United Nations CTOC/COP/WG.3/2018/2

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

Distr.: General
4 April 2018

Original: English

Working Group on International Cooperation
Vienna, 28–31 May 2018
Item 3 of the provisional agenda*
Discussion of challenges faced in the course of extradition proceedings

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Background paper prepared by the Secretariat

I. Introduction

1. The present background paper was prepared by the Secretariat in order to facilitate discussions under item 3 of the provisional agenda of the ninth meeting of the Working Group on International Cooperation. It presents an overview of practical considerations relating to the practice of consultations and the sharing of information between cooperating States in the context of extradition, and addresses the need to ensure that the authorities involved perform their functions efficiently and effectively, relying on strengthened capacities, including through technical assistance, as appropriate.

2. The present paper also takes into account some of the topics recommended for future meetings of the Working Group, as listed in the report on its eighth meeting. Those topics include the exchange of experiences and views with regard to the practice of carrying out consultations before an extradition request is refused, especially in cases where such a decision is made by a court; and how to manage central authorities and competent national authorities to enable their effective engagement in international cooperation (see CTOC/COP/WG.2/2017/4–CTOC/COP/WG.3/2017/4, para. 38).

3. Since beginning its work, the Working Group on International Cooperation has emphasized the significance of consultations between the requested and requesting States in extradition proceedings.[1] At its second meeting, in 2008, the Working Group stressed the importance of article 16, paragraph 16, of the United Nations Convention against Transnational Organized Crime, which contains the obligation to consult between the requesting and requested States before refusing to extradite. Direct

* CTOC/COP/WG.2/2018/1–CTOC/COP/WG.3/2018/1.

[1] For 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 of the Parties to the United Nations Convention against Transnational Organized Crime, see CTOC/COP/WG.3/2016/2.

consultations were considered extremely useful to better understand the circumstances of the case (see CTOC/COP/2008/18, para. 19).

4. At its third meeting, in 2010, the Working Group recommended, inter alia, that States should make every effort to establish direct contact between central authorities in different States and consult with each other throughout the preparation and execution of requests for international cooperation (see CTOC/COP/WG.3/2010/1, para. 3 (k)).

5. At its sixth meeting, held in Vienna on 27 and 28 October 2015, the Working Group recommended that Member States should consider encouraging practitioners, in appropriate cases, to consult informally prior to making a formal request for extradition or mutual legal assistance; in doing so, States parties should promote initiatives to make available clear guidance on their procedures and requirements for making such requests (see CTOC/COP/WG.3/2015/4, para. 2 (e)).

6. At the eighth meeting of the Working Group, in 2017, held back to back with the tenth meeting of the Working Group of Government Experts on Technical Assistance, the role of informal bilateral consultations in reducing the time needed to process and execute official requests for mutual legal assistance or extraditions, as well as improving the rate of success of those requests, was highlighted. Several speakers also emphasized the role of such consultations in gaining a better understanding of the legal requirements of the cooperating States and, consequently, in expediting the process for the execution of requests for mutual legal assistance, extradition and the transfer of criminal proceedings or other forms of international cooperation in criminal matters. In addition, many speakers expressed support for the back-and-forth exchange of draft copies of requests for mutual legal assistance as a way to make the process more flexible and expeditious (see CTOC/COP/WG.2/2017/4–CTOC/COP/WG.3/2017/4, para. 16).

7. Furthermore, the Working Group on International Cooperation has consistently addressed the issue of consultations in extradition proceedings in conjunction with the role, functions and strengthening of central authorities in the context of international cooperation in criminal matters. On the basis of the deliberations of the Working Group, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime adopted resolution 8/1, entitled “Enhancing the effectiveness of central authorities in international cooperation in criminal matters to counter transnational organized crime”. In that resolution, the Conference focused for the first time on a detailed overview of operational and practical aspects pertaining to the work of central authorities and called for concerted action to improve and facilitate that work as a key prerequisite of effective international cooperation.

