



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

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## Working Group on International Cooperation

Vienna, 19-21 October 2016

### Provisional agenda and annotations

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  - (b) Adoption of the agenda and organization of work.
2. Reflection on the work of the Working Group on International Cooperation over the past 10 years.
3. States parties' efforts to use the United Nations Convention against Transnational Organized Crime as a basis for international cooperation.
4. Joint investigations as a modality for international cooperation to combat cross-border organized crime.
5. Sharing of best practices and challenges in implementing:
  - (a) International cooperation for purposes of confiscation (art. 13 of the United Nations Convention against Transnational Organized Crime);
  - (b) Disposal of confiscated proceeds of crime or property (art. 14 of the United Nations Convention against Transnational Organized Crime).
6. Update by the Secretariat on its tools related to international cooperation under the United Nations Convention against Transnational Organized Crime.
7. Other matters.
8. Adoption of the report.

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\* Reissued for technical reasons on 8 August 2016.



## **Annotations**

### **1. Organizational matters**

#### **(a) Opening of the meeting**

The meeting of the Working Group on International Cooperation will be opened on Wednesday, 19 October 2016, at 3:00 p.m.

#### **(b) Adoption of the agenda and organization of work**

At its 16th meeting, held on 12 February 2016, the extended Bureau of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime endorsed the proposal — based on past practice — for a parallel meeting of the Working Group on International Cooperation during the eighth session of the Conference of the Parties to the Convention, and further approved the dates of 19 (from 3:00 p.m.) to 21 October 2016 (until 1:00 p.m.) for the seventh meeting of the Working Group.

At its 17th meeting, held on 12 April 2016, the extended Bureau of the Conference confirmed the provisional agenda for the seventh meeting of the Working Group, which had been approved by tacit consensus on 1 April 2016.

### **2. Reflection on the work of the Working Group on International Cooperation over the past 10 years**

At its second session, held in Vienna from 10 to 21 October 2005, the Conference of the Parties to the Organized Crime Convention adopted decision 2/2 entitled “Implementation of the international cooperation provisions of the United Nations Convention against Transnational Organized Crime”. In that decision, the Conference decided to establish at its third meeting 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.

The open-ended working group convened its first meeting during the third session of the Conference of the Parties, which was held in Vienna from 9 to 18 October 2006. Since then it has met five more times.

The seventh meeting of the Working Group offers the opportunity to take stock of the work carried out at all previous meetings and assess how that work has assisted the Conference in promoting and reviewing the implementation of the international cooperation provisions of the Convention.

For its consideration of this item, the Working Group will have before it a background paper prepared by the Secretariat entitled “Working Group on International Cooperation established by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime: an overview of mandates and work since its establishment” (CTOC/COP/WG.3/2016/2).

## **Documentation**

Background paper prepared by the Secretariat entitled “Working Group on International Cooperation established by the Conference of the Parties to the United

Nations Convention against Transnational Organized Crime: an overview of mandates and work since its establishment” (CTOC/COP/WG.3/2016/2)

### **3. States parties’ efforts to use the United Nations Convention against Transnational Organized Crime as a basis for international cooperation**

In its resolution 55/25 of 15 November 2000, in which the General Assembly adopted the Organized Crime Convention, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing that Convention and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing that Convention, the General Assembly expressed its determination to deny safe havens to those who engage in transnational organized crime by prosecuting their crimes wherever they occur and by cooperating at the international level.

The Convention contains a number of provisions on international cooperation that call for more concerted action by States parties in that field. In the Convention, international cooperation in criminal matters is specifically mentioned either as a purpose (art. 1) or in the provision on its scope of application (art. 3). The consequent effect is the interrelationship with other parts of the Convention on issues such as establishment of jurisdiction, criminalization of offences, domestic prosecution and investigation of crimes and protection of witnesses.

Apart from identifying international cooperation in criminal matters as a “treaty purpose”, the Convention provides in detail for a wide array of international cooperation modalities, from formal judicial cooperation, such as extradition and mutual legal assistance, to more informal law enforcement modalities or other types of cooperation, such as joint investigations and special investigative techniques.

In addition to its almost universal adherence (186 States parties), another advantage of the Convention is the extended scope of application of its international cooperation provisions, especially article 16, on extradition, and article 18, on mutual legal assistance.

