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Review of the implementation of the United Nations Convention against Corruption
International cooperation

Implementation of chapter IV (International cooperation) of the United Nations Convention against Corruption (review of articles 46-50)

Thematic report prepared by the Secretariat

* CAC/COSP/2013/1.

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I. Introduction

1. In its resolution 3/1, the Conference of the States Parties to the United Nations Convention against Corruption adopted the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (contained in the annex to that resolution), as well as the draft guidelines for governmental experts and the secretariat in the conduct of country reviews and the draft blueprint for country review reports. The guidelines, together with the blueprint, were finalized by the Implementation Review Group at its first session, held in Vienna from 28 June to 2 July 2010.

2. In accordance with paragraphs 35 and 44 of the terms of reference of the Review Mechanism, thematic reports have been prepared in order to compile the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the country review reports, organized by theme, for submission to the Implementation Review Group, to serve as the basis for its analytical work. An analysis of related technical assistance needs is included in a separate document (CAC/COSP/2013/5).

3. The present thematic report contains information on the implementation of chapter IV (International cooperation) of the Convention by States parties under review in the first, second and third years of the first cycle of the Review Mechanism. It covers general observations on challenges and good practices in the implementation of articles 46-50 of the Convention. (Examples of implementation are given in boxes 1-15; information on challenges in implementation, as well as good practices, is provided in figures I-V.)

II. Implementation of chapter IV of the Convention

A. Mutual legal assistance

Figure I
Challenges in the implementation of article 46 of the Convention, by paragraph

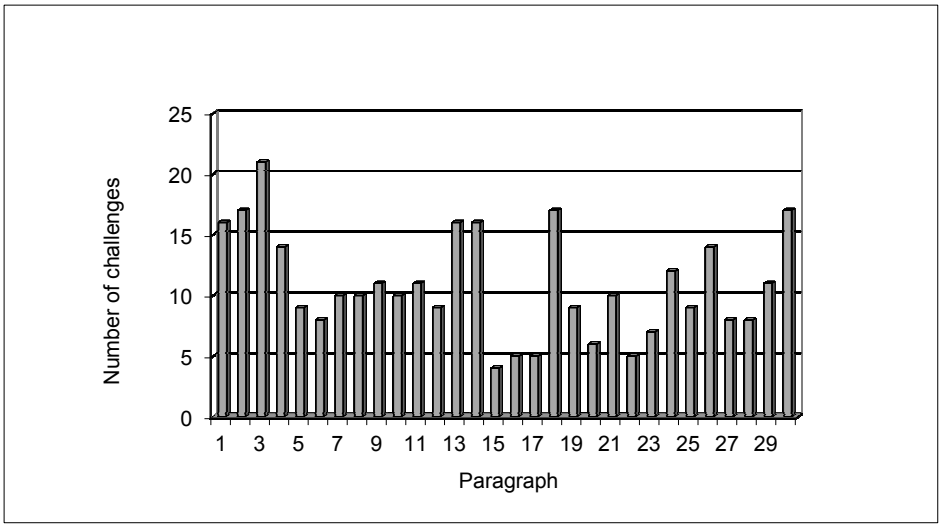
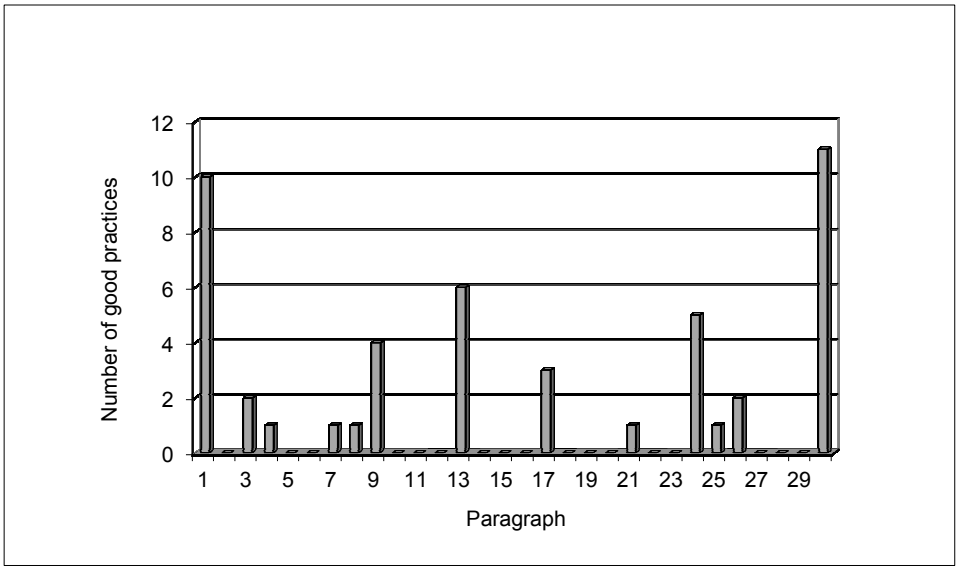