II. Consultations and sharing of information between the requested and the requesting State in extradition proceedings

A. Consultations throughout the extradition process

8. The typical extradition process in a requested State is, in general, a two-tier process involving decision-making steps by both judicial and executive authorities, as prescribed in relevant legislation.[2] In that context, consultations with counterparts in the requesting State may occur at different stages of the extradition proceedings in order to facilitate the decision-making process and may also include effective advocacy and ways to address questions from the courts in the requested State.

[2] The present analysis does not cover the ad hoc process established by Council of the European Union framework decision 2002/584/JHA on the European arrest warrant and the surrender procedures between States members of the European Union.

9. In this context, the term “effective advocacy” is not considered a legal term of art, but rather a descriptive concept, referring to cases in which the requested State communicates to the requesting State its legal requirements, as well as any potential problems with the extradition request, and offers the opportunity for the provision of additional information or evidence to substantiate the case or strengthen the assurances needed after a potential surrender of the fugitive, as appropriate. Such communications may involve the exchange of information on legal requirements or may take place prior to the decision of the competent judicial authority in the requested State, or at the executive stage of the extradition process, during which the executive authority makes the final decision on the surrender of the fugitive. In cases of multiple requests, effective advocacy means informing the requesting State of the extradition requests of any other State for the same individual so that a discussion can take place concerning which case might be prioritized.

10. The analysis below examines substantive and practical aspects of extradition for which consultations between the requested and requesting State could play a facilitating role at different stages of the extradition proceedings, from the stage preceding the submission of the extradition request to the final surrender of the person sought to the requesting State.

B. Consultations before the submission of the extradition request

1. Provisional arrest

11. The significance of consultations and information-sharing may first emerge in urgent cases in which requests are made for the provisional arrest of the person sought pending the initiation of formal extradition procedures. In line with article 16, paragraph 9, of the Organized Crime Convention, a requested State party, subject to the provisions of its domestic law and its extradition treaties and upon being satisfied that the circumstances so warrant and are urgent, may take, at the request of the requesting State party, a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.[3] The provision is useful for States parties that may need a treaty basis to be able to order the provisional arrest of a person with a view to eventual extradition, even prior to the presentation of a formal extradition request.[4] The provision covers situations in which it is urgent to arrest the person sought, but there is not enough time to compile all the documents required for a formal extradition request. One such example is when the requesting State has reason to believe that the person is about to flee the requested State. The application may be made by any means prescribed in the domestic laws or relevant treaties, including means capable of producing a written record.

12. Provisional arrest requests are, by their very nature, urgent, and avoiding delays at that stage can be crucial to the success of an extradition case.[5] It is therefore important to process provisional arrest requests in the most speedy and efficient manner possible; States should establish procedures for communicating and carrying out such requests expeditiously. States with a central authority for extradition should devise a system to ensure that it is immediately aware of any such request transmitted. Establishing efficient communications is essential, both domestically, to enable a requested State to make and communicate a decision on the application as quickly as

[3] See also art. 6, para. 8, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988; art. 44, para. 10, of the United Nations Convention against Corruption; and art. 9 of the Model Treaty on Extradition. In terms of regional instruments, see, as an example, art. 16 of the European Convention on Extradition of 1957.

[4] See also *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (United Nations publication, Sales No. E.98.XI.5), art. 6, para. 8, commentary para. 6.32.

[5] See United Nations Office on Drugs and Crime (UNODC), *Revised Manuals on the Model Treaties on Extradition and Mutual Assistance in Criminal Matters*, para. 140. Available at www.unodc.org.

possible, and internationally, to reduce the delay in the transmission to the requested State of sufficient evidence to secure arrest.

13. Once the provisional arrest has been made, the clock starts ticking and the requesting State needs to provide all the information needed for a formal extradition request, usually within 40 to 60 days, although periods up to 90 days are not uncommon. Failure to submit the extradition request within the prescribed period of time entails the release of the provisionally arrested person.

