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Review of the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto: United Nations Convention against Transnational Organized Crime

Development of a digest of organized crime cases

Report of the Secretariat

I. Introduction

1. In its resolution 64/179, the General Assembly reaffirmed the urgent need to strengthen international cooperation and technical assistance in promoting and facilitating the ratification and implementation of the United Nations Convention against Transnational Organized Crime and, to that end, encouraged Member States to ensure the consideration and dissemination of existing manuals and handbooks developed and published by the United Nations Office on Drugs and Crime (UNODC).

2. The Conference of the Parties to the Convention, at its fifth session, held in Vienna from 18 to 22 October 2010, endorsed that recommendation and, in its resolution 5/1, entitled “Ensuring effective implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”, encouraged UNODC, in consultation with Member States, to continue its work to address the threats posed by transnational organized crime, particularly with regard to various forms of crime within the scope of the Convention that are of common concern to the States parties. In that resolution, the Conference also requested UNODC to continue developing technical assistance tools with a high degree of added value, such as handbooks, digests of relevant case law and legal commentaries, with regard to the instruments as a whole and to particular issues such as mutual legal assistance and confiscation.

* CTOC/COP/2012/1.



3. Against this background, and to mark the tenth anniversary of the Organized Crime Convention, UNODC, in cooperation with the Governments of Colombia and Italy and the International Criminal Police Organization (INTERPOL), decided to enlist the help of anti-organized crime practitioners from different countries and regions to collect and analyse cases and best practices in combating transnational organized crime and to publish them as a digest of organized crime cases.

4. The present report was prepared pursuant to resolution 5/1 and provides an account of the activities undertaken and the methodology used to develop the digest. The report also provides a summary of good practices and conclusions that emerged during the case analysis and the work of the pool of experts and practitioners who have contributed to and supported the initiative. The report further contains proposals and recommendations to ensure follow-up and regular updates of the digest, as well as to facilitate its dissemination and the further collection of cases, good practices and lessons learned on organized crime.

II. The digest initiative

A. Nature and purpose of the digest

5. The digest of organized crime cases¹ is to be a collection and analysis, with commentary, of cases from different countries on countering organized crime. The objective of the digest is to provide practitioners with a set of lessons learned covering problematic aspects of criminal justice responses to organized crime, and thereby contribute to facilitating the implementation of the Organized Crime Convention and its Protocols. It addresses difficulties and solutions identified in dealing with the criminalization, investigation, prosecution and adjudication of offences, committed with the involvement of an organized criminal group. This includes an overview of experiences related to international law enforcement and judicial cooperation. The digest is also intended to contribute to enhancing the practical knowledge of practitioners with regard to new and emerging forms of organized crime.

6. The digest is to contain comments on cases of organized crime and related good practices and will complement and reinforce the existing set of technical assistance tools produced by UNODC to assist Member States in strengthening their

¹ The digest has been developed by the Implementation Support Section of the Organized Crime and Illicit Trafficking Branch of the Division for Treaty Affairs, in cooperation with other relevant units of UNODC, with substantive support from many experts and national practitioners. The development of the digest is made possible by the financial support provided by the Governments of Italy and Colombia. In addition, the Ministry of Interior of Italy hosted two meetings of experts, and ensured the translation of the digest into French and Italian; the National Police of Colombia, which hosted the second meeting in Cartagena, also ensured the translation of the digest into Spanish; the Colombian Attorney-General's Office and the National Anti-Mafia Directorate of Italy provided substantive documentation and disseminated information on the initiative among national practitioners.

capacity to prevent, investigate and prosecute transnational organized crime and to adopt and implement relevant legislation.²

B. Cases and their relationship to the Organized Crime Convention

7. The digest is to be based on the analysis of almost 200 cases and cover a wide range of organized crime offences and related national legislation. It will not, however, provide an exhaustive analysis of all forms and types of organized crime, but rather a snapshot of the dynamic nature of criminal justice responses to organized crime. Moreover, the digest will refer only to practices directly reflected in the featured cases, as presented, commented on and discussed by the experts.

