



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

Distr.: Limited
13 October 2017

Original: English

**Working Group on
International Cooperation**
Vienna, 9-13 October 2017

**Working Group of Government
Experts on Technical Assistance**
Vienna, 11-13 October 2017

Draft report on the meetings of the Working Group on International Cooperation and the Working Group of Government Experts on Technical Assistance held in Vienna from 9 to 13 October 2017

Addendum

II. Recommendations

Working Group on International Cooperation

1. The following recommendations were formulated by the Working Group on International Cooperation:

(a) States parties to UNTOC should consider making use, where appropriate, of the Convention as a legal basis for transferring criminal proceedings to another State party in relation to the offences covered by the Convention and the Protocols and in accordance with the requirements set forth in article 21 of the Convention;

(b) States parties should engage in informal consultations proactively and during the drafting of international cooperation requests for better coordination and with a view to avoiding additional costs and duplication of work; and they should foster informal consultations particularly in the field of transfer of criminal proceedings, including through informal joint investigative teams, to identify needs and to proactively assess the appropriateness of a relevant request, as well as ways to deal with the practicalities of such cooperation;

(c) In assessing whether a request for the transfer of criminal proceedings should be made, States parties should consider, inter alia, existing bases of criminal jurisdiction, how to best serve the interests of the proper administration of justice; the interests and rights of persons involved (offenders and victims), the costs incurred, as well as national sovereignty issues;

(d) In implementing article 21 of the Convention and/or concluding bilateral treaties or agreements on transfer of criminal proceedings, States parties should consider relying on the Model Treaty on the Transfer of Proceedings in Criminal Matters as a guidance tool;

(e) States parties should make use of existing regional judicial cooperation networks to facilitate discussion and responses to conflicts of criminal jurisdiction;



(f) The Secretariat should assist the Conference in compiling material and information received from States parties on best practices, including practical considerations, in the field of transfer of criminal proceedings;

(g) States parties that have not done so should ratify, or accede to, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) and its 2005 Protocol, with a view to giving practical effect to transfer of criminal proceedings in relation to piracy prosecution;

(h) States parties should continue their efforts to facilitate the active participation of central authorities in the relevant meetings of the Conference and its working groups, particularly the Working Group on International Cooperation;

(i) To further support the exchange of practical expertise among practitioners in the field of international cooperation, the Secretariat should seek to organize, subject to available resources and with a view to making best use of such resources, practical-oriented expert group meetings either on the margins of the Working Group or in conjunction with meetings of relevant intergovernmental bodies;

(j) The Secretariat should assist the Conference in building partnerships with existing regional judicial cooperation networks to enhance coordination mechanisms among them, including through regular meetings in Vienna, subject to available resources and in conjunction with meetings of relevant intergovernmental bodies.

III. Summary of deliberations (*continued*)

Working Group on International Cooperation

B. Good practices for bilateral consultations between central authorities, including preparation, case tracking, training and participation (agenda item 3)

2. At its first and second meetings, on 9 October 2017, the Working Group considered agenda item 3, entitled “Good practices for bilateral consultations between central authorities, including preparation, case tracking, training and participation”. The discussion on the agenda item was facilitated by the panellists Caroline Charpentier and Lise Chipault (France).

3. The Secretariat brought to the attention of the Working Group the salient points of discussion held at an informal Expert Group Meeting on “enhancing the effectiveness of central authorities to engage in international cooperation in criminal matters, especially MLA”, which took place in Vienna from 5 to 6 October 2017 and was organized by the UNODC Global Programme to Support Member States to Prevent and Combat Organized and Serious Crime, Organized Crime Branch, Division for Treaty Affairs. The meeting aimed at implementing resolution 8/1 of the Conference of the Parties to the Organized Crime Convention and brought together experts from Algeria, Argentina, Austria, Cabo Verde, China, France, Jamaica, Kenya, Nigeria, Norway, Romania, Senegal, Singapore, Tanzania, Togo, United Kingdom, United States, United Arab Emirates. Regional judicial cooperation networks (WACAP Network, the Commonwealth Network, EJM and IberRed) were also represented. The participants engaged in an exchange of views and expertise on practical aspects of international cooperation and their conclusions provided an inspiration source for further discussion at the Working Group under this agenda item.