14. Against this background, early and continuous contacts and consultations between the central authorities of the requested and requesting States are important, in order to ensure the best possible coordination to deal with tight deadlines and procedural restraints. With a bit of planning and foresight, a number of issues can be dealt with beforehand, including possible alternative measures (e.g., bail, surrendering of passports or regular reporting), the preparation of supporting documentation, filing deadlines and a description of the entire process in the requested State and what is expected of the requesting State.[6]

2. Information exchange on legal requirements

15. Consultations at an early stage may also be a good opportunity to exchange information on legal requirements, including the content of the request for provisional arrest or the submission of a future extradition request. Such an exchange is of particular importance if the States involved have different legal traditions or systems.

16. Prosecuting authorities and bodies responsible for making extradition requests should be aware of the possibility of refusal of a request on any ground in a particular case. The authorities of a State that is seeking extradition may wish to contact the diplomatic authority or central authority of the requested State in advance to discuss the likelihood that a potential ground for refusal may be invoked, and determine if it is possible to overcome it. Such consultations can assist the requesting State in preparing a request that meets all the requirements of the requested State, and can also enable the requesting State to decide whether to make an extradition request or not. It should be noted, however, that in certain cases it may be important to make an extradition request even when there is a significant chance of denial, as the making of a request may be a prerequisite to prosecution in the requested State in lieu of extradition.

C. Consultations while drafting and submitting the extradition request

1. Accuracy of request: clarifications on legal requirements and conditions

17. During the preparation of the extradition request, ongoing communication between central authorities and the sharing of draft requests can help to ensure that the request is accurately transmitted to the requested State. In addition, open channels of communication between the cooperating States during the preparation of the extradition request pave the way for effective information-sharing on the legal requirements and conditions that need to be fulfilled. This is particularly important in terms of fulfilling the dual criminality requirement (foreseen in art. 16, para. 1, of the Organized Crime Convention) and ensuring that the conditions of the domestic legislation of the requested State are met (referred to in art. 16, para. 7, of the Convention).

18. During the preparation of the extradition request, consultations may also be important as a means of allowing both the requested and requesting States to avail themselves of the facilities and advantages offered by various provisions (e.g., art. 2,

[6] See UNODC, *Manual on Mutual Legal Assistance and Extradition* (Vienna, 2012), p. 57.

para. 4, of the Model Treaty on Extradition, on accessory extradition,[7] and art. 16, para. 2, of the Organized Crime Convention).[8]

19. It is important for the requesting State to consult with the diplomatic or central authority of the requested State, because that authority will be able to explain the process and keep the requesting State engaged in it. That engagement is of particular importance for the clarity and precision of the legal concepts and terms contained in the extradition request and its supporting documentation, and also for the quality of the translations provided.

2. Concurrent requests: extradition requests and European arrest warrants

20. In cases of concurrent requests for the extradition of the same person,[9] the requested State determines, at its discretion, to which of the requesting States the person is to be extradited, taking into account certain criteria, including the following: (a) whether the requests have been made pursuant to a treaty; (b) the interests of the requesting States; (c) whether the requests relate to different offences; (d) the relative seriousness of the offences; (e) the time and place of commission of each offence; (f) the dates of the requests; (g) the nationality of the person and of the victims; and (h) the chronological order in which the requests were received. Each criterion serves as a reminder of interests that may be present in a particular case and needs to be considered by the requested State, often in consultation with the requesting State. Reliance on such consultations may also be useful for the purpose of explaining the reasons for the final decision of the requested State.

21. An interesting example from case law, in which a court itself referred to consultations as the recommended course of action, was the judgment of the Grand Chamber of the Court of Justice of the European Union in the *Aleksei Petruhhin case*. The judgment has a significant impact on cooperation between States members of the European Union and third countries on extradition matters and, in particular, on the execution of a request for extradition presented by a third country to a State member of the European Union against a national of another State member of the European Union.[10]

D. Consultations before the decision of the competent judicial authority on the extradition request

1. Evidentiary requirements

22. There are differences and variations in the documents required to be presented to the requested State and in the relevant evidentiary requirements needed for granting an extradition request. Those differences and variations may arise from the legal tradition and system of the requested State and may also be affected by the specific requirements of an applicable treaty, in particular if it is bilateral. The main evidentiary variations to be found in domestic laws or extradition treaties include the following: (a) the “no evidence test”, which requires no actual evidence of the alleged offence but, instead, a statement of the offence, information on the applicable penalty, the warrant of arrest for the person and a statement setting out the alleged criminal conduct; (b) the “probable cause” test, which requires sufficient evidence to create reasonable grounds to suspect that the person sought has committed the alleged

[7] If the request for extradition includes several separate offences, each of which is punishable under the laws of both parties, but some of which are not extraditable offences, the requested party may grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

[8] If the request for extradition includes several separate serious crimes, some of which are not covered by art. 16, the requested State party may apply this article also in respect of the latter offences.