8. The collected cases and related comments are not necessarily linked to the implementation of the Organized Crime Convention and are not limited to transnational crime, since good practices can also be derived from experiences related to national criminal conduct and domestic legal frameworks. However, as the Convention and its Protocols have a central role as global standard-setting instruments, their provisions have been constantly used as guidelines for the identification of themes and issues, as well as terms of comparison with the practices outlined in the cases.

9. No final court judgements have been issued with respect to some of the cases in the digest, but they will be included because of the valuable lessons and good practices they provide.

C. Target readers and methodology

10. The digest is targeted at a wide range of audiences, such as law enforcement officials, prosecutors and judicial officials, for whom it could serve as a reference and a tool for addressing the many challenges presented by organized crime. Moreover, as many of the lessons learned refer to the adoption of broader anti-crime policies and new legal tools, as well as addressing loopholes or deficiencies in existing legislation, policymakers and legislators would also benefit from the digest.

11. For the development of the digest, UNODC informed representatives of a number of States parties about the initiative, invited them to designate national experts and practitioners and requested them to provide relevant case law. Due consideration was given to the need to ensure balanced geographical representation and to capture the most illustrative experiences in the fight against the various forms

² Such tools include the *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, the series of model laws and treaties, the Tailor-made legal publications for practitioners, the online directory of competent national authorities, the legal library, and the Mutual Legal Assistance Request Writer Tool. These and other legal tools can be found on the website of UNODC (www.unodc.org/unodc/en/legal-tools/index.html).

of organized crime. A total of 27 countries and 3 international organizations have participated in the development of the digest.³

12. For the presentation of the cases, the experts were requested to complete a standardized summary template, which was often complemented by additional documents, provided either spontaneously or in response to requests from UNODC. Information was also gathered through a limited general questionnaire and questions specifically concerning single cases, sent by UNODC to the participating experts. With a view to better understanding the national legal systems within which the submitted cases were framed, UNODC also made use of existing information provided by Member States during the various reporting cycles established by the Conference of the Parties for gathering information on the implementation of the Organized Crime Convention and Protocols thereto.⁴

D. Outcomes of the three expert group meetings for the development of the digest

13. The development of the digest was made possible by the participation and support of national experts from selected countries, who contributed their experience and knowledge to this exercise, in their personal capacity, and who provided the Secretariat with cases and inputs. Of special importance for the development of the digest were three meetings of the experts in 2011 and 2012 to support the work of drafting of the digest.

14. The first meeting of experts was held in Rome from 23 to 26 May 2011, hosted by the Italian Scuola Superiore di Polizia; 45 experts from 21 countries with direct experience in various aspects of organized crime and 3 international and regional organizations attended the meeting. The meeting allowed the group to establish a common understanding of the scope and objectives of the digest, as well as to define methodological approaches, a preliminary structure and thematic areas for inclusion in the digest. The case review included investigative and prosecutorial methods and techniques used by law enforcement and investigative officials, as well as practical and legal measures to enhance effectiveness and expedite international cooperation. During that meeting, experts also agreed that the digest would not become a mere compilation of criminal investigative and judicial stories, but rather contain a critical analysis of specific difficulties encountered by national authorities in coping

³ Albania, Argentina, Brazil, Canada, Colombia, El Salvador, France, Germany, Hungary, Italy, Jamaica, Kenya, Mexico, Morocco, Nigeria, Philippines, Portugal, Romania, Russian Federation, Serbia, South Africa, Spain, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela (Bolivarian Republic of); and the special committee on organized crime of the European Parliament, INTERPOL and the Special Representative and Coordinator for Combating Trafficking in Human Beings of the Organization for Security and Cooperation in Europe.

⁴ Reference is made to the questionnaires and related information provided by Member States to UNODC during the first and second reporting cycles on the implementation of the Organized Crime Convention and the Protocols thereto, carried out between 2004 and 2008, through the interim self-assessment checklist disseminated in 2008 and through the pilot project to review the implementation of the Convention and Protocols thereto, developed by UNODC and implemented by a limited number of States during the period 2009-2010, in order to test possible mechanisms to review the implementation of these instruments.

with organized crime and outline identified solutions. It was also agreed that the discussion of the collected materials and comments should be organized according to substantive themes and issues, rather than according to criminal offences.