4. Speakers shared their experiences on the use of bilateral consultations to enhance international cooperation. The role of informal bilateral consultations in improving the time needed to process and execute official requests for mutual legal assistance or extraditions, as well as the rate of success, were highlighted. Several speakers also emphasized the role of informal bilateral consultations in gaining a better understanding of the legal requirements of the cooperating States and in, consequently, expediting the process for the execution of requests for mutual legal

assistance, extradition, transfer of criminal proceedings or other forms of international cooperation in criminal matters. Additionally, many speakers expressed support for the back-and-forth exchange of advanced draft copies of requests of mutual legal assistance as a way to make the process more flexible and expeditious. A few speakers mentioned their concerns over national sovereignty in dealing with informal means of cooperation that are not based on formal agreements.

5. Two main trends were identified in relation to informal consultations: some speakers recognized informal cooperation as part of the process of formal judicial cooperation which is strictly related to the initial stage prior to the submission of the relevant request. In this regard, reference was made to the complementarity between formal and informal cooperation, as well as to the mechanism of spontaneous transmission of information, as foreseen in paragraphs 4-5 of article 18 of the Organized Crime Convention. Others referred to informal consultations as part of police-to-police cooperation and stressed their significance for intelligence-sharing, especially in cases of electronic evidence. However, it was also emphasized that the main challenge was to transform such intelligence to evidence that can be admissible before the court. Moreover, many speakers mentioned different tools to facilitate bilateral consultations between national authorities and ensure fluent communications, including regular exchange of emails, visits to the central authority's counterpart, regular phone calls and videoconferences.

6. Several speakers referred to the transmission channels for MLA requests and underlined the complementarity between the use of diplomatic channels and the direct communications (either among central authorities or among the competent authorities sending out and executing the request). With regard to inter-agency coordination and cooperation between central authorities and competent implementing authorities at the domestic level, the participants stressed the benefits and importance of having regular meetings between central authorities and judges and prosecutors.

7. Several speakers underscored the importance of posting of liaison magistrates or officers overseas. The role that liaison magistrates or other officers can play was deemed as a key factor for improved cooperation by facilitating direct contacts with the authorities of the host State and by fostering mutual trust and confidence. Another speaker reported on the national practice of concluding MoUs with other countries to agree on technical modalities of international cooperation. A common denominator in many speakers' interventions was the need to raise funds and devote additional resources for boosting reforms in the area of international cooperation and enhancing the efficiency and effectiveness of related mechanisms.

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

9. Furthermore, several speakers shared their experiences of the use of regional networks, such as the Associates of South East Asian Nations (ASEAN), the International Criminal Police Organization (INTERPOL) and West African Central Authorities and Prosecutors against Organized Crime (WACAP), as platforms for establishing fruitful bilateral consultations for cases of international cooperation.

10. The issue of translations was also addressed as a major challenge by several speakers. Many highlighted the usefulness of a pool of translators within their central and competent authorities as a good practice and some underscored the importance of relying on translators with legal knowledge. According to one speaker, the coordination among central authorities to establish a common language for drafting requests was an effective way to avoid translation costs and ensure that the recipients are able to understand the content of such requests. For another speaker, charging the requesting authority was an effective way to avoid unnecessary translation costs. Additionally, some speakers noted that inaccurate or unintelligible translations may entail further delays and challenges in international cooperation.

11. Many speakers underlined the importance of using the Organized Crime Convention as a legal basis to enhance and facilitate international cooperation. Other highlighted the specificities of the domestication of the Convention into their national legal systems.

IV. Organization of the meetings

B. Statements (*continued*)

12. Under agenda item 3 of the Working Group on International Cooperation, statements were made by representatives of the following States parties to the Convention: Algeria, Argentina, China, Côte d'Ivoire, Jamaica, Japan, Kenya, Mauritius, Mexico, Morocco, Nigeria, Philippines, Romania, Singapore, Sudan, Switzerland, Thailand, United States.