Figure II
Good practices in the implementation of article 46 of the Convention, by paragraph



4. In the review of implementation of chapter IV of the Convention, it was observed that most States parties had adequate laws and measures in place to grant mutual legal assistance. However, some had yet to enact relevant laws and to streamline the relevant procedures or remove the legal and practical obstacles to international cooperation. Twenty States parties had adopted specific legal provisions, either as distinct laws or as part of broader legislation such as the penal code or the criminal procedure code. One State party had mutual legal assistance provisions only in its anti-money-laundering law. Fourteen States parties reported that, in the absence of comprehensive domestic legislation on the matter, mutual legal assistance was provided on the basis of multilateral and bilateral treaties or on a case-by-case basis.

Box 1
Example of the implementation of article 46, paragraph 1, of the Convention

One State party reported that its legislation on mutual legal assistance in criminal matters was complemented by specific regulations facilitating the submission and receipt of mutual legal assistance requests to and from States parties to the Convention and relating to offences established in accordance with the Convention.

Another State published a set of mutual legal assistance guidelines, which provided requesting States and executing authorities with the information they needed to make a request to the central authority. This flow of information allowed the State to receive over 3,000 requests for mutual legal assistance each year, including approximately 500 cases that were categorized as involving corruption.

5. As in the case of extradition, mutual legal assistance frameworks were influenced by the nature of the legal system of each State. In States parties where

the direct application of treaties was permitted, the self-executing provisions of the Convention would apply without the need for specific implementing legislation. In States where implementing legislation was required to enact international treaties, the provisions of the Convention would not be applicable without the adoption of enabling laws and would need to be incorporated into national laws and practices. States parties showed significant differences in their mutual legal assistance provisions, even where there was domestic legislation for mutual legal assistance in corruption-related matters and even when they had similar legal systems. One common-law State referred to difficulties with mutual legal assistance in coercive measures, even with other common-law States. Those difficulties stemmed from a different appreciation of the coercive nature of some measures, for example of search warrants, that led to different requirements regardless of the similarity of legal systems.

6. Although most States parties had concluded bilateral or other international treaties regulating mutual legal assistance, in most countries mutual legal assistance could be afforded in the absence of treaties, based on the principle of reciprocity or on a case-by-case basis. The majority of countries could use the Convention as a legal basis for mutual legal assistance. While some countries provided examples and detailed statistics on mutual legal assistance in corruption cases, it was noted that it was difficult for others to provide statistics or examples on how mutual legal assistance was implemented in practice.

7. A majority of States parties were able to grant assistance in relation to offences for which legal persons might be held liable, but only a small percentage provided examples of actual cases. In the domestic legislation of eight States parties, the principle of criminal liability of legal persons was not established, but mutual legal assistance was possible. Two States parties reported their intention to adopt legislation expressly regulating mutual legal assistance in relation to offences for which a legal person might be held liable. Two countries had in their law reasons to refuse mutual legal assistance in relation to legal persons, and seven countries did not provide clear answers on the topic.