15. The second meeting of experts was held in Cartagena, Colombia, from 28 November to 2 December 2011, at the training centre of the Spanish Agency for International Development Cooperation. The meeting was attended by over 30 experts from 18 countries and international organizations. The experts had the opportunity to elaborate on their concrete experiences and to explain what specific aspects of single cases (such as an investigative technique or a prosecutorial method) were found to be effective or ineffective and the reasons supporting their evaluations. The group discussion of the cases, reinforced by the presentations of the various national normative and institutional contexts, significantly facilitated the collective understanding of the cases. During the meeting, the group shared and agreed on the first preliminary results and good practices identified through the analysis of the cases and discussed the way forward. It also discussed ways of ensuring wide dissemination of the digest and considered options such as posting it on the UNODC website and updating it periodically with new cases and comments.

16. The third and last meeting of experts was held in Palermo, Italy, from 11 to 14 June 2012 at the Palazzo dei Normanni, seat of the Sicilian Parliament. The meeting was preceded by a high-level opening ceremony attended by the President of the Italian Senate, the Minister of Interior, the Prosecutor General, the Chief of Police and several representatives of other national and local authorities. During the meeting, experts discussed and commented on the draft digest, addressed existing gaps and validated the good practices contained in the document. The meeting also discussed the inclusion in the digest of additional information and reference material through its annexes and accompanying CD, as well as the usefulness of developing additional chapters to focus on the prevention of organized crime and specific criminal offences. The meeting agreed on the relevance of the prevention chapters and on the usefulness of addressing the specific features and issues relevant to particular forms of organized crime in a separate chapter. Finally, the meeting explored various options that could ensure the sustainability and regular updating of the digest.

E. Structure of the digest

17. The digest is to follow a thematic approach, focusing on different aspects of the criminal justice response (criminalization, investigation, prosecution and others). Rather than focusing on specific categories of criminal conduct, the digest is to cover all forms of organized crime, owing to the many lessons resulting from the cases relating to the wide variety of offences in which criminal groups engage. The digest will also address some of the special features related to particular forms of crime.

18. Consequently, the digest is to be divided into six chapters, namely: (a) organized crime: nature and criminalization; (b) investigation and prosecution; (c) international law enforcement and judicial cooperation; (d) measures related to proceeds of crime; (e) features of specific offences; and (f) prevention of organized crime. Separate text boxes are to be used for a more detailed account of specific

cases, or for references to national laws or models, as well as for general conclusions and lessons learned. The digest will use abbreviations consisting of letters and numbers to indicate the country and case number (e.g., ALB.1 would refer to case number one from Albania). This will allow readers to trace the cases on the electronic support platform that is to accompany the digest. A list of cases submitted, including information on their content and relevance, is to be annexed to the digest.

III. Executive summary of the digest

A. Nature and criminalization of organized crime

19. The first chapter of the digest will be devoted to substantive criminal law issues. The analysis of several cases provided by experts allows for elaboration on how the concept of an organized crime offence emerged and was used in different domestic laws and practices, as well as the scope of application of national laws against organized crime. The chapter will also contain detailed information on the offence of participation in an organized criminal group, the liability of legal persons and the extension of national criminal jurisdictions. The digest will not attempt to provide a precise definition of the term “organized crime”, but rather focus on how organized criminal groups operate, and on the flexibility and unique abilities of such groups to evolve and diversify.

1. Policies against organized crime and organized crime offences

20. Although the Organized Crime Convention does not contain an explicit formulation of a general criminal policy against organized crime, the overall analysis of its provisions allows for the identification of a general and overarching strategy, which gives rise to the normative basis. Irrespective of the concrete manifestations of the criminal conduct, the criminal justice response to organized crime must target the criminal organization itself, and efforts should be focused on the dismantling of the entities constituting that organization. This general approach results in a series of strategic implications and policy choices, which are reflected in the Convention and which involve all the aspects of the criminal law and criminal justice system.

2. Patterns of criminal organizations

21. Many of the cases presented in the digest will relate to new or emerging organized crime offences, including cybercrime, environmental crime and crimes against cultural property. Similarly, the cases reveal a diverse array of organizational typologies of organized crime. The organized criminal groups involved in the commission of such offences range from groups formed on an ethnic and/or hierarchical basis to those with a looser and more flexible structure, from territorially based groups to business-centred ones. Furthermore, when the criminal conduct entails the integration of distinct roles, the links among the various actors also reveal diverse possibilities, with one group conducting the entire action, or a combination of numerous cells managed by a single coordinator, or a network of autonomous entities acting together on a transactional basis.