In view of the above, the use of the Convention as a legal basis for international cooperation has repeatedly been highlighted as a cornerstone of efforts of States parties to enhance criminal justice responses to transnational organized crime. In the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation, adopted by the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice and endorsed by the General Assembly in its resolution 70/174 of 17 December 2015, States parties were encouraged to implement and make more effective use of the Convention, while Member States that had not yet ratified or acceded to the Convention were urged to consider doing so.

At its sixth meeting, in 2015, the Working Group further discussed the “interplay” of the 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.

Moreover, in view of some reports of parties not accepting the Convention as a basis for legal assistance under article 18, paragraph 7, of the Convention, the Working Group recommended that States parties should take steps to enhance the use of the 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, and that States parties should also ensure that their domestic laws and practice conform with article 18 of the Convention.

At its seventh meeting, the Working Group may wish to build on previous discussions, take stock of national practices and exchange views and expertise on how to pursue a more efficient and effective use of the Convention as a legal basis for international cooperation.

#### **Documentation**

Information provided by the Secretariat on the notification requirement of article 16, paragraph 5(a) of the United Nations Convention against Transnational Organized Crime (CTOC/COP/WG.3/2016/CRP.1)

#### **4. Joint investigations as a modality for international cooperation to combat cross-border organized crime**

Article 19 of the Organized Crime Convention encourages States parties to enter into bilateral or multilateral agreements or arrangements to establish joint investigative bodies in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States. The same provision authorizes the conduct of joint investigations on a case-by-case basis, even in the absence of a specific agreement or arrangement.

In an effort to provide specific guidance for the implementation of, inter alia, article 19 of the Convention, the Secretariat hosted an informal expert group meeting in Vienna from 2 to 4 September 2008. The informal expert group examined a broad range of collaborative and cooperative approaches and joint investigative practices in use in different regions with a view to raising awareness of the provisions on joint investigations, identifying models for conducting them, and identifying legal obstacles and impediments to their effective use. The report of that meeting, in its draft form, was brought to the attention of the Conference of the Parties at its fourth session in 2008 (see CTOC/COP/2008/CRP.5).

At its sixth meeting, held in October 2015, the Working Group recommended that 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.

Building on that mandate, the seventh meeting of the Working Group offers participants the opportunity to provide guidance to the Secretariat on the most appropriate methodological ways and modalities to update and finalize the aforementioned report.

## Documentation

Informal expert working group on joint investigations: conclusions and recommendations (CTOC/COP/2008/CRP.5) (to be recirculated)

### 5. Sharing of best practices and challenges in implementing:

#### (a) International cooperation for purposes of confiscation (article 13 of the United Nations Convention against Transnational Organized Crime)

Provisions on assistance in identifying, tracing and freezing or seizing proceeds of crime for the purpose of eventual confiscation, which can be regarded as a special form of mutual legal assistance, have only recently begun to be included in international conventions and agreements. Based on the precedent set by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the Organized Crime Convention requires States parties to create domestic mechanisms for the tracing, freezing or seizure and confiscation of the proceeds of crimes falling within its scope of application (art. 12), and engage in international cooperation to be able to respond to requests presented by other States for purposes of confiscation of the proceeds of such crimes (art. 13).

Nonetheless, international cooperation for confiscation purposes poses difficulties of its own, related to several factors, including the considerable diversity in domestic confiscation regimes. The challenges can be overcome only by closer international cooperation to align national law and practice, using as much as possible such international points of reference as the relevant provisions of the Organized Crime Convention. At the national level, legislation and practice should be developed to allow greater flexibility in providing international cooperation in confiscation, with due regard for the legitimate interests of third parties. Many of the current difficulties can be dealt with by ensuring that the authorities are aware of the legal tools available for cooperation and that they are motivated to use them.

#### (b) Disposal of confiscated proceeds of crime or property (article 14 of the United Nations Convention against Transnational Organized Crime)

International cooperation for purposes of confiscation could be expanded further to include agreements or arrangements for sharing confiscated proceeds of crime or property, taking into particular consideration article 14 of the Organized Crime Convention. This provision requires States parties to give priority to requests from other States parties for the return of such assets for use as compensation to crime victims or restoration to legitimate owners. States parties are also encouraged to consider concluding an agreement or arrangement whereby proceeds may be contributed to the United Nations to fund technical assistance activities under the Convention, or may be shared with other States parties that have assisted in their confiscation.

In addition to promoting the ratification and implementation of normative instruments such as the Organized Crime Convention, the Secretariat has also been working to develop model instruments with a view to supporting States in achieving uniformity and consistency with international standards in treaty relations or for the negotiation of new bilateral agreements or arrangements. A model bilateral agreement on the sharing of confiscated proceeds of crime covered by the Organized Crime

Convention and the 1988 Convention has been developed and made available to Member States (see Economic and Social Council resolution 2005/14, annex).