8. The purposes for which legal assistance might be requested according to article 46, paragraph 3, of the Convention were to a large extent covered by domestic legislation in 21 States parties. Nine States indicated that the purposes were specified or supplemented in the applicable bilateral or multilateral mutual legal assistance treaties. Some countries whose legislation or treaties listed specific purposes also included a general (catch-all) clause to ensure full coverage of all purposes; the inclusion of such a clause was recommended to one country. In most States parties, asset recovery (in accordance with chapter V of the Convention) was not explicitly listed. However, the legislation of some States parties contained provisions to facilitate assistance pertaining to the identification, freezing and confiscation of proceeds of crime, with a view to enabling the recovery of assets. In a few countries, domestic law did not list any purpose for which mutual legal assistance could be obtained. As a result, any type of procedural action could be executed upon request, provided that such action would be authorized in a similar domestic case.

Box 2
Example of the implementation of article 46, paragraph 3, of the Convention

In one State party where the Convention had direct application and served as a legal basis for mutual legal assistance, including with regard to asset recovery, national authorities noted that once a mutual legal assistance request was executed, the investigation and prosecution authorities had all of the legal powers that they would have under a national case, including with regard to all measures relating to seizure and forfeiture. For provisional measures, the level of proof would be even lower than in national cases (prima facie case).

9. The spontaneous transmission of information to foreign authorities, envisaged in article 46, paragraphs 4 and 5, of the Convention, has repeatedly been considered in international forums as a good practice that reflected cooperation between States. That practice was generally not specifically regulated. Two States parties, however, expressly regulated the spontaneous exchange of information between judicial authorities, and another had even designated a specific authority empowered to transmit information without prior request. The majority of States parties reported that even if not foreseen, spontaneous transmission of information was possible to the extent that it was not explicitly prohibited. Some of those countries based such information directly on the Convention. Only a few countries indicated that the spontaneous transmission of information was not possible. The information provided suggested that this was a field in which institutions often made use of the platforms of international organizations or networks such as the International Criminal Police Organization (INTERPOL), the Egmont Group of Financial Intelligence Units, the Association of South-East Asian Nations Chiefs of Police (ASEANAPOL) or the Asset Recovery Inter-Agency Network for Southern Africa (ARINSA) (see below under article 48). Some countries provided examples or even noted that such transmission occurred frequently through informal channels of communication available to law enforcement authorities.

Box 3
Example of the implementation of article 46, paragraphs 4 and 5, of the Convention

One State party reported that no legislative basis was needed to pass on, without prior request, information which might be related to confidential and investigative data (including personal data) to foreign authorities. That could be done through the normal gateway provisions provided by the State party's data protection act, which allowed for exemptions to the regulations found elsewhere, and in particular for the purposes of crime prevention and detection.

10. In most States, requests for legal assistance could not be declined on the ground of bank secrecy even if there was no explicit provision highlighted which would prohibit such denial. The vast majority of States parties under review confirmed that bank secrecy legislation did not constitute an obstacle to the provision of mutual legal assistance under the Convention, and several States parties reported that they regularly provided requesting States with information obtained from financial institutions. In some countries, access to bank records had to be duly

authorized by prosecuting or judicial authorities. One State party reported that it did not have any legislation which made banking information secret, but that a person's banking and account information was confidential. For disclosing such information to law enforcement authorities, there were two laws which enabled authorities to provide such information for a criminal investigation in a different State. In another country, a request regarding business records or bank accounts of individuals would be submitted to the prosecution office, which would decide based on a balance between the different rights and interests involved, including the individual rights of the person whose records were sought under the Constitution of the State involved. In one country, the legislation required a confidentiality undertaking from the requesting State, guaranteeing that it would use the required information only in the particular case concerned. That was reported to cause problems because requesting States were not always aware of the requirement, and statistics demonstrated that several times a year the banking information was provided after the authorities of the requesting State had been made aware of the requirement and submitted the confidentiality undertaking. It should also be noted that a number of States parties applied the Convention directly on that issue.