22. Given the variety of offences and *modi operandi*, the cases confirm that investigative and prosecutorial methods adopted for more traditional offences or organizational typologies are also appropriate in proceedings related to these new offences or networking systems.

23. Thus, the first lesson learned on this topic is that domestic laws against organized crime should ideally have a broad or flexible scope of application, so as to avoid the risk of rigidity and also permit the use of reinforced legal tools against new features of organized crime. The open-ended scope of application of the Convention, which applies to all “serious crimes” (when transnational and committed with the involvement of an organized criminal group), and the broad definition of “organized criminal group” have been used as guiding concepts in this regard.

24. In addition, those cases offer abundant material to illustrate how the basic criminal policy contained in the Convention — namely, that the criminal justice response to organized crime offences should be aimed at dismantling the criminal groups — is concretely applied in different countries.

3. Participation in an organized criminal group

25. The cases also underscore the importance of the correct criminalization of the offence of participation in an organized criminal group, as prescribed by article 5 of the Organized Crime Convention. In addition to the presentation of cases, the experts provided legislative texts and explanations of their national criminalization provisions. The digest posits that the divergent legislative paths of common-law countries, which usually adopt the conspiracy form of the offence, and civil-law countries, which usually adopt the association form, are not necessarily an impediment to effective global action against organized crime. Instead, the cumulative approach contained in the Organized Crime Convention, consisting of both forms of offences where the fundamental principles are not prohibited by the national legal system, is supported by positive results in several cases.

26. The cases illustrate that, when preparing domestic legislation, it is necessary to reflect on the importance of criminalizing conspiracy and criminal association, the need for a policy of dismantling the organized criminal group and, when establishing these offences, on the need to better tailor them to the characteristics of organized crime in each country, as well as at the transnational level. The conspiracy/association offences are essential to expanding the scope of investigations and prosecution to the widest possible circle of facts and offenders.

4. Liability of legal persons

27. Few cases were provided on the topic of the liability of legal persons. It is difficult to draw specific conclusions on whether the dearth of cases is due to the fact that this measure is rarely used or that it is irrelevant to the fight against organized crime. However, some experts have noted that measures on the liability of legal persons remain difficult to introduce and/or apply in legal systems where they are not already customary. It appears that an in-depth, comprehensive study would be useful, focusing in particular on the identification of all the criminal aspects of organized crime where a provision on such liability appears necessary or appropriate.

5. Transnational offences and criminal jurisdiction

28. Cases show that organized crime offences are at present characterized by transnationality, which complicates efforts to counter them. It is therefore necessary to develop legal means, practices and, more generally, a culture of effective international cooperation among law enforcement and judicial institutions.

29. Cases illustrate the status quo of international cooperation and demonstrate, *inter alia*, that cooperation frequently involves the continuous coordination of activities, including entire stages of law enforcement or prosecutorial action. In this regard, some experts note that the lack of coordination in the exercise of jurisdiction may lead to conflicts, while the majority of experts support the opposite view, that the parallel exercise of criminal jurisdiction by more than one country could substantially contribute to investigations and prosecutions and, in particular, allow for improved coordination and synergy of law enforcement activities by the countries involved.

B. Investigation and prosecution

1. Investigative and prosecutorial approach to organized crime

30. The digest will pay special attention to investigations and prosecutions, which are significant elements of the criminal process. The experts emphasize some fundamental methodological aspects whose importance in addressing organized crime is well evidenced by specific instances, such as, in particular, the need for a proactive approach and for specialized law enforcement agents and prosecutors.

31. Two elements are of particular importance in a proactive approach, the first of which is the intelligence-led nature of criminal investigations. Gathering and analysing information on the history, composition, means, objectives and *modi operandi* of criminal groups, as well as on illicit networks and markets, are essential components of any investigation and are usually also important triggering factors. The second element, which has proved to be highly successful, consists in expanding the investigation and covering the entire structure and criminal conduct of groups or networks, irrespective of how small the case was at the start, with the ultimate objective of preventing future offences. This preventive aspect is an important component of proactive criminal investigations.