[9] See art. 16 of the Model Treaty on Extradition.

[10] For an overview of the facts of the case, see the text of the judgment of the Court at http://curia.europa.eu.

offence; and (c) the "prima facie evidence of guilt" test, which requires evidence to be presented to the authorities of the requested State that would allow them to form the opinion that the person sought would have been required to stand trial, had the alleged conduct of the criminal offence occurred in the requested State.

23. In practice, prima facie evidence of guilt has proved to be a considerable impediment to extradition, not only between systems of different legal traditions but also between States with the same general traditions but differing rules of evidence. Moreover, several common-law States have waived the requirement in prescribed circumstances. As stated in the Organized Crime Convention, States parties should endeavour to expedite extradition proceedings and to simplify evidentiary requirements relating thereto (art. 16, para. 8).

24. In doing so, prior research into the requirements of the requested State, along with ongoing communication with the central authority of that State, are key to moving an extradition request forward. Both the requested and the requesting State may need to engage in consultations to take stock of the evidentiary standards necessary to satisfy the test for extradition and agree on demonstrating the highest possible degree of flexibility to facilitate effective international cooperation. If the relevant extradition law or the applicable extradition treaty between the two States provides for such flexibility, consultations will assist them in agreeing on the most effective implementation of the relevant provisions on required evidence in a given case.

2. Judicial scrutiny of grounds for denying extradition: human rights considerations

25. Once the court has determined that the requirements for extradition are satisfied — e.g., extraditable offences, dual criminality and sufficient evidence, where applicable — it may further consider whether there are grounds for denying extradition. In the past, the court was prevented from doing so by virtue of the doctrine of non-inquiry, as applied in jurisprudence in the United States of America.[11] Following this doctrine, the court of the requested State does not appear to be allowed to judge or "supervise the integrity of the judicial system of another sovereign".[12] While that rule was rarely breached in the past, it has begun to be challenged more frequently in view of international human rights concerns that are often present in extradition proceedings.

26. The court may deny extradition on different grounds, including the following: the person sought was tried in absentia by the requesting State; the requesting State might impose the death penalty for the offence for which extradition is requested; the requesting State might not treat the person sought in accordance with fair trial standards; the requesting State might subject that person to torture, cruel, inhuman or degrading treatment or punishment; or the State may prosecute or punish the person on the basis of sex, race, religion, nationality, ethnic origin or political opinions (see art. 16, para. 14, of the Organized Crime Convention).

27. The extradition court will need to obtain information to substantiate the risk of human rights violations if the extradition request in question is granted. In addition, the requesting State should be in a position to respond to allegations of possible mistreatment of the person sought after surrender. In that regard, effective advocacy helps to sustain communications between the cooperating States. It also ensures that the file will be submitted to the court for the extradition hearing and that the legal representation of the requesting State will argue for extradition at that hearing. Moreover, effective advocacy may also refer to information provided to the requesting State with regard to time frames and deadlines for appeals or reviews in different instances of judicial scrutiny within the extradition process, or to information

[11] See M. Cherif Bassiouni, *International Extradition: United States Law and Practice*, 4th ed., (New York, Oceana Publications, 2002), p. 569.

[12] United States Court of Appeals, Seventh Circuit, *Flynn v. Schultz*, 748 F2d 1186, No. 84-2427 (1984).

regarding asylum proceedings of an administrative nature that run in parallel with the extradition process.