11. In contrast to the approach taken in relation to extradition, the majority of States parties provided that dual criminality was not a requirement for granting mutual legal assistance. In 10 countries, assistance would not be rendered in the absence of dual criminality for coercive measures. In four States parties, the absence of dual criminality was an optional ground for refusing assistance. Two States parties indicated that dual criminality was required by legislation but that either the requirement was flexibly applied or, in the absence of dual criminality, the Convention could be applied directly. In one State party, the dual criminality requirement was not applied if reciprocity was granted in that regard. In three countries, the reviewers were not provided with a clear response on the matter. Two States parties indicated that dual criminality was required, without specifying whether assistance would be granted when non-coercive measures were involved. The scope and the types of assistance to be provided in the absence of dual criminality varied from one State to another, including based on considerations regarding human rights.

Box 4
Examples of the implementation of article 46, paragraph 9, of the Convention

In one State party, requests concerning coercive measures could be executed, in principle, on condition of dual criminality. However, even in the absence of dual criminality, mutual legal assistance involving coercive measures could exceptionally be granted if the request was aimed at (a) the exoneration of a person from criminal responsibility; or (b) the prosecution of offences involving sexual acts with minors.

Another State underlined the importance of flexibility on the application of dual criminality requirements, consistent with domestic law, so as to be in line with the Convention. The principle of dual criminality was assessed by seeking equivalent criminal conduct, despite the fact that the criminal act might be named differently in the requesting State. A test was applied, relating to the conduct alleged, rather than any particular named crime or definition of the crime in the requested State.

12. Twelve States parties directly applied the provisions of articles 46, paragraphs 10 to 12, of the Convention, on the transfer of detainees for purposes of identification or testimony, if the matter was not regulated by specific bilateral or multilateral treaties. Fourteen States parties had regulated the matter in accordance with the requirements of the Convention, in particular with regard to safe conduct and the consent of the detainee for the execution of the transfer. Three States parties reported that they were party to regional instruments on judicial cooperation which contained provisions on the matter.

Box 5
Example of the implementation of article 46, paragraphs 10 to 12, of the Convention

In one State, mutual legal assistance agreements provided for the transfer of persons in custody, in the absence of relevant legislation.

13. Of 44 States, all but three had designated central authorities to receive requests for mutual legal assistance. The notification to the Secretary-General was missing for 12 States and was considered false by one country under review. In approximately half of the States parties under review, the central authority was the ministry of justice; in a significant number of countries, the office of the attorney-general was the central authority, while three States had assigned that role to the ministry of foreign affairs, one to a specific anti-corruption body and one to the ministry of home affairs. Several States had identified a specific department, or even a specific official, within the designated ministry. Some States parties had designated more than one central authority, with the division of labour made according to the type of crime, the type of request or territorial divisions. One State party had in the central authority a detailed system for follow-up to mutual legal assistance requests. It contained guidelines for the responsibilities of organizations and individuals and specific deadlines. Apart from facilitating work on incoming mutual legal assistance requests, the system was also used for periodic evaluations of the mutual legal assistance process.

14. There was also variation with regard to the structure of the central authority, as well as the composition and the hierarchy (e.g. whether it reported to the secretary of state or to another entity). Some countries had also nominated different central authorities under different treaties; they generally stated that this did not in practice present any difficulties.

15. Twelve States parties required the submission of requests for mutual legal assistance through diplomatic channels. Two countries limited the use of diplomatic channels for requests submitted by States with which it had no treaty in force or in cases in which a treaty envisaged such use. In eight countries, requests could be addressed directly to the authority from which assistance was sought, although those countries included one that had not yet designated a central authority, where it was unclear whether that practice would continue once a central authority had been designated.

16. Most States parties reported that, in urgent circumstances, requests addressed through INTERPOL were acceptable, even though in some cases subsequent

submission through official channels was required. Some States could agree to such urgent submissions subject to reciprocity.

17. The language and format of mutual legal assistance requests remained a problem. Information on the languages acceptable for incoming requests had been provided by 29 States parties. In 13 countries, the official language of the State was the sole acceptable language for incoming requests.

Box 6
Examples of the implementation of article 46, paragraph 14, of the Convention (on languages)

Seven States parties had notified the Secretary-General that requests for legal assistance would be accepted if submitted in the official language of the requested country, in English or in specified other official languages of the United Nations.