32. Another lesson learned is that investigative and prosecutorial agencies should adopt a holistic approach to covering the greatest number of persons involved in, and the broadest forms of criminal conduct perpetrated by, criminal groups. In this way, the criminal justice response can serve as an effective part of a strategy aimed at dismantling the organization and preventing future offences. This requires, *inter alia*, accurate planning of operations and functional relationships among all the actors involved.

2. Institutional setting: specialized entities for organized crime

33. Consideration has been given to various organizational arrangements, such as the creation of offices or units specifically tasked with the investigation and prosecution of organized crime. The purposes of such entities are: (a) to gather, manage and effectively use knowledge about criminal phenomena; (b) to develop

specific expertise in criminal policies and related methods to counter organized crime; (c) to build capacity in the application of specialized investigative and prosecutorial legal tools; (d) to coordinate or consolidate investigations and prosecutions so to avoid possible overlaps of initiatives; and (e) to optimize the results of prosecutorial efforts against single criminal groups or networks.

3. Special investigative techniques

34. The digest will discuss matters related to the use of special investigative techniques, in particular those mentioned in article 20 of the Organized Crime Convention, namely, controlled deliveries, surveillance and undercover operations. The lesson learned, while still recognizing the need to continue making the best use of traditional means of investigation and evidence, is that in the investigation and prosecution of organized crime, special techniques are, as a rule, indispensable. They are linked to the successes achieved in the most serious investigations presented by the experts. Special techniques such as interception of communications or controlled deliveries focus on the interaction between offenders. They are of particular added value when dealing with a criminal organization, as they lead to the discovery of the structure and the conduct of such organizations.

35. In presenting the cases, the experts emphasized that such special techniques require detailed regulation at the domestic level, which is still absent in some countries. In addition, they pointed out that the lack of harmonization among domestic laws frequently creates difficulties in international cooperation. That is demonstrated by cases in which the results of such techniques could not be used in the court of the requesting country for reasons related to formal or substantial infringement of legal requirements. Therefore, the operative conclusion of the digest in this regard will be that the use of special investigative techniques remains an area where much more capacity-building, as well as legislative assistance, is needed.

4. Other investigative techniques

36. Several cases have shown that ordinary investigative techniques can also yield results. The section of the digest on this topic will describe instances that demonstrate how innovative and traditional methods of investigation can be combined in a single investigative flow. For example, the thorough examination of discarded refuse from the office of an accomplice once contributed to uncovering essential investigative leads. Similarly, the seizure of forged paintings, where, with the agreement of the prosecutor, the knowledge of their falsity was not disclosed, allowed for the successful conclusion of a parallel investigation. The relevant section will also discuss and provide examples of how to overcome the common difficulty of identifying foreign persons and how to deal with the uncontrolled use of SIM cards. Identification refers to the attribution of personal data to a person and connecting that person to the crime scene or to the crime, or to previous cases. References to the normative scheme for the identification of persons will be provided.

5. Protection of witnesses

37. The chapter on protection of witnesses will offer incisive and detailed descriptions of some national legal frameworks on the protection of witnesses and collaborators. The protection of witnesses and collaborators is to be illustrated by

the presentation of a national programme of “special protection”, which includes measures such as the relocation of protected persons, change of identity, social assistance and reintegration. The cases under study reiterate that the effects of protection programmes are maximized when there is a multipronged approach, which starts with the application of temporary and longer-term police measures and the application of ad hoc evidentiary rules during court testimony, such as the utilization of videoconferences.

C. International law enforcement and judicial cooperation

1. International legal basis

38. The collected cases offer a rich and varied perspective of international cooperation, at both the law enforcement and judicial levels. They confirm that, in those situations where cooperation can be granted only if a legal provision exists that so permits, such as for extradition and mutual legal assistance, domestic legislation and bilateral or regional agreements are the prevailing legal basis used by States. In line with paragraph 7 of article 18 of the Organized Crime Convention, the application of the norms contained in that article should be strongly encouraged, especially where they facilitate cooperation, as an alternative to those of bilateral or regional treaties and of domestic laws. Several cases support the conclusion that the use of the Convention should be promoted as an important factor in the development of globally aligned practices of cooperation. In cases where several countries are requested to provide cooperation, the possibility of all of them using the Convention as a single legal basis should be explored, with the aim of facilitating a more homogeneous and coordinated approach to international legal assistance.