E. Consultations at the "executive stage" of the extradition process

1. Consultations before refusing extradition: human rights considerations and assurances

28. In a typical extradition regime involving both the judicial and executive branches, the executive authority is involved at the beginning of the process to check the compliance of the extradition request with the necessary formalities. In many legal systems, however, the executive authority is also involved at the end of the extradition process. The exercise of executive discretion at the end of the extradition process[13] is closely linked to a variety of human rights considerations, but there are also political considerations that need to be taken into account. However, executive discretion is not absolute. If the judicial authority makes a final decision not to grant an extradition request, the executive authority is bound to reject the extradition request. Consequently, judicial control prior to the executive decision is consultative insofar as it is positive regarding the admissibility of extradition, and binding insofar as it is negative.

29. Against this background and while exercising discretion as to whether or not to permit the surrender of the person sought to the requesting State, the competent executive authority of the requested State may examine the applicability of grounds for refusal foreseen in the extradition treaty in question or in extradition legislation. The Organized Crime Convention itself provides that, before refusing extradition, the requested State party shall, where appropriate, consult with the requesting State party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation (art. 16, para. 16). An interpretative note to that provision indicates that the words "where appropriate" are to be understood and interpreted in the spirit of full cooperation and should not affect, to the extent possible, the obligatory nature of the paragraph, and that the requested State party must, when applying this paragraph, give full consideration to the need to bring offenders to justice through extradition cooperation.[14]

30. Consultations at the "executive stage" of extradition proceedings may also offer the opportunity to consider whether the provision of particular assurances by the requesting State could, in certain cases, allow extradition to be granted, while providing an acceptable degree of protection of the person sought. Such assurances could include the following:

(a) Assurances that the requesting State will not impose the death penalty or will not carry it out if it is imposed, if the offence for which extradition is being sought carries the death penalty;

(b) Assurances that the person sought will not be subjected to cruel, inhuman or degrading treatment or punishment or prosecuted or punished after surrender on the basis of sex, race, religion, nationality, ethnic origin or political opinions;

(c) Assurances that, if the person sought has been convicted in the requesting State in absentia, upon surrender, the person sought will have the opportunity to have the case retried in his or her presence;

(d) Assurances that, if the person sought would be liable to be tried or sentenced in the requesting State by an extraordinary court or tribunal, the judgment will be passed by an independent and impartial court that is generally empowered under the rules of judicial administration to pronounce on criminal matters.

[13] See sect. 26 of the Model Law on Extradition.

[14] See the *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5), p. 163.

31. Some States may extradite individuals if they receive assurances from the requesting State that it will not use torture against those individuals. However, in a report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the General Assembly (A/60/316), it was concluded that States could not resort to diplomatic assurances as a safeguard against torture and ill-treatment where there were substantial grounds for believing that a person would be in danger of being subjected to torture or ill-treatment upon return. It was the view of the Special Rapporteur that diplomatic assurances were unreliable and ineffective in the protection against torture and ill-treatment as they were usually sought from States where the practice of torture was systematic. Moreover, post-return monitoring mechanisms had proved to be no guarantee against torture. Diplomatic assurances were not legally binding, therefore they carried no legal effect and no accountability if breached; and the person whom the assurances were aimed at protecting had no recourse if the assurances were violated.[15]

2. Rule of specialty

32. The widely recognized international principle embodying the rule of specialty limits the power that the requesting State has over the person surrendered to it through the extradition process. According to this rule, an extradited person cannot be proceeded against, sentenced, detained, re-extradited to another State or subjected to any other restriction of personal liberty for any offence committed before the surrender other than the one for which extradition was requested and granted.[16]

33. The practice of consultations is linked to the rule of specialty in a twofold manner. First, before the surrender of the person sought to the requesting State, the competent executive authority of the requested State seeks assurances from its counterpart in the requesting State that the rule will be respected after surrender. In fact, the legislation of the requested State should stipulate that one of the conditions for the granting of an extradition request is that the requesting State must give a specialty undertaking or assurance.

34. Second, after the surrender, extradition may be extended to any other offence if, inter alia, the requested State consents. The notion of consent of the requested State has to be determined through consultations. Some States may wish to assume the obligation that their consent shall automatically be given if the other offence is extraditable according to the applicable treaty. Alternatively, some States may wish to include other grounds in determining whether to grant consent if the request is for prosecution for or punishment of entirely separate criminal acts that should have been included in the original request for extradition.

