



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

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Draft report

Addendum

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

1. Another representative of the secretariat provided an analytical summary of the replies received from States parties in response to a note verbale dated 4 May 2021 sent with a view to collecting information on the use of the Convention as a legal basis for international cooperation. It was reported that the secretariat had received replies from 30 States parties, among which the vast majority had indicated that they had used the Convention as a legal basis for international cooperation. Respondents provided an overview of their national legislative regimes and practices regarding international cooperation. Those replies had been analysed and summarized in the document entitled “Statistical information on the use of the United Nations Convention against Corruption as a legal basis for extradition, mutual legal assistance and law enforcement cooperation” (CAC/COSP/EG.1/2021/3).

2. The representative of the Secretariat noted that a number of countries reported that their national legislation allowed for the use of the Convention as a legal basis for extradition. Most States parties also referred to other legal bases for extradition, such as bilateral and regional treaties. In their responses to the note verbale, less than half of the States parties reported having used the Convention as a legal basis for extradition, and the majority of States parties noted that they did not make extradition conditional on the existence of a treaty. With regard to mutual legal assistance, unlike in the case of extradition, a substantial majority of States parties reported having used the Convention as a legal basis.

3. Regarding law enforcement cooperation, the majority of the States parties indicated that they had not used the Convention as a legal basis. Some States parties noted the difficulties encountered with regard to maintaining statistics on the use of the Convention as a legal basis for international cooperation and the need to enhance and promote cooperation between law enforcement authorities, as well as the importance of regional cooperation networks. He concluded that further means for collecting relevant statistical data would greatly facilitate the reporting on



international cooperation, as additional information was required on the use of the Convention as a legal basis for international cooperation.

Panel discussion on the use of the Convention as a legal basis for international cooperation, with the view to facilitating the implementation of article 44, paragraph 5, article 46, paragraph 7 and article 48, paragraph 2, of the Convention

4. To facilitate the deliberations under the agenda item and in line with the recommendations of previous expert meetings, a thematic panel discussion was held on the use of the Convention as a legal basis for international cooperation, with a view to facilitating the implementation of article 44, paragraph 5, article 46, paragraph 7, and article 48, paragraph 2, of the Convention.

5. The panellist from China underscored the importance of the special session of the General Assembly against corruption and the pledge made in it by States parties to make full use of the Convention to promote international cooperation and prevent and combat corruption. She expressed the support of China for the Convention as the main tool in the global anti-corruption regime. She noted the legislative reforms undertaken by her country to allow for an enhanced use of the Convention for international cooperation. To illustrate that, the panellist provided examples of the use of the Convention by her country as a legal basis for international cooperation in the absence of bilateral agreements, as both a requesting State and a requested State. One of those cases resulted in the successful return of proceeds of crime to the country of origin. In conclusion, the panellist reiterated the four proposals concerning international cooperation made by China at the special session of the General Assembly against corruption, calling on the international community to work together to build a world free from corruption.

6. The panellist from Panama described the use of the Convention as a legal basis for extradition and international cooperation in her country. She referred to the declarations of the Government of Panama at the time of its ratification of the Convention, by virtue of which it considered the Convention to be a legal basis for extradition. The panellist underscored that Panama did not make extradition conditional on the existence of a treaty because the principle of reciprocity could be applied. She provided examples of and statistics on the use of the Convention as a legal basis for extradition as both a requesting State and a requested State, including two cases involving high-level officials. Regarding mutual legal assistance, Panama had made and received requests on the basis of the Convention. The panellist shared some examples and noted that a number of those cases had resulted in the confiscation of assets in foreign countries.

7. In addition, the panellist shared some lessons learned, good practices and challenges in the use of the Convention as a legal basis for international cooperation. She highlighted the importance of communication among central authorities in order to ensure effective mutual legal assistance. She explained that the Convention had been used as a complement to bilateral treaties that did not make certain corruption offences extraditable. She mentioned the use of the online directory of competent national authorities contained in the SHERLOC knowledge management portal as a good practice for enhancing communication. She underscored the importance of the existence of cooperation networks and interinstitutional cooperation agreements in the enhancement of the efficiency of mutual legal assistance requests. However, she noted that the enhancement of communication channels and the safe and swift sharing of information continued to be a challenge.

8. The panellist from Albania provided an overview of the implementation of the Convention in her country. She underlined the importance of using the Convention as a legal basis for extradition – although Albania did not make extradition conditional on the existence of a treaty – and the possibility of using the principle of reciprocity instead. The panellist indicated that the Convention was considered part of the national legal framework, and therefore all offences provided in the Convention were

considered extraditable offences. In addition, the panellist explained that the Ministry of Justice was the central authority for mutual legal assistance, which could be provided in the absence of dual criminality when the measures requested were not coercive. In that regard, she noted the recent adoption and amendment of the country's law on mutual legal assistance, which, among other things, encompassed the means of communication to be used, including direct communication between law enforcement authorities, procedures for establishing joint investigation teams and other internal procedures.