2. Law enforcement cooperation

39. The proactive and holistic approach to investigations also has a considerable impact on international law enforcement cooperation. The digest will underline the need to use such cooperation as early as possible in the process. In line with article 27 of the Convention, this should include the exchange of intelligence information and should be based on mechanisms such as “spontaneous” information exchanges, which enable investigators to identify offences at an early stage and relay them to their counterparts. The lesson learned is that law enforcement agencies should make contact as early as possible with their counterparts in other jurisdictions in order to ensure the coordination of investigative action.

3. Institutional aspects

40. In the case of transnational organized crime offences, cooperation at the law enforcement and prosecution levels is rarely confined to single, limited acts of assistance, but rather consists of a series of continuous and interlinked activities carried out by two or more countries. This implies coordination of investigative initiatives, including their programming, timing and distribution, and the development of the new concept of co-management of investigation and prosecution. In the cases analysed, such characterizations appear connected to the

transnational nature of organized crime and are essential to policies aimed at dismantling criminal organizations.

41. Moreover, the concept of prolonged coordination of investigative and prosecutorial activities entails the creation of cooperative institutions. The cases provided by experts have shown that an international law enforcement system, as described above, which allows for a continuous and expanded exchange of intelligence and significant coordination during investigative activities, greatly benefits from a permanently established structure, at either the bilateral or the international level, to assist in specific investigations and to ensure a permanent channel of communication. The digest will expand on these structures and provide further clarifications, based on legislative models introduced by the experts. Some of the most common possibilities include posting liaison officers, the creation of “joint law enforcement offices” and consideration of the experience gained by the European Union with the European Police Office (Europol) and Eurojust.

4. Joint investigative teams

42. In view of the provisions contained in article 19 of the Organized Crime Convention, the digest will devote special attention to the issue of joint investigative teams. Several cases have demonstrated that the establishment of such teams was useful in the investigation of complex transnational offences. On the basis of the cases and the information available on the normative national or regional frameworks, the lesson learned is that a joint investigative team can be an effective tool for concerted law enforcement and prosecutorial actions. The establishment of such teams means that a formal mutual legal assistance request is not required, making it possible to maximize coordination, unify operational efforts in a single body and take measures quickly. Nonetheless, because of the combination of powers stemming from two or more separate justice systems, and of the many legal issues that arise from joint investigative team operations, their establishment should be rooted in a set of substantive general norms and well-defined regulations, agreed upon bilaterally or regionally, and not simply arise from the contingent and immediate needs of a specific case. Countries with a special interest in the creation of joint teams should undertake joint preparations and pilot activities.

43. In addition, cases indicate that, if the circumstances do not allow the establishment of joint investigative teams, States should still consider establishing other procedures to ensure continuous coordination of their investigations and use their autonomous, parallel activities to increase the effectiveness of the investigations and expand the range of objectives. When establishing the coordination mechanism, States should also consider the participation of prosecutorial and judicial authorities, subject to their national legislation, in order to strengthen the operative capacity of the coordinated entities involved.

5. International Criminal Police Organization

44. Cases attest to the global and frequent use of mechanisms of cooperation provided by INTERPOL. The digest will contain information on the nature of INTERPOL databases and information systems, including the “notices and diffusions” system, as well as on other types of programmes and services, and will

underscore the role of INTERPOL in promoting the international networking of national police forces.

6. Mutual legal assistance and extradition

45. The importance of mutual legal assistance and extradition is underscored by the fact that these forms of international cooperation are present in almost half of the cases presented. The experts have expressed regret that customary difficulties encountered in this area of international cooperation, such as late or incomplete answers to requests for assistance and discrepancies in the procedural laws of the countries involved, persist and could lead to evidentiary results that cannot be introduced at trials in the requesting States. The lesson to be expressed in the digest is that prosecutorial and judicial authorities should work, to the greatest extent possible, in an environment of mutual trust. They should allocate operational resources to the development of informal, direct contact to prepare for the formal procedures of mutual legal assistance. The use of specialized central authorities, the establishment of international networks of prosecutorial and judicial authorities and the use of meetings with foreign officials, either of a general nature or in the context of single cases, can also be important facilitating factors.

