



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

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## **Working Group on International Cooperation**

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Item 2 of the provisional agenda\*

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

### **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**

**Background paper prepared by the Secretariat**

#### **I. Introduction**

1. In its decision 2/2, entitled “Implementation of the international cooperation provisions of the United Nations Convention against Transnational Organized Crime”, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime decided to establish, at its third session, 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.

2. The working group was established as the Working Group on International Cooperation. Together with the Working Group of Government Experts on Technical Assistance it was the first subsidiary body created by the Conference to assist it in making recommendations to improve the Convention and its implementation (art. 32, para. 3 (e), of the Convention). The rationale for giving priority to the establishment of those two working groups was evident because technical assistance had been given a central role in the implementation of the Convention and had been made a key component of the mandate of the Conference, and because international cooperation had a prominent place within the overall context of the Convention. Apart from identifying international cooperation to combat transnational organized crime as one of its purposes (art. 1), the Convention

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\* CTOC/COP/WG.3/2016/1.



provides in detail for a wide array of international cooperation modalities, such as extradition, mutual legal assistance and cooperation for purposes of confiscation, as well as law enforcement cooperation, joint investigations and cooperation in the use of special investigative techniques. The international cooperation provisions of the Convention are comprehensive and support States parties' efforts to develop appropriate and effective criminal justice and law enforcement responses to transnational organized crime. Article 18 of the Convention, on mutual legal assistance, is an example of what may be called a "mini mutual legal assistance treaty", as it can be used in the absence of other treaties.<sup>1</sup> In addition, article 16 of the Convention sets a minimum standard for enhancing the efficiency of extradition mechanisms in relation to the offences established in accordance with the Convention.

3. The present background paper marks the tenth anniversary of the first meeting of the Working Group on International Cooperation. Its aim is to provide an overview of the mandates given and the work accomplished by the Working Group, and of the recommendations and feedback the Working Group has submitted to the Conference with a view to facilitating a more efficient implementation of the provisions of the Convention that govern international cooperation.

## **II. Taking stock of the work the Working Group on International Cooperation has accomplished since its establishment**

### **A. Periodicity of the meetings**

4. In its decision 2/2, which provided the mandate for the Working Group on International Cooperation, the Conference remained silent regarding the frequency of the Working Group's meetings. However, an indirect indication was provided in the decision of the Conference to establish the Working Group "at its third session". Thus, the Conference clarified from the outset that its intention was to integrate the Working Group into the overall work and deliberations it conducted during its regular sessions. The rules of procedure for the Conference require the regular sessions of the Conference to be held biennially, with the exception of its second and third regular sessions, unless the Conference itself decides otherwise (rule 3). Thus, the Working Group has consistently met on a biennial basis, as well as during the regular sessions of the Conference, which were held in 2006, 2008, 2010, 2012 and 2014.

5. Since 2014, however, the meetings have been convened on an annual basis based on resolution 7/1 of the Conference, in which the Conference encouraged the Working Group on International Cooperation and the Working Group of Government Experts on Technical Assistance to consider meeting on an annual basis, as needed, and to hold their meetings consecutively, in order to ensure the effective use of resources. A meeting of the Working Group was convened in 2015, between the seventh and eighth sessions of the Conference, as decided by the

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<sup>1</sup> See also the *Manual on Mutual Legal Assistance and Extradition*, published by the United Nations Office on Drugs and Crime in 2012.

extended Bureau of the Conference and as a result of specific efficiency and cost-saving measures undertaken by the Secretariat by rearranging entitlements for the organization of meetings of other Conference working groups.

## **B. Synergies with other working groups and expert meetings**

6. On two occasions, in 2012 and 2014, the Working Group on International Cooperation met back to back with the open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption convened by the Conference of the States Parties to that Convention in its resolution 4/2. In 2012 the expert meeting was held after the sixth session of the Conference of the Parties to the Organized Crime Convention, and following the fourth meeting of the Working Group. In 2014 both meetings were convened during the seventh session of the Conference of the Parties to the Organized Crime Convention and were held back to back. The parties to the two conventions had convened these meetings in order to take advantage of the synergies between the Working Group and the expert meetings held under both conventions.