35. If there is no provision in the extradition legislation of the requested State or the applicable extradition treaty to specify which authority of the requested State will give consent to the requesting State to bring new criminal charges against the extradited person, consultations might be needed to confirm institutional competence on the matter. In many States, it is the executive authority that gives the consent, since the judicial branch no longer has jurisdiction over the matter after the person has been surrendered. In other States, however, the judicial authority needs to be involved, to ensure that the extradited person is not at risk of being subjected to additional coercive measures by the requesting State.

36. In relation to the documentary requirements for a consent request, the requesting State should produce a complementary request that meets the formal and material requirements of an ordinary request, as well as a legal record of any statement made by the extradited person in respect to the offence concerned. The channels for transmitting a consent request to the requested State are usually the same as for the

[15] See also UNODC, *Manual on Mutual Legal Assistance and Extradition* (Vienna, 2012), p. 51.

[16] See Model Treaty on Extradition, art. 14, and Model Law on Extradition, sect. 34.

extradition request itself. Generally, the request for consent is accompanied by documentation in support of extradition for the additional offences.

37. In the discussion on the granting of consent to waive the rule of specialty, there are factors for consideration on the circumstances in which the appropriate authority would agree to consent. Such factors may include whether extradition would have been granted in respect of the offences for which consent is sought, whether the requesting State knew (or could reasonably have been expected to have known) about those offences at the time the extradition request was made, and whether the interests of justice require that consent be given. In general, States should do as much as possible to ensure that they do not have to make requests for waiving the rule of specialty.

3. Alternatives to denial of extradition

38. The denial of extradition on different grounds may trigger further consultations with the competent authorities of the requesting State seeking alternatives in lieu of extradition, with a view to avoiding criminal impunity.

39. The Organized Crime Convention provides for three alternatives when an extradition request is denied on the grounds of nationality of the person sought. In article 16, paragraph 10, the Convention provides for the obligation of a State party, if it does not extradite one of its nationals, to apply the *aut dedere aut judicare* principle and submit, at the request of the requesting State, the case without undue delay to its competent authorities for the purpose of prosecution.

40. In practice, the above alternative can be facilitated and supported through the establishment of criminal jurisdiction of the requested State for that purpose (see art. 15, para. 3, of the Convention), as well as the use of tools and mechanisms of international cooperation such as the transfer of criminal proceedings and mutual legal assistance for the transfer to, and adjudication by, the requested State of the relevant criminal files (see CTOC/COP/WG.3/2017/2, para. 23).

41. The second alternative to denial of extradition of nationals is foreseen in article 16, paragraph 11, of the Convention. This provision allows for the conditional surrender of nationals to the requesting State on the condition that it is only for trial and that the national will be promptly returned after trial to the requested State to serve any sentence imposed as a result of such trial, within the limits of the law of the requested State.

42. The text of the above-mentioned provision on conditional surrender is flexible, allowing the two cooperating States to determine the precise conditions which could, for example, include time limits on the commencement of proceedings in the requesting State, the availability of lawyers from the requested State and the circumstances and conditions of provisional custody.[17]

43. The third alternative relates to the denial of extradition of a national sought for the enforcement of a sentence in the requesting State. Article 16, paragraph 12, of the Convention enables the requested State to consider, upon application of the requesting State, the enforcement of the foreign sentence, or the remainder thereof, in its territory. It will be for the law of the requested State to determine, for example, the possibility of early release or parole or the effect of any general amnesty. The enforcement of the foreign sentence will be without prejudice to the principle of double jeopardy.[18]

44. Consultations between the requesting and requested States are beneficial in that context as a means of allowing for practical arrangements and ensuring that the enforcement of the sentence in the requested State will improve the prospects for the social rehabilitation of the person sentenced. Regional instruments of ad hoc scope of

[17] See David McClean, *Transnational Organized Crime: A Commentary on the UN Convention and its Protocols*, Oxford Commentaries on International Law Series (New York, Oxford University Press, 2007), p. 185.

