



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

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## Draft report

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## Addendum

### III. Review of the implementation of the United Nations Convention against Transnational Organized Crime

#### Report of the informal working group on mutual legal assistance

1. Following the decision of the Conference of the Parties, in connection with its consideration of agenda item 2, to constitute working groups, as required, with a view to promoting discussion and exchange of views on specific issues and preparing draft decisions on such issues for the consideration of the Conference, a working group on mutual legal assistance was established at the request of the President of the Conference at its 5th meeting, on 12 October. Chaired by the Vice-President (Croatia), and, in her absence, by the Vice-President (Brazil), the working group dealt with practical issues pertaining to mutual legal assistance, but also extended its working agenda to cover issues related to extradition and international cooperation for purposes of confiscation.
2. The group was of the view that the effective implementation of articles 16, 18 and 13 of the Organized Crime Convention, on extradition, mutual legal assistance and international cooperation for purposes of confiscation, respectively, was fundamental for the promotion of international cooperation among States parties to combat the offences covered by the Convention and its supplementary Protocols.
3. The group noted that, in accordance with article 18, paragraph 1, of the Convention, the aim of the instrument was to facilitate the provision among States parties of the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences falling within its scope of application. In view of that, the group was of the opinion that States parties should give serious consideration to rendering assistance, to the extent possible



under their domestic law, even in the absence of dual criminality in accordance with article 18, paragraph 9, of the Convention.

4. The group recommended that discussion at the meeting of the working group to be held during the third session of the Conference could include consideration of the differences between civil and common law systems in relation to the documents furnished and the relevant evidentiary requirements for requests for extradition, as well as ways of overcoming related difficulties.

5. The group also pointed out that States parties should pay particular attention to articles 16, paragraph 16, and 18, paragraph 26, of the Convention and, to that effect, should consult each other before refusing a request for extradition or mutual legal assistance.

6. The group discussed the analytical report on implementation of the Convention (CTOC/COP/2005/2). Some speakers expressed concern about the accuracy of the statement in paragraph 92 of the report that mutual legal assistance treaties that provided for refusal on the ground of bank secrecy would normally be automatically invalidated between parties to the Convention.

7. There was also discussion of paragraph 95 of the report and the group confirmed the statement made therein that States parties might wish to consider reviewing existing grounds for refusal of mutual legal assistance in order to achieve the appropriate balance between the protection of national interests and fundamental principles and ensuring that the widest measure of assistance could be granted.

8. Commenting on paragraph 104 of the report, on grounds for refusal of requests for international cooperation for the purposes of confiscation, the group noted that the paragraph might be read as implying that there should be no ground for refusal of such cooperation and requested the secretariat to clarify in updates of the report the relationship between article 13, on international cooperation for the purposes of confiscation, and article 18, on mutual legal assistance, in particular the point that the provisions of article 18 applied, *mutatis mutandis*, to article 13.

9. There was considerable discussion of the reporting obligation set forth in article 13, paragraph 5, of the Convention, which required States parties to furnish copies of their laws and regulations giving effect to article 13 and of any subsequent changes to such laws and regulations or a description thereof to the secretariat. In particular, discussion focused on how the material gathered could be used to promote effective cooperation. Questions were raised as to whether such material should be submitted in the language of the State party concerned or should be translated, prior to submission, into an official language of the United Nations. The Group was of the view that those were significant issues, which should be given in-depth consideration by the Conference of the Parties at its third session.

10. The group also expressed concern about the relationship between article 14 of the Organized Crime Convention, on disposal of confiscated proceeds of crime, and chapter V of the United Nations Convention against Corruption, focusing in particular on how States parties to both Conventions should deal with their implementation. The group agreed that the issue should be considered further. There was also discussion of the provisions of the Organized Crime Convention on the return and sharing of assets, as well as an exchange of national experience and practice in that area. The secretariat informed the group about the Model Bilateral

Agreement on the Sharing of Confiscated Proceeds of Crime or Property covered by the Convention and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,<sup>1</sup> which had been negotiated in March 2005 by an intergovernmental expert group and adopted by the Economic and Social Council by its resolution 2005/14 of 22 July 2005.

11. The outcome of the related discussions in the informal working group was brought to the attention of the Conference of the Parties in the form of a draft decision (CTOC/COP/2005/L.10).

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<sup>1</sup> United Nations, *Treaty Series*, vol. 1582, No. 27627.