7. The discussion of the above synergies was part of the agenda of the fourth meeting of the Working Group, in 2012. At that meeting speakers noted that some coordination of the work of the two bodies could be beneficial. The commonalities were discussed 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 (see CTOC/COP/WG.3/2012/5, paras. 4-9). A similar exchange of views took place during the second open-ended intergovernmental expert meeting, held in Panama City on 25 and 26 November 2013, during the fifth session of the Conference of States Parties to the Convention against Corruption (see CAC/COSP/EG.1/2013/3).

8. The Conference of the States Parties to the Convention against Corruption decided, in its resolution 5/1: “in order to ensure the effective use of resources, on a provisional basis and without prejudice to their independent status and mandates, the next open-ended intergovernmental meeting of experts on international cooperation under the United Nations Convention against Corruption shall be held back to back with the corresponding Working Group on International Cooperation under the United Nations Convention against Transnational Organized Crime, when feasible, at separate times and at the same venue.” Based on this mandate, the practice of holding the meetings of the two bodies back to back was repeated in 2014.

9. In 2015, the two bodies met separately and at different venues, but only a few days apart. Specifically, the sixth meeting of the Working Group was held in Vienna on 27 and 28 October 2015, whereas the fourth open-ended intergovernmental expert meeting was held in St. Petersburg, Russian Federation, on 2 and 3 November 2015, in parallel with the sixth session of the Conference of States Parties to the Convention against Corruption.

10. Synergies were separately mandated by resolution 5/7 of the Conference of the Parties to the Organized Crime Convention, entitled “Combating transnational organized crime against cultural property”. In that resolution, 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 resulting recommendations were included in the report of the fourth meeting of the Working Group (see CTOC/COP/WG.3/2012/5, section IV). In its resolution 6/1 on ensuring effective implementation of the Organized Crime Convention and the Protocols thereto, the Conference welcomed the outcomes of the joint discussion on trafficking in cultural property of the two working groups, held at its sixth session, endorsed the recommendations of the joint discussion of the two working groups, encouraged Member States and the Secretariat to conduct further work on the matter, and requested the Secretariat to bring the specific guidelines on crime prevention and criminal justice responses with respect to trafficking in cultural property, after their finalization, to the attention of the Conference for the purpose of implementing the Convention. Those guidelines were subsequently adopted by the General Assembly in its resolution 69/196 as the International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences.

## **C. Past meetings of the Working Group on International Cooperation**

### **First meeting, held in 2006**

11. In its decision 3/2 on the implementation of the provisions on international cooperation in the Organized Crime Convention the Conference of the Parties acknowledged the importance of granting assistance in an expeditious manner in the fields of extradition and cooperation for purposes of confiscation and, in that context, encouraged central authorities to coordinate, within their competences, direct contact between prosecutors and magistrates involved in the daily handling of cases involving mutual legal assistance and confiscation, where appropriate.

12. In the same decision, the Conference further laid the foundations for the continuity and sustainability of the Working Group on International Cooperation by making that Working Group a constant element of its work and structure. Moreover, it expanded the substantive scope of the mandate of the Working Group: while in decision 2/2 reference was made to the establishment of an “open-ended working group [...] to hold substantive discussions on practical issues pertaining to extradition, mutual legal assistance and international cooperation for the purpose of confiscation”, in decision 3/2 the Conference used the more general term “open-ended working group on international cooperation”, thus expressing its intention to authorize a broader discussion covering other forms of international cooperation.

### **Second meeting, held in 2008**

13. The Working Group was convened again during the fourth session of the Conference. From 8 to 10 October 2008 it held four meetings in parallel with the

plenary meetings of the Conference. The Working Group reviewed the implementation of articles 13, 16 and 18 of the Organized Crime Convention, addressed several practical aspects of these provisions and experiences in applying them, and formulated a number of recommendations for consideration by the Conference at its fourth session. The Working Group decided to update decision 3/2 and to recommend the adoption by the Conference of a new decision containing a number of measures to further promote the implementation of the provisions on international cooperation of the Convention (decision 4/2).

