



Conference of the States Parties to the United Nations Convention against Corruption

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**Open-ended Intergovernmental Expert
Meeting to enhance international
cooperation under the United Nations
Convention against Corruption**
Eighth session
Vienna, 31 May 2019

Draft report

Addendum

III. Implementation of chapter IV of the United Nations Convention against Corruption: lessons learned, good practices and challenges

1. In an effort to enhance the exchange of information and synergies between the open-ended intergovernmental expert meetings to enhance international cooperation under the United Nations Convention against Corruption and the Working Group on International Cooperation established by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime (UNTOC), a representative of the Secretariat provided an overview of the salient outcomes of the deliberations at the tenth meeting of the Working Group on International Cooperation, which had been held in Vienna on 16 October 2018. At this meeting, the Working Group considered the issue of “Challenges faced in expediting the extradition process, including addressing health and safety and other human rights issues, as well as litigation strategies utilized by defendants to delay the resolution of an extradition request”. The discussion on the agenda item was facilitated by panellists from Switzerland, China and Mexico. During the deliberations, speakers underlined the importance of holding consultations among authorities and practitioners to expedite the extradition process. They highlighted the usefulness of informal consultations as a means of exchanging information on legal requirements and standards, and on specific aspects of extradition cases, such as the identification of the person sought. As was further pointed out, consultations played a pivotal role in providing assurances and guarantees regarding the treatment of persons sought after their surrender. The representative of the Secretariat further shed light on the anticipated future role of the Working Group within the framework of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, established in accordance with resolution 9/1 of the Conference of the Parties to the Convention.

2. The speaker also made reference to an Informal Expert Group Meeting on International Cooperation in Criminal Matters, held in Vienna from 9 to 11 April 2019, which had brought together 36 experts and practitioners from 19 countries,



representing both civil and common law legal systems. The participants discussed, among others, the use of the Organized Crime Convention as a legal basis for international cooperation in criminal matters; advantages, challenges, lessons learned and possible responses to international cooperation through mutual legal assistance; international cooperation for confiscation and disposal of confiscated assets; practical aspects, challenges encountered and good practices in the field of extradition; and UNODC tools on international cooperation in criminal matters and regional networks. The discussion on the substantive topics of the meeting facilitated a constructive exchange of views, experiences, good practices and lessons learned among the participants.

3. Following the presentation, several speakers emphasized the interlinkages between certain topics, such as international cooperation, discussed both by the Working Group on International Cooperation established under the United Nations Convention against Transnational Organized Crime and the expert meeting established under the United Nations Convention against Corruption, while also stressing that duplication should be avoided. A number of speakers suggested that future expert meetings could be linked more closely to the meetings of the Working Group on International Cooperation under UNTOC and the Working Group on Asset Recovery, either through joint or back-to-back meetings, or by introducing on the agenda of the expert meetings such topics that are specifically related to the United Nations Convention against Corruption, such as, for example, international cooperation in civil and administrative proceedings under the Convention. One speaker noted that the scheduling of future expert meetings under the United Nations Convention against Corruption should be carefully considered, given the resource constraints and potential overlap in topics, while several other speakers referred to important differences between the two Conventions and the need to reserve time for separate deliberations in view of the issues, which were unique to each Convention. These speakers also referred to the specific value of the expert meeting as a forum for the exchange of experiences among experts and practitioners under the Convention against Corruption.

4. One speaker further noted, when discussing the methods of work and the expert meeting and its agenda, this should be done before any decision on scheduling the meetings together with other meetings should take place. One speaker noted that the participation of experts in the expert meeting was constrained by the organization of the programme of work (back-to-back with other working group meetings under the Convention), while another speaker emphasized the benefit of the current organization of work in this manner as a useful means to maximize expert participation.

5. In response to the statements made, the Secretary noted that the matter of holding meetings back-to-back or jointly with the working group under UNTOC had been discussed previously, and that the expert meeting under the Convention against Corruption did not have the mandate to take decisions pertaining to the organization of work of the working group under the Organized Crime Convention. One of the additional constraints mentioned in this regard was the fact that the sessions of that Group were held during the sessions of the Conference of the Parties to the Organized Crime Convention. In this connection, it also was noted by the secretariat that relevant considerations may need to include the anticipated role of the Working Group on International Cooperation under the newly established Mechanism to Review the Implementation of the Organized Crime Convention and the Protocols thereto.

6. A representative of the secretariat presented the most prevalent trends and findings in the implementation of chapter IV of the United Nations Convention against Corruption, based on an analysis of the completed reviews of the first cycle of the Mechanism for the Review of Implementation of the Convention, as well as challenges in the implementation of chapter IV of the Convention. The representative referred to the ongoing work to develop a set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the Convention during the first review cycle. The relevant paper ([CAC/COSP/IRG/2019/3](#)), which had been prepared pursuant to Conference

resolution 6/1, analysed the outcomes of the first cycle country reviews in terms of identified successes, good practices, challenges, observations and technical assistance needs. The paper was based on an analysis of over 6,000 recommendations and over 1,000 good practices identified in 167 completed country reviews of the first cycle, as well as written submissions received from States parties, and was made available to the Group at its tenth session (CAC/COSP/IRG/2019/3). The Group welcomed the set of non-binding recommendations and conclusions, which represented important results of the outcomes of the first review cycle, and it was suggested that there be further consultations on the most appropriate method of transmitting the document to the Conference for its consideration and approval at its upcoming session in December. A fuller analysis of these issues, and the outcomes of the first review cycle in general, was included in the secretariat's study, *State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation*, published for the seventh session of the Conference.