The seventh meeting of the Working Group could trigger further exchange of national experience (good practices and challenges) and views, as well as discussions on how to reinforce efforts to build and promote flexible and efficient schemes of international cooperation for purposes of confiscation.

For its consideration of agenda item 5, the Working Group will have before it a background paper prepared by the Secretariat entitled “Implementation of articles 13 and 14 of the United Nations Convention against Transnational Organized Crime: international cooperation for purposes of confiscation, and disposal of confiscated proceeds of crime or property” (CTOC/COP/WG.3/2016/3).

### **Documentation**

Background paper prepared by the Secretariat entitled “Implementation of articles 13 and 14 of the United Nations Convention against Transnational Organized Crime: international cooperation for purposes of confiscation, and disposal of confiscated proceeds of crime or property” (CTOC/COP/WG.3/2016/3)

## **6. Update by the Secretariat on its tools related to international cooperation under the United Nations Convention against Transnational Organized Crime**

The Secretariat has continued its work to upgrade and redevelop a number of tools to assist Member States in taking action against transnational organized crime. In particular, the Secretariat has continued to develop the knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC), and disseminating information on the implementation of the Organized Crime Convention.

The Secretariat has also continued its work to finalize the content of the redeveloped Mutual Legal Assistance Request Writer Tool of the United Nations Office on Drugs and Crime (UNODC). The finalized tool, which has been revised and expanded to include additional features on asset recovery, electronic evidence and specific forms of international cooperation in criminal matters, was tested in practice on a pilot basis with a view to assessing its functionality and practical usefulness in addressing the needs of practitioners.

Furthermore, the publication *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*<sup>1</sup> has been updated and made available online via SHERLOC to assist national legislators, legislative drafters and other relevant officials in their efforts to develop the legislative and other measures needed for their countries to become a party to the Convention or to implement its requirements, including those on international cooperation.

UNODC has also finalized the needs assessment tools on the Convention. The aim of the tools is to provide guidance in assessing what should be done by States parties in order to ensure that the full potential of the Convention could be realized.

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<sup>1</sup> United Nations publication, Sales No. E.05.V.2.

These tools are to be used in the delivery of technical assistance, in particular in assessing the needs of States parties for technical assistance.

Furthermore, the Working Group, at its sixth meeting in October 2015, recommended that, 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 1988 Convention 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.

The seventh meeting of the Working Group could provide the platform to: (a) review progress in the redevelopment, updating and implementation of UNODC technical assistance tools; (b) share views on the way forward to increase the accessibility and outreach of such tools, future directions for the development of such tools, and provision of guidance to UNODC on emerging needs for new tools; and (c) identify potential audiences and stakeholders that may have a particular interest in making use of UNODC tools.

#### **7. Other matters**

As no issues to be raised under item 7 have come to the attention of the Secretariat, no documentation regarding this item is currently foreseen.

#### **8. Adoption of the report**

The Working Group will adopt a report on its meeting, the draft of which will be prepared by the Secretariat.

## Annex

### Proposed organization of work

<i>Date and time</i>	<i>Agenda item</i>	<i>Title or description</i>
<b>Wednesday, 19 October</b>		
3-6 p.m.	1 (a)	Opening of the meeting
	1 (b)	Adoption of the agenda and organization of work
	2	Reflection on the work of the Working Group on International Cooperation over the past 10 years
	3	States parties' efforts to use the United Nations Convention against Transnational Organized Crime as a basis for international cooperation
<b>Thursday, 20 October</b>		
10 a.m.-1 p.m.	3	States parties' efforts to use the United Nations Convention against Transnational Organized Crime as a basis for international cooperation ( <i>continued</i> )
	4	Joint investigations as a modality for international cooperation to combat cross-border organized crime
3-6 p.m.	5	Sharing of best practices and challenges in implementing: (a) International cooperation for purposes of confiscation (art. 13 of the United Nations Convention against Transnational Organized Crime) (b) Disposal of confiscated proceeds of crime or property (art. 14 of the United Nations Convention against Transnational Organized Crime)
<b>Friday, 21 October</b>		
10 a.m.-1 p.m.	6	Update by the Secretariat on its tools related to international cooperation under the United Nations Convention against Transnational Organized Crime
	7	Other matters
	8	Adoption of the report