14. More specifically, the Working Group discussed the following matters in depth, as summarized in decision 4/2:

(a) The different elements of article 16 of the Convention on extradition, highlighting the potential of those provisions as a legal basis for extradition, different aspects of the issue of the extradition of nationals, and the principles of *aut dedere aut judicare* (extradite or prosecute) and dual criminality;

(b) The comprehensive provisions contained in article 18 on mutual legal assistance, which were found by the Working Group to constitute an integral set of rules applicable in areas in which no other treaty applied; ways and means of requesting assistance, such as by e-mail and oral communication; and the use of working languages;

(c) Article 13 on international cooperation for purposes of confiscation, including the diversity of confiscation schemes found in national legislation, such as conviction-based confiscation and non-conviction-based confiscation.

15. The Working Group also addressed the legal and practical aspects pertaining to the implementation of article 18, paragraph 18, of the Convention, on videoconferencing. It recommended that States parties consider its use and the giving of evidence by video link. It also encouraged States parties to include provisions in their domestic legal systems for that type of cooperation, which had various benefits, including its cost-effectiveness and potential for the protection of witnesses.

16. Moreover, the Working Group followed up on its previous recommendations. It took note of the conclusions and recommendations of the series of regional workshops organized by the Secretariat pursuant to Conference decision 3/2 and held in Bogotá, Cairo, Dakar, Kuala Lumpur and Vienna in 2007 and 2008 for central authorities, liaison magistrates, judges, prosecutors and practitioners responsible for handling extradition and mutual legal assistance. The Working Group welcomed the holding of those regional workshops and other training seminars, which proved useful for strengthening close working contacts between authorities and facilitating exchanges among counterparts, and requested the Secretariat to pursue such activities in regions not yet covered by the previous workshops and to follow them up at the subregional and interregional levels, in response to the specific cooperation needs identified.

17. The Working Group encouraged central authorities responsible for mutual legal assistance and the competent authorities responsible for extradition requests to make full use of existing regional networks. Furthermore, it reiterated its request to the Secretariat to provide its support to strengthening networking among authorities at the interregional level and to explore ways to facilitate communication and

problem-solving among such authorities by considering the establishment of a discussion forum on a secure network (see also CTOC/COP/2008/18).

### **Third meeting, held in 2010**

18. The Working Group held its third meeting in Vienna on 20 and 21 October 2010, during the fifth session of the Conference. Representatives of regional networks were invited to attend the meeting. The participants engaged in substantive discussions on the issues of extradition, mutual legal assistance and international cooperation for purposes of confiscation. The Chair of the Working Group presented to the Conference a summary of the outcome of the meeting and the recommendations of the Working Group aimed at strengthening international cooperation.

19. The Working Group reviewed in detail article 16 of the Convention, relating to extradition, and discussed practices and experiences with regard to the application of the article.

20. The Working Group also highlighted the role of regional networks in coordinating and facilitating mutual legal assistance and other forms of international cooperation.

21. Building on prior discussions about videoconferencing, the Working Group further recognized that the use of videoconferencing for the hearing of witnesses could save a considerable amount of time and money. It could also serve as a useful alternative to the transfer of witnesses, as witnesses in prisons or police stations could testify by video link. The importance was underlined of using videoconference technology to ensure the protection of witnesses' and victims' rights.

22. The Working Group discussed the implementation of article 13 of the Convention, relating to international cooperation for purposes of confiscation (see CTOC/COP/WG.3/2010/1).

23. Following the convening of the meeting of the Working Group, the Conference, in its resolution 5/8, encouraged States parties, subject to domestic law, to dispose of confiscated proceeds of crime or property in accordance with the provisions of article 14 of the Convention, and to give priority consideration, if so requested, to returning the confiscated proceeds of crime or property to the requesting State Party so that it could give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners, and to consider concluding agreements or arrangements for the purposes mentioned in paragraph 3 of article 14 of the Convention.