7. The representative of the Secretariat provided an update on the implementation of the mandates contained in previous Conference resolutions and emanating from previous expert group meetings. She referred to a note verbale dated 17 December 2018, sent to all States parties with a view to collecting information on electronic tools and systems for processing and tracking international requests for assistance; common reasons, observed in the practice of relevant authorities, for refusals and delays in responding to mutual legal assistance requests related to offences established under the Convention and possible suggestions on how to avoid such refusals and delays; international cooperation in civil and administrative proceedings related to cases of corruption and suggestions on possible measures to protect the confidentiality of the information requested for the purposes of civil and administrative proceedings related to cases of corruption in the requesting country, where the relevant matter was addressed by criminal proceedings in the requested country; statistics and cases on the use of the Convention as a legal basis for mutual legal assistance by relevant authorities including, where appropriate and consistent with domestic legal systems, in relation to civil and administrative proceedings; and challenges and good practices in international cooperation and other topics outlined in the resolutions of the Conference and the recommendations of the expert meetings. A summary of all responses received as of 13 March 2019 was included in the secretariat's progress report (CAC/COSP/EG.1/2019/2). It was also noted that the Secretariat would continue to analyse the information received from States parties and would make it available at future meetings.

8. In its resolution 7/1, the Conference had welcomed the recommendations of the sixth open-ended intergovernmental expert meeting to enhance international cooperation under the Convention. In those conclusions and recommendations, the expert meeting, inter alia, had recommended that States parties should continue their efforts with regard to bridging the gap between different legal systems, particularly in the area of criminal procedure and evidence standards, by using the Convention as a legal basis, and by concluding detailed bilateral treaties and arrangements on mutual legal assistance.

9. In the same resolution, the Conference had requested the Secretariat to continue, within existing resources, to collect statistics or other relevant information on the use of the Convention as a legal basis for mutual legal assistance and to make the information available to the Conference.

10. The sixth open-ended intergovernmental expert meeting to enhance international cooperation under the Convention, held in Vienna on 6 and 7 November 2017, had recommended that the Secretariat continue its work on the analysis of practical challenges arising in the work of central authorities responsible for requests under the United Nations Convention against Corruption with a view to strengthening their effectiveness and efficiency.

11. During the ensuing discussion, speakers emphasized the importance of international cooperation in corruption-related cases under the Convention and

underscored the need to provide each other the widest measure of assistance in this regard. Speakers referred to a series of legislative, administrative and policy measures taken in their countries to enhance their ability to provide effective cooperation and also highlighted specific challenges, good practices and experiences in extradition and mutual legal assistance cases. It was mentioned that the Convention had a positive impact on international cooperation and that many States, in order to improve the implementation of Chapter IV of the Convention, had concluded or acceded to other international and regional instruments and entered into bilateral agreements on extradition and mutual legal assistance.

12. While some speakers mentioned that they could cooperate in the absence of a treaty, other speakers mentioned that the Convention often served as a legal basis for international cooperation and provided relevant statistics in regards to its use. Some speakers expressed concerns that even when the Convention is used as a legal basis, requested States sometimes did not recognize it as such and declined to provide the assistance requested, referring to domestic legislative arrangements.

13. Similarly, many speakers emphasized that cases concerning the provision of mutual legal assistance and extradition were frequently very lengthy often in excess of one year. One speaker provided an example where an important piece of evidence had been provided by the requested State only after considerable delay and this ultimately prevented the prosecutors from being in a position to rely on it at trial. Another speaker, while acknowledging the lengthy nature of many international cooperation cases, suggested that in certain circumstances alternative ways to obtain the necessary measures should be pursued, such as direct engagement with foreign financial intelligence units to restrain bank accounts of suspects until a formal MLA request was prepared and submitted.

14. Another common challenge in extradition and MLA cases mentioned by speakers included a lack of responses to requests or insufficient details in reasons denying the requests. Some speakers suggested that these challenges often resulted from the lack of knowledge of the laws and procedures guiding the provision of international cooperation in the requested State, while another speaker stressed that such cases denied opportunities for the requesting States to correct the request if it was deemed deficient. Another speaker referred to situations where some requests were deemed as “fishing expeditions” solely on the ground that the requests could not be supported by evidence deemed sufficient for requested States. As a solution to some of these issues, several speakers suggested that draft requests could be shared in advance to permit the requested State to assist in correcting the request. Another speaker suggested that the secretariat develop a general guide on MLA rules and procedures applicable in different countries.

15. Other challenges highlighted by speakers included dual criminality requirements, strict evidentiary rules, the inability to provide specific measures such as return of immovable objects, lack of simplified procedures, or strict bank secrecy rules in requested States. Some speakers noted that in many cases when requests were denied due to the lack of dual criminality, this could often be overcome through early communication and coordination.

16. Finally, speakers also reported on how their countries took steps to establish new or strengthen the existing domestic and international coordination and communication platforms to expedite proceedings and ensure their success. Several speakers referred to their experience in establishing joint investigation teams to fight transnational crime, including corruption. Several speakers also mentioned the significance and importance of direct police-to-police cooperation or through INTERPOL and similar regional initiatives and stressed the effectiveness of informal asset recovery practitioner networks in particular. The representative of Eurojust described how his organization provided a platform to support European Union practitioners in cases of serious and transnational criminality and had a network of 47 focal points in non-EU States. He also stressed that the legal basis for the work of such joint teams also had indirect benefits of building trust and team spirit among its members.