One State party indicated that it would accept requests translated into any of the official languages of the United Nations.

One State party accepted mutual legal assistance requests in all languages if the requesting country provided assurance that requests in the official language of the requested country would be accepted in reciprocity.

18. Eight States parties indicated that oral requests would be acceptable, and 11 confirmed that requests submitted by electronic mail would also be accepted; in most cases, subsequent formalization in writing was required. Most States parties confirmed that their legislation did not hinder requests for additional information subsequent to the receipt of the original request.

Box 7
Examples of the implementation of article 46, paragraph 14, of the Convention (on means of communication)

According to one State party, when foreign authorities submitted letters rogatory by fax, e-mail or other expedited means of communication, the ministry of justice transferred the request to local authorities for execution before it received the original copy of the request. Besides, when examining the possibility of executing coercive measures, the courts of that State party never required original materials as a precondition for making a decision.

19. The majority of States would endeavour to satisfy conditions or follow procedures stipulated by the requesting States, in particular regarding compliance with evidentiary requirements, insofar as such requirements were not in conflict with domestic legislation or constitutional principles.

20. Hearing of witnesses by videoconference was permissible under the domestic law of 16 States parties. In five countries, that channel for taking testimony was considered admissible since it was not explicitly prohibited, and its application was based directly on the Convention. Only two States reported that this practice was not permitted under national legislation, and one State was party to a relevant treaty but did not yet carry out videoconferences in practice. One State noted that it could

provide assistance by videoconference upon the request of another country, although in its own domestic law the use of testimonial evidence acquired by videoconference was not regulated. Nine States parties had handled requests for mutual legal assistance involving a hearing through videoconference. Two of those regularly sought assistance from, and provided assistance to, foreign States in the form of taking testimony via video link. One State party reported that it had concluded a regional convention regulating all aspects of the use of videoconferencing in international cooperation in judicial matters, and one European Union Member State referred to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000, which provided detailed rules for videoconferencing. In one country, the absence of domestic regulation was explained by a lack of the necessary infrastructure.

Box 8
Example of the implementation of article 46, paragraph 18, of the Convention

Several States parties reported that they made extensive use of videoconferencing to take testimony, which allowed them to avoid lengthy procedures and high costs associated with the transfer of witnesses.

21. The rule of specialty in the supply of information or evidence, established in article 46, paragraph 19, of the Convention, was respected in most national systems. Similarly, a majority of States parties indicated that they ensured confidentiality of the facts and substance of the request if the requesting State so required. If there was a need to use the evidence for any other proceedings which were not outlined in the original request, the normal procedure entailed communication between central authorities in advance of the use of the material for those proceedings.

Box 9
Example of the implementation of article 46, paragraph 19, of the Convention

In one State party, although the domestic law on mutual legal assistance did not contain the specialty principle, it was applied based on the consideration that the principle was a generally accepted norm of international law.

Some States confirmed that they included the principle in their bilateral assistance agreements.

22. The majority of States parties had legislation in place providing for the same grounds for refusal as listed in the Convention. Only in some States did domestic law set forth different grounds for refusal, such as prejudice to an ongoing investigation in the requested State, the excessive burden imposed on domestic resources, the political nature or the insufficient gravity of the offence, and concerns of discrimination and possible prejudice to universally recognized rights and fundamental freedoms of the individual.

23. The vast majority of States parties indicated that a mutual legal assistance request would not be refused on the sole ground that the offence also involved fiscal matters. In one country, a request referring exclusively to a taxation offence

constituted a discretional ground for refusal, with the exception of cases involving an intentionally false statement or an intentional omission. It was therefore considered virtually impossible for a corruption offence that also involved taxation questions to fall under such grounds for refusal, and it was concluded that the country was in compliance with article 46, paragraph 22. The vast majority of countries would also provide the reasons for refusal.