24. In the same resolution, the Conference took steps towards providing policy guidelines for making efficient use of the additional modalities of international cooperation provided for in the Convention by encouraging States parties, subject to domestic law, to implement fully all the provisions of the Convention related to international cooperation, giving special attention to, inter alia, the possibility of developing joint investigative bodies, with full respect for the sovereignty of States (art. 19 of the Convention) and special investigative techniques in the context of cooperation at the international level (art. 20 of the Convention).

**Fourth meeting, held in 2012**

25. The fourth meeting of the Working Group was held on 15, 16 and 18 October 2012. The Working Group shared, *inter alia*, 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.

26. The role of regional networks and initiatives in tackling transnational organized crime was also discussed, and States were called upon to foster the development of networks in order to improve international cooperation and to better address organized crime.

27. Furthermore, speakers discussed experiences and shared best practices in using the Convention for international cooperation, taking into consideration article 16 on extradition, article 18 on mutual legal assistance, with particular reference to videoconferencing, bank information, covert investigations and controlled deliveries, and article 21 on transfer of criminal proceedings.

28. The Working Group concluded that regional networks of prosecutors and central authorities were important for facilitating international cooperation in criminal matters in the framework of the Convention. It also highlighted the importance of police-to-police cooperation and cooperation between police and prosecutorial or judicial officials, as well as the value of effective coordination among investigative and law enforcement agencies at the national level for the purpose of improving capacity for international cooperation (see CTOC/COP/WG.3/2012/5).

29. In its resolution 6/1 on ensuring effective implementation of the Organized Crime Convention and the Protocols thereto, the Conference welcomed the activities carried out by the Working Group and requested the United Nations Office on Drugs and Crime (UNODC), in conjunction with Member States, to continue to establish networks and other mechanisms to facilitate formal and informal cooperation, including through regional and interregional meetings and exchanges of experience among practitioners, with a view to taking stock of and sharing knowledge acquired through the instruments and mechanisms mentioned in the resolution and the Working Group.

**Fifth meeting, held in 2014**

30. The Working Group met for the fifth time in Vienna on 8 and 9 October 2014 to discuss, among other topics, various aspects related to the adoption and negotiation of bilateral and multilateral agreements or arrangements for international cooperation in criminal matters, and noted the utility of such instruments in bridging differences between different domestic legal systems, as well as in complementing the implementation of the Organized Crime Convention.

31. In addition to discussing traditional forms of cooperation in criminal matters, the Working Group shared views on modalities aimed at giving practical effect to the Convention's provisions on international cooperation. With regard to arrangements to facilitate international cooperation, speakers discussed the establishment and strengthening of regional and subregional networks.

32. Speakers shared experiences concerning the implementation of article 18, paragraph 13, of the Convention. It was noted that an estimated 60 per cent of States parties to the Convention had notified the Secretary-General of their central authorities for the purposes of article 18. States parties that had not yet done so were encouraged to fulfil that obligation in an expeditious manner. The Working Group also discussed different models for central authorities. It noted that the most commonly designated authorities were ministries of justice, public prosecutors' offices and offices of the attorney general.

33. Several speakers underlined the importance of strengthening the coordinating role of central authorities designated under article 18, paragraph 13, of the Convention. In this regard, views were exchanged on functions of central authorities that could lead to an enhanced coordinating role at the domestic level, including the development of strong links and effective lines of communication; the setting up of mechanisms for consultation with competent authorities involved in the execution of requests; the development of systems for tracking the status of requests; and the exercise of quality control over requests.

34. Speakers also discussed functions that could enhance international cooperation among central authorities. These encompassed the development of clear guidance on procedures and requirements for the submission of mutual legal assistance requests and the holding of regular formal and informal consultations among central authorities, including prior to the formal submission of requests for extradition and mutual legal assistance. Some speakers underlined the importance of technical assistance delivered by UNODC to strengthen the knowledge and capacity of central authorities (see CTOC/COP/WG.3/2014/4).