[18] See the *Travaux Préparatoires*, p. 163.

application may be of relevance, where applicable and appropriate (e.g., the European Convention on the International Validity of Criminal Judgments and the Inter-American Convention on Serving Criminal Sentences Abroad).

4. Logistical arrangements of surrender, including arrangement of costs

45. By the time the requested State has decided to grant extradition, arrangements should be in place to enable the surrender of the person sought to the requesting State. The cooperating States may wish to engage in consultations or to refer to the procedures of surrender. Many treaties, for example, stipulate that the person sought should be delivered to officials of the requesting State at a place of departure convenient to those officials. Some States require an agreed fixed time limit for release of the person concerned. The time limit can be mutually agreed between the two parties on a case-by-case basis.

46. Article 17 of the Model Treaty on Extradition assigns responsibility for the different costs involved in the extradition process. The requested State will bear the costs incurred in its territory, while the requesting State will be responsible for the costs of transporting the extradited person from the requested State to the requesting State following surrender.

47. Some countries may wish to consider reimbursement of costs incurred as a result of withdrawal of a request for extradition or provisional arrest. There may also be cases for consultation between the requesting and requested States for the payment by the requesting State of extraordinary costs, in particular in complex cases where there is a significant disparity in the resources of the two States.

48. Another issue is whether the costs of any proceedings in the requested State include the resources for providing legal representation, either by the authorities of the requested State or private counsel, in such proceedings. Many modern treaties expressly provide that the ministry of justice or equivalent authority of the requested State shall advise, assist and render all necessary representation for the requesting State in extradition proceedings. In any case, consultations between the requested and requesting States may prove to be productive and useful for clarifying relevant issues in detail.

49. Moving the person sought from the requested State to the requesting State after the granting of extradition requires coordinated action between the competent authorities and may often involve transit arrangements.

50. Once the decision has been made, the surrender order sets in motion events that can occur quite quickly, and a requesting State must be prepared to act promptly. Careful planning with respect to the timing, routing and responsibility for the transfer have to be considered.

51. Moreover, consultations may be needed to clarify which State will be responsible for the transfer of the person and what route will be used. The route should be planned carefully, keeping in mind the nationality of the person. Direct routing is the best option. If it cannot be achieved, the routing should, at the very least, avoid a stop in a third country, as it could provide an opportunity for the prisoner to exercise citizenship rights or otherwise seek to circumvent the extradition process.

III. Central authorities

A. Added value, practical functions and facilitation of consultations

52. The international community has consistently reaffirmed the importance of central authorities in facilitating international cooperation in criminal matters. In that regard, Member States have consistently been urged to establish or strengthen, as appropriate, central authorities that are fully empowered and equipped to deal with requests for international cooperation in criminal matters. The ability to promptly

request and respond to requests for international cooperation is of particular importance, given the serious nature of the offences and their transnational nature. Therefore, the designation of a central authority that can be clearly identified by other States parties, and with which they may be in contact for the purpose of requesting cooperation, is central to the implementation of the pertinent provisions of the Organized Crime Convention.

53. Communication and consultations between the requested and requesting States, as described above, can best be supported through central authorities entrusted with the task of receiving and transmitting extradition requests. Direct communication between those authorities has the potential to enhance the effectiveness or relevant arrangements and avoid confusion and delays in cooperation.

54. A good practice in this regard is to proactively make informal contacts with regular or potential partners, in particular when drafting extradition requests as a means of checking inconsistencies and reviewing the fulfilment of applicable requirements. Moreover, follow-up communication after the submission of a request is important for building mutual trust and avoiding frustration resulting from a lack of action to execute the request. The Conference of the Parties to the Convention, in its resolution 8/1, called upon States parties to staff, equip and empower central authorities so that those authorities played an effective coordinating role among various government agencies within a State party and also with other States parties in order to ensure effective implementation of the Convention regarding international cooperation in criminal matters. In the same resolution, the Conference emphasized the importance of contact and consultations between central authorities from both requesting and requested States parties, where appropriate, in order to support effective international cooperation, both before the submission of a request for international cooperation, to ensure that the request is legally and factually sufficient under the domestic law of the requested State party, and after the submission of a request, to clarify specific matters and to allow for consultations before refusing or partially refusing a request for assistance, consistent with article 16, paragraph 16, and article 18, paragraph 26, of the Convention.