24. Generally, laws did not contain provisions regarding the period in which requests were to be executed and did not specifically provide that information should be given on the progress made concerning the execution of requests. In one country, legislation foresaw a period of two months, and it was stated that new draft legislation was expected to shorten that period to one month. However, central authorities often were found to have appropriate case handling measures for the organization of their work internally, which in some cases included guidelines. A proactive role of the central authority was recognized as having a positive effect on the expeditious response to requests.

25. The average time needed to respond to a request ranged from one to six months. However, several States stressed that the time required would depend on the nature of the request, the type of assistance and the complexity of the case; some States had also established that the amount of time required depended on the bilateral agreements used. One European Union Member State indicated that the time needed was shorter when the request was submitted directly to the executing authority, which was possible within the European Union, than when it was submitted to the central authority. In some cases, the processing of the request could take over a year. One country indicated its endeavours to provide mutual legal assistance within a period of up to three months; however, matters requiring freezing of assets could be done immediately upon receipt of the request through INTERPOL. Some States parties reported that when the requesting State indicated the need to address the matter urgently, the request would be responded to within a few days. One State affirmed that it would respond to all requests generally within two weeks, which was regarded as an exemplary performance. One State party confirmed its ability to execute certain measures, such as the freezing of bank accounts, within the shortest possible period of time, often within an hour. It was generally accepted that requests submitted by States sharing the same legal, political or cultural background as the requested State were responded to more rapidly. The use of case management systems within central authorities was considered by a number of States parties as a successful example of implementation that allowed monitoring of the length of mutual legal assistance proceedings for the purposes of improving standard practice.

Box 10
Examples of the implementation of article 46, paragraph 24, of the Convention

One State party reported that the staff members of its central authority engaged in constant, almost daily, communication with their counterparts in States that had submitted a large number of mutual legal assistance requests. This central authority further sought to have regular annual consultations with its largest partners in the areas of extradition and mutual legal assistance.

Another State party monitored the status of execution of mutual legal assistance requests using a specially designed casework database, which contained features enabling case officers to track each action taken on a matter and thus to identify delays in the execution of a request.

In one State party, despite the fact that its law did not contain specific deadlines for the execution of mutual legal assistance requests, a prosecutor general's decree contained mandatory rules not only for the prosecutors' offices, but also for all other law enforcement agencies, which obliged competent territorial authorities to implement legal assistance measures within 10 days, and the international assistance unit of the prosecutor general's office to send the required materials immediately.

The central authority of another State customarily responded in urgent cases within five working days, and in routine cases within 10 working days. However, the length of time that it took to execute a request depended on the complexity of the evidence required, as well as other factors, such as court time and the availability of witnesses.

26. Most States would not prohibit consultations with a requesting State party before refusing or postponing a request. Some States referred to bilateral treaties expressly regulating the matter, while others conducted such consultations as a matter of practice. Although generally only a limited number of examples of such consultations were provided, one country stated that they were held very often. Only a few countries stated that there was neither any regulation nor any practice in that regard.

27. Although few concrete cases of postponement of the execution of requests owing to interference with ongoing investigations were reported, several States argued that such postponement might be envisaged in accordance with domestic legislation or regional treaties, or by direct application of the Convention. Even when there were no specific legal provisions governing the matter, a number of States indicated that their central authorities complied with those requirements as a matter of practice and procedure. In one country, interference with ongoing investigations was a ground for discretionary refusal; however, as a matter of practice it was reported that the case had been postponed after there were concerns about interference with ongoing investigations.

Box 11
Examples of the implementation of article 46, paragraph 25, of the Convention

Upon receipt of a mutual legal assistance request which did not contain the prescribed elements, the central authority of one State party would, as a standard practice, contact the embassy of the requesting State in order to clarify conditions under which the request could be executed.

28. Safe conduct of witnesses, envisaged in article 46, paragraph 27, of the Convention, was addressed in the vast majority of States, either in multilateral or bilateral treaties or in domestic legislation. Some States noted that the Convention could be applied directly to that effect or that they provided safe conduct as a matter of practice. In one country report, a recommendation was given to amend the relevant legislation because it foresaw eight days as the period after which safe conduct would cease, rather than 15 days as considered in the Convention.