9. The panellist highlighted that, with a view to facilitating the processing and prioritization of requests and gathering and generating data and statistics on that topic, a new mutual legal assistance electronic system for international judicial cooperation had been established. In that connection, she underscored the importance of using networks such as the GlobE Network to enhance the efficiency of mutual legal assistance processes. Finally, the panellist noted that, under her country's legislation, law enforcement agency cooperation was restricted to specific emergency cases. Nevertheless, while the information-sharing in those cases remained a challenge, she cited the use of networks such as INTERPOL and the conclusion of memorandums of understanding as tools that had enhanced cooperation with the national authorities of her country.

10. In the ensuing discussion, several speakers underlined the importance of using the Convention as a legal basis for international cooperation, shared information about their international cooperation frameworks, and welcomed the secretariat's analysis of statistical information in that regard. One speaker recalled that technical assistance and effective international cooperation was of paramount importance in the prevention of and fight against corruption. He informed the meeting of the robust framework in his country composed of 82 bilateral treaties on extradition and 117 memorandums of understanding, underscored the need to remove obstacles to international cooperation and emphasized the importance of participating in networks and relevant initiatives in order to ensure the effective implementation of the Convention through global cooperation.

11. Several speakers shared their national experience in the use of the Convention for international cooperation in the absence of bilateral arrangements and described concrete cases of success. One speaker noted that in 2020, in enforcing the laws on the prevention of corruption among certain categories of public officials, the Office of the Prosecutor General of his country had sent 48 mutual legal assistance requests on criminal proceedings with reference to the relevant provision of the Convention, of which 22 requests had been executed. Another speaker informed the meeting that in 2020, her country had sent more than 50 requests for mutual legal assistance to different countries on the basis of the Convention, half of which were successfully executed, and in the first half of 2021, 17 further requests had been sent on the basis of the Convention. She noted that national authorities of her country actively used the tools and guides made available by the secretariat, including the SHERLOC knowledge management portal.

12. One speaker explained that, although her country's domestic laws required bilateral treaties as a basis for extradition, in her jurisdiction the Convention could be applied to offences established under it. In relation to perceived delays in international cooperation, she emphasized the importance of informal cooperation prior to sending formal mutual legal assistance requests. She noted, however, that when further information was required for the execution of a request, requesting jurisdictions often failed to respond to requests for clarification or provided incomplete information, and the translation issues encountered could pose a challenge to successful collaboration. In brief, many of the challenges encountered in international cooperation were entirely related to an inability to communicate quickly, accurately and directly with the relevant authorities. Another major challenge that practitioners in her country faced was that of developing specific evidence for offences linked to assets located in her country. Although the degree of secrecy was high in cases involving corruption

offences, it was necessary to establish and demonstrate evidence of the links between offences and related assets.

13. Several speakers proposed solutions with a view to improving international cooperation and encouraged the establishment of solid informal bilateral arrangements as a tool for exchanging substantive information, such as police-to-police and other informal cooperation channels, in particular networks of practitioners, with regard to, inter alia, requests for the confiscation of assets and the enforcement of foreign court decisions. The completeness of requests was also mentioned as being crucial to ensuring the effectiveness of international cooperation. Several speakers called upon States to make use of the subsidiary bodies of the Conference of the States Parties to the Convention, such as the expert meeting to enhance international cooperation, to promote dialogue and enhance cooperation, including through substantive discussions and in-depth thematic research.

14. One speaker referred to the political declaration adopted by the General Assembly at its special session against corruption, held in June 2021, and underscored the usefulness of the GlobE Network for building cooperation among competent law enforcement authorities. Several speakers expressed the intention of their countries to join the Network.

15. Another speaker highlighted the challenges in obtaining mutual legal assistance relating to the enforcement of foreign court orders and the use of the Convention in conjunction with other regional instruments, such as the African Union Convention on Preventing and Combating Corruption and the Southern African Development Community Protocol on Mutual Legal Assistance in Criminal Matters. In addition, he referred to the usefulness of updating and harmonizing legislation to facilitate the preparation of effective international cooperation requests and the return of illicit assets.

16. One speaker emphasized the benefits of mutual legal assistance, in particular with respect to civil and administrative proceedings related to corruption offences, including for the purposes of asset recovery, and encouraged other States parties to study the matter further. He also highlighted the benefits of non-conviction-based confiscation in the context of international cooperation, as provided for in article 54, paragraph 1 (c), of the Convention.

17. One speaker referred to the importance of signing agreements and developing domestic legal provisions on international cooperation in asset recovery and reported the establishment by his country of a body responsible for asset recovery that also handled international cooperation requests within the same framework.

18. Another speaker referred to the need to criminalize predicate offences in order to ensure active participation in efforts relating to international cooperation against corruption.