55. Enhanced communication that includes in-person consultations should be pursued, in particular between countries with heavy caseloads and/or with countries where cooperation presents specific challenges, or between civil- and common-law countries. Where in-person meetings are not feasible, it should be possible to track ongoing cases with other jurisdictions through the use of videoconferences at regular intervals. In its resolution 8/1, the Conference strongly encouraged States parties to facilitate engagement between and among central authorities in person, including through regional networks or by virtual means, such as videoconferences, and highlighted the particular importance of engagement between central authorities in order to review the execution of requests, discuss impediments to mutual cooperation and identify solutions to those challenges.

56. In addition to their core functions of sending and receiving requests, many central authorities also facilitate the process of international cooperation through the following: the provision of information on national laws and procedures to other States prior to the formal submission of a request; the exercise of quality control over incoming and outgoing requests; the practice of double-checking procedural requirements, as well as those related to the certification and authentication of supporting documents; and the provision of advisory services to competent authorities, both domestically and internationally. In addition, the central authority, as a possible single focal point for incoming and outgoing requests, may act as a collector and provider of statistical information relating to requests.

B. Technical assistance at the regional and global levels to support central authorities

57. The extent to which central authorities are able to perform an effective coordination role is often dependent upon the availability of resources, in terms of infrastructure, staffing and training opportunities. Relevant United Nations bodies have continued to mandate the United Nations Office on Drugs and Crime (UNODC) to, inter alia, provide technical assistance to Member States in order to enhance the capacity of the experts and staff of central authorities to deal expeditiously with international cooperation requests, develop tools to facilitate international cooperation in criminal matters and support central authorities in strengthening communication channels and information exchange.

58. In its resolution 8/1, the Conference urged States parties, including in collaboration with UNODC, to promote training and technical assistance to facilitate international cooperation under the Convention and, in that regard, encouraged States parties to prioritize efforts to strengthen knowledge and capacity within their central authorities and other relevant institutions.

59. The practice of posting liaison officers in one country to facilitate cooperation with the central authorities of other countries has repeatedly been indicated as a good practice for achieving better operational results. The effectiveness of posting liaison officers or liaison magistrates could be enhanced by providing specialized training on the Convention, other applicable international instruments and the legal system and national laws of the host country. A sine qua non for success in the practice of posting liaison officers or liaison magistrates in foreign jurisdictions or intergovernmental organizations is the existence of clear and well-defined mandates regarding their role and tasks.

60. Regional coordination mechanisms and networks can be utilized to enhance interaction and engagement between and among central authorities and to provide a better picture of actual needs and priorities.[19] Informal meetings of regional judicial cooperation networks need to be held on a regular basis in order to achieve better collaboration and facilitate the exchange of good practices, lessons learned and information.

IV. Conclusions and recommendations

61. The Working Group on International Cooperation may wish to recommend that the Conference of the Parties encourage States parties to consistently exchange best practices and lessons learned regarding consultations and sharing of information in different stages of extradition proceedings through international, regional and subregional forums.

62. The Working Group may also wish to recommend that the Conference of the Parties continue to foster focused discussion on the training and capacity-building needs of central authorities with regard to the performance of their tasks to facilitate the process of international cooperation in criminal matters, in particular with regard to extradition, and call upon States parties to provide financial support to technical assistance efforts, including those undertaken by UNODC, to strengthen knowledge and capacity within central authorities.

[19] The UNODC Global Programme for Strengthening the Capacities of Member States to Prevent and Combat Organized and Serious Crime continued to support, among others, the Network of West African Central Authorities and Prosecutors against Organized Crime; the Network of Central Authorities and Prosecutors from Source, Transit and Destination Countries in Response to Transnational Organized Crime in Central Asia and the Southern Caucasus; and the Great Lakes Judicial Cooperation Network.