46. The limited instances of extradition cited in cases demonstrate that, if norms regulating the essential aspects of the extradition procedures exist in the domestic laws of the two countries involved, then article 16 of the Convention can be successfully used as a legal basis in cases where the legal system of the requested State requires an extradition treaty for extradition to be granted.

D. Measures related to proceeds of crime

1. Policy and legal basis

47. A chapter of the digest will deal with the confiscation of proceeds of crime, a measure that, over the years, has acquired a prominent role among the legal means adopted for the suppression of organized crime. The strongest argument for confiscation is that depriving the offender of the benefits of crime is both an appropriate punishment and an effective prevention tool. It is a strong deterrent for profit-minded criminals, as well as an efficient mechanism to remove financial and other material resources that could be used to continue criminal activities. Moreover, confiscation impedes illicitly acquired assets from being reinvested into the legitimate economy. The deterrent function of confiscation is, to a great degree, in keeping with the policy of dismantling criminal groups.

48. The importance of confiscation has been emphasized in the cases submitted for the digest, with several cases reflecting the confiscation or seizure of significant amounts of proceeds and instrumentalities. They also illustrate the attention paid to confiscation by law enforcement and judicial authorities. In addition, recent developments in many national laws reflect an expansion of the powers to confiscate proceeds of crime in order to reduce the potential activities of organized crime structures.

2. Extended confiscation and non-conviction-based confiscation

49. Several of the cases to be included in the digest refer to extended confiscation or other types of non-conviction-based confiscation. These are confiscations or forfeitures that do not require a criminal conviction or cover not only the proceeds of the specific offence for which a conviction is obtained, but also all the other assets under the control of the offender that are proved, or assumed, to have been directly or indirectly obtained through previous criminal activities. The digest will provide examples of these advanced types of confiscation and conclude that confiscation should be considered a fundamental component of the criminal justice response to organized crime. Therefore, investigators and prosecutors should make financial investigations and measures to prevent the disposal of assets by criminals an integral part of their action, in addition to establishing the criminal liability of the offenders. Financial investigations and preventive measures should thus be integrated, at the outset, into the planned activity of the law enforcement and prosecutorial authorities. In cases where extended confiscation is possible, they should cover all the assets attributed to the alleged offenders.

50. The cases make the need for specialization particularly evident, and law enforcement agencies and prosecutorial offices should ensure that officers and prosecutors who are specialized in confiscation proceedings participate in the most complex cases, possibly from an early stage, in order to contribute their knowledge and experience to the planning and development of initiatives for confiscation.

3. International cooperation in the execution of confiscation

51. In the digest it will be noted that the variety of domestic confiscation mechanisms and extended confiscation lead to uncertainty in the granting of effective assistance, particularly when confiscation is ordered in the requesting State. In-depth research on and analysis of this issue would be of interest to practitioners interested in pursuing the confiscation of assets of offenders located abroad. In this connection, the United Nations Convention against Corruption states that, in order to facilitate international mutual assistance in the execution of foreign orders of confiscation, specific procedures should be studied separately from the domestic proceedings of confiscation. In accordance with article 55, paragraph 1, of that Convention, such procedures may consist of recognizing and giving effect to the original order of confiscation issued by a court of the requesting State.

E. Issues related to specific criminal offences

52. The themes of the digest will reflect the various stages of the criminal justice response, rather than the specific categories of offences. However, the cases provide adequate starting points for observations on some of the specific features related to single categories of crime. One chapter will address a range of issues specifically concerning offences related to firearms, money-laundering, maritime piracy, cultural property and environmental crime.

F. Prevention of organized crime

53. A chapter of the digest will discuss various aspects of organized crime prevention. The cases provided and the interventions made by experts at the meetings have contributed a series of indications on ad hoc prevention measures tailored to organized crime, which are comparable to those contained in article 31 of the Organized Crime Convention.

