application of the Organized Crime Convention, for the purpose of preventing and combating trafficking in cultural property and to report relevant information to UNODC;

(b) Taking note of article 31, paragraph 5, of the Organized Crime Convention, the Working Groups requested UNODC, in coordination with relevant international organizations, to assist Member States in raising awareness about trafficking in cultural property and related offences at the regional and international levels, including through workshops, seminars and similar events;

(c) The Working Groups requested Member States and invited relevant international organizations to provide data to UNODC on trafficking in cultural property, such as the links between trafficking in cultural property and transnational organized crime, estimates of illicit money involved, and good practices in and challenges to combating and preventing such activities;

(d) The Working Groups requested UNODC to solicit the above-mentioned information from Member States and relevant international organizations, to analyse the data upon receipt and to report to both Working Groups;

(e) The Working Groups requested UNODC to collect information on the contact points of Member States focused on preventing and combating trafficking in cultural property and to include them in the directory of competent national authorities;

(f) The Working Groups urged Member States to consider entering into bilateral agreements for preventing and combating trafficking in cultural property,

taking into consideration, as appropriate, the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property.

38. Under agenda item 7, the Working Group recommended that the Conference of the Parties consider:

(a) Requesting UNODC to continue to promote the use of the Organized Crime Convention to combat trafficking in cultural property. In that regard, UNODC, could, upon request, provide technical assistance for the application, in particular, of the international cooperation provisions of the Organized Crime Convention to trafficking in cultural property;

(b) Encouraging States parties to implement the Organized Crime Convention in respect of trafficking in cultural property, including the provisions on international cooperation.

## **V. Organization of the meeting**

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

39. The fourth meeting of the Working Group was held on 15, 16 and 18 October 2012. On those days, a total of five separate meetings were held. The Chair of the Working Group made an opening statement. Introductory statements were made by representatives of the Secretariat on items 2, 3 and 5 of the agenda.<sup>1</sup> The joint discussion on cultural property of the Working Group of Government Experts on Technical Assistance and the Working Group on International Cooperation was co-chaired by the Chairs of the two Working Groups.

40. Statements were made by representatives of the following States: Romania, United States of America, Philippines, Chile, Canada, France, Panama, Saudi Arabia, Argentina, Egypt, China, Ecuador, El Salvador, Indonesia, Ukraine, Slovakia, Turkey, Finland, the Russian Federation, Norway, Colombia, Nigeria, Italy, Iran (Islamic Republic of), Japan, Netherlands, Switzerland, Poland, Germany, Morocco and Israel.

41. The representative of the European Union made a statement.

42. Observers for the European Judicial Network and the Ibero-American Network for International Legal Cooperation also made statements.

### **B. Documentation**

43. The documents before the Working Group are listed in the annex to the present report.

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<sup>1</sup> CTOC/COP/WG.3/2012/1.

## Annex

**List of documents before the Working Group on  
International Cooperation at its meeting held in Vienna  
on 15, 16 and 18 October 2012**

<i>Document symbol</i>	<i>Agenda item</i>	<i>Title or description</i>
CTOC/COP/WG.3/2012/1	1 (b)	Provisional agenda and annotations
CTOC/COP/WG.3/2012/2	4 and 5	Background paper prepared by the Secretariat on best practices and experiences in using the Organized Crime Convention for international cooperation and the role of regional networks
CTOC/COP/WG.2/2012/3- CTOC/COP/WG.3/2012/4	7	Report of the Secretariat on the application of the Organized Crime Convention by States parties with respect to criminal offences against cultural property
CTOC/COP/2012/9	4	Report of the Secretariat on activities of UNODC to promote the implementation of the provisions on international cooperation in the Organized Crime Convention
UNODC/CCPCJ/EG.1/2012/4	6	Report on the meeting of the expert group on protection against trafficking in cultural property held in Vienna from 27 to 29 June 2012
UNODC/CCPCJ/EG.1/2009/2	6	Report on the meeting of the expert group on protection against trafficking in cultural property held in Vienna from 24 to 26 November 2009
CTOC/COP/WG.3/2012/CRP.1		Background paper prepared by the Secretariat on possible synergies with the expert group on international cooperation, established by the Conference of the States Parties to the Convention against Corruption