35. The recommendations made by the Working Group were endorsed by the Conference in its resolution 7/4 and annexed to that resolution, and included the following:

(a) States parties should consider strengthening the coordinating role of central authorities designated under article 18, paragraph 13, of the Organized Crime Convention, including through developing strong links and effective lines of communication, as well as mechanisms for consultation, with competent authorities involved in the execution of requests for mutual legal assistance;

(b) States should support central authorities in developing systems for tracking the status of requests, including after such requests have been transferred to a competent authority for execution;

(c) States should examine possibilities for central authorities to collect and disseminate statistical information on mutual legal assistance requests, including the nature of the assistance requested or provided and the legal basis for such cooperation;



(d) States should encourage central authorities to make available clear guidance on their respective procedures and requirements for submission of mutual legal assistance requests.

#### **Sixth meeting, held in 2015**

36. The gathering and sharing of electronic evidence was among the issues discussed, and speakers highlighted the transnational nature of cybercrime as well as the pertinent challenges for national sovereignty and the establishment of the most appropriate criminal jurisdiction. It was noted that the complexity of the legal and operational issues associated with cybercrime required the development of additional tools to upgrade the capacity of law enforcement and judicial authorities of Member States, as well as the provision of technical assistance to law enforcement agencies.

37. Furthermore, speakers shared their experiences relating to the use of liaison officers and liaison magistrates posted in foreign law enforcement agencies or intergovernmental organizations, and relating to successful cases of international cooperation. Those cases included instances in which liaison officers or liaison magistrates had played a significant role in conducting effective cross-border investigations, inter alia, by facilitating the preparation and submission of mutual legal assistance requests to their States and providing information on what was required in extradition requests and proceedings.

38. The Working Group also discussed the interplay of the Organized Crime Convention with other bilateral or multilateral treaties used as legal bases for international cooperation and challenges stemming from this interrelationship (see CTOC/COP/WG.3/2015/4).

39. Recommendations made by the Working Group and brought to the attention of the Conference at its eighth session included the following:

(a) Mainstreaming the topic of electronic evidence into existing and future tools on international cooperation in criminal matters;

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

(c) Examining ways and means to foster international cooperation involving, inter alia, the use of electronic evidence, the preservation of such evidence and, in particular, the examination of possibilities to expedite formal mutual legal assistance processes.

### **D. Methodology**

40. In discussing agenda items at its regular meetings, the Working Group followed various methodological approaches. It has been the Secretariat's consistent practice to prepare background papers as pre-session documents to outline the substantive content of the topic under discussion. Other topics have been introduced through ad hoc presentations delivered by representatives of the Secretariat. In other

cases still, the Working Group had before it for its consideration technical papers issued as conference room papers on practical aspects linked to the implementation of the international cooperation provisions of the Convention.

41. Starting from the fourth meeting of the Working Group, in 2012, discussions under certain agenda items have been led by panellists identified in advance by the regional groups and notified to the extended Bureau of the Conference.

42. The deliberations held during the meetings of the Working Group have also been enriched by presentations given by representatives from regional intergovernmental organizations sharing regional perspectives and good practices pertaining to international cooperation.

### **III. Conclusions and recommendations**

43. At this juncture, having completed 10 years of work, the Working Group on International Cooperation may wish to recommend that the Conference of the Parties to the Organized Crime Convention:

(a) Take into account, when considering the future work of the Working Group, the ongoing discussions at the open-ended intergovernmental meeting to explore all options regarding an appropriate and effective review mechanism for the Organized Crime Convention and the Protocols thereto;

(b) Consider the development of a multi-year workplan with standing items and thematic discussions for the purpose of facilitating a structured and comprehensive dialogue on all aspects of the implementation of the international cooperation provisions of the Convention;

(c) Propose and support a more systematic compilation and regular updating of statistical data on the use of the Convention as a legal basis for international cooperation in criminal matters;

(d) Reiterate its invitation to States parties to consider including in their delegations to future meetings of the Working Group practitioners in charge of matters related to the international cooperation provisions of the Convention, and to encourage their active participation in the meetings of the Working Group;

(e) Reiterate, in coordination with the Secretariat, its invitation to States parties to consider scheduling future meetings of the Working Group in such a manner as to facilitate the participation of practitioners (such as by holding future meetings back-to-back with other relevant meetings), or to consider synergies with other working groups established by the Conference, thus making the best possible use of Government and Conference resources.