IV. The digest as a “living document”: proposals to ensure its follow-up and sustainability

54. The digest is to contain almost 200 cases, most of them summarized in a standardized template format and accompanied by judicial decisions and other explanatory documents. It will also contain many national laws and regulations and comparative research that have contributed to the analysis of the cases and the understanding of the underlying legal systems.

55. During their three meetings, the experts expressed their interest in continuing the exchange of experiences initiated for the digest. They requested UNODC to seek ways of ensuring the continuity of such exchanges in order to make the digest a “living document”. To this end, and subject to the availability of additional voluntary resources, UNODC proposes a number of mutually reinforcing actions, which are described in the paragraphs below.

56. The digest could be continued and expanded through the development of an online “digest newsletter”, which would facilitate the collection and dissemination of new cases, as well as the exchange of views, good practices and legislative developments. The newsletter could also serve as a mechanism for the regular updating of the digest itself. More generally, it is hoped that such a newsletter could reach a wider public and trigger an international dialogue among practitioners and scholars on good practices and issues pertaining to the prevention of and criminal justice response to organized crime.

57. Moreover, in order to make available the material and documentation generated through the digest, UNODC intends to establish a dedicated website containing information on the digest, as well as relevant cases and related material.⁵

58. Both the newsletter and the website would be accessible through the UNODC web page and its new knowledge management portal.

59. The organization of regional workshops for practitioners is another important way to gather and exchange practical experiences. Such workshops would have the dual purpose of disseminating good practices and building national capacities in their application. Such meetings would also provide an opportunity to collect and analyse additional cases, identify region-specific features of organized crime phenomena and facilitate the exchange of expertise among practitioners. Existing

⁵ Information on the digest initiative, including reports on meetings and additional related work, can be accessed at www.unodc.org/unodc/en/organized-crime/digest-of-organized-crime-cases.html. It will be possible to access case summaries and the accompanying documentation and laws, through the UNODC knowledge base management portal, once it is established.

mechanisms, such as the Central American Network of Organized Crime Prosecutors, or other types of regional bodies, such as Europol or Eurojust, could provide useful platforms for the promotion of such meetings.

60. Periodic interregional workshops could be held to validate, at the cross-regional level, the most relevant good practices and lessons learned and to contribute to the regular updating of the digest.

V. Conclusions and recommendations

61. The development of the digest has confirmed that the collection of judicial cases and their systematic and critical analysis have served as a significant source of knowledge and inspiration for the development of good practices.

62. The analysis of cases has broadened the criminological understanding of organized crime and its evolution, including of various new and emerging offences and organizational patterns. Furthermore, the analysis of cases has confirmed that certain policies and strategies outlined in the Convention, such as dismantling organized criminal groups by depriving them of their illicit assets, have remained valid tools in the prevention of and fight against organized crime. The digest will also identify a number of important lessons learned with regard to the concrete application of international and national measures at the different stages of the criminal justice response, ranging from criminalization to investigation and international cooperation.

63. The experts welcomed the methodology of complementing the work on cases with analysis by and direct feedback from practitioners. One of the positive by-products of the three meetings of experts was the lively interaction among the participants. In discussing the challenges and difficulties encountered by their peers in the cases under discussion, the experts also provided concrete solutions to the problems described by their colleagues.

64. In the light of these conclusions, the Conference of the Parties may wish to request UNODC:

(a) To facilitate the dissemination and application of the good practices contained in the digest through, inter alia, its translation into and dissemination in all the official languages of the United Nations;

(b) To seek ways of ensuring the continuity of this exchange and to make the digest a “living document”, through updating, given the evolving nature of organized crime;

(c) To continue collecting and analysing relevant cases on organized crime, accompanied by legal commentaries and comparative legal studies, with particular regard to areas identified in the digest as presenting application problems or gaps in knowledge;

(d) To develop an online digest newsletter as a means of establishing a forum on international dialogue among practitioners on good practices in addressing organized crime;

(e) To continue facilitating regional and interregional meetings and exchanges of experience among practitioners, with a view to taking stock of and sharing the knowledge acquired through the digest.

65. The Conference may also wish to invite States:

(a) To facilitate the active engagement of national practitioners and experts in such a dialogue;

(b) To support the continuation of the digest initiative through voluntary financial and in-kind contributions.