29. With respect to costs associated with mutual legal assistance requests, the general rule was that those would be covered by the requested State. Some States parties had regulations that foresaw case-by-case arrangements regarding costs, and four States parties reported cases in which extraordinary expenses had been covered in part by the requesting State pursuant to an ad hoc arrangement. Further, the legislation of some States parties provided that the requesting State should cover some costs associated with the execution of specific requests, such as costs incurred with respect to expert testimony or for transferring detained witnesses. In three States parties, the applicable law provided that costs would be borne by the requesting State unless stipulated otherwise by the States concerned.

Box 12
Example of the implementation of article 46, paragraph 28, of the Convention

Often, requests for assistance met with delays owing to the lack of provisions regulating the issue of costs.

One State party reserved for itself the decision whether to charge the costs completely or partially to the requesting State. The review recommended that this practice should be changed by introducing an obligation to consult beforehand with the requesting State on the issue of costs.

Another State party had borne the costs of execution of all relevant requests and had not consulted with requesting States regarding extraordinary costs.

Yet another State party solved the cost issue relating to bilateral agreements through the stipulation that each party should assume its own costs.

30. Most States parties indicated that documents available to the general public would be provided to the requesting State. With regard to governmental records that were not publicly available, one State party affirmed that it often provided such records, which included police and law enforcement reports, to requesting States. Another country provided such records as long as doing so was not precluded by treaties or significant contrary interests. One country indicated it could make such documents available based on a production order issued by a court of law, or by

application of the attorney-general for declassification of Government records. In another country, all documents in possession of the authorities were by virtue of the law public, and thus potentially available to requesting States. Finally, one State party distinguished between various types of non-public information: "classified information", which could be provided to a requesting State; "secret information" and "confidential information", which could be shared on a case-by-case basis; and "absolutely secret information", which could never be provided. In one State, there were no specific legislative requirements covering the provision of such material; however, it could be provided in any format that was admissible in the requesting State, so that relevant evidentiary requirements could be met.

31. At the practical level, although some States indicated that they faced significant challenges with respect to effective mutual legal assistance, States generally reported that cooperation was continually improving. Strategies for strengthening cooperation included the development of modern tools and mechanisms to enhance information-sharing. The sharing of experiences among States parties had also proven a beneficial practice. Several reports indicated that States parties had strengthened their international cooperation mechanisms and networking, inter alia, through membership and active participation in regional bodies aimed at facilitating inter-State judicial assistance within regions. Along those lines, some States parties referred to effective and advanced regional instruments and mechanisms for facilitating mutual legal assistance, and made reference to advanced judicial cooperation networks. Regional organizations were also recognized as having contributed greatly to the improvement of judicial cooperation. The role of central authorities was generally considered very important.

B. Transfer of criminal proceedings

32. Half of States parties noted that their legal systems did not contain any provision regulating the international transfer of criminal proceedings. However, in some of those States such transfer could take place on the basis of an ad hoc arrangement. Further, the possibility of transferring criminal proceedings was addressed in the European Convention on the Transfer of Proceedings in Criminal Matters, which two States parties used in cases involving the transfer of proceedings. Further, the issue was addressed in general terms in a regional instrument signed, but not yet ratified, by one State party. One country indicated it had neither taken domestic measures nor concluded treaties, but that it could use the Convention directly for the transfer of criminal proceedings.

33. In 15 countries, the possibility of transferring proceedings was foreseen in domestic legislation or bilateral or multilateral treaties, although in some of those countries no such transfer had taken place. The domestic legislation of one State party provided for such a possibility within the framework of a regional international organization in relation to money-laundering offences.

34. One State party was found to have made rather extensive a use of that form of international cooperation, especially with neighbouring countries: it reported a total of 59 incoming requests and 47 outgoing requests during the period 2009-2011. Another State party reported that since January 2010 it had received over

750 requests, mostly fraud-related, to transfer proceedings into its jurisdiction, although it could not be confirmed how many of those proceedings had ultimately been accepted. One State party mentioned that translation posed practical difficulties because it was time- and resource-intensive. Another country argued that the transfer of criminal proceedings was a routine practice, without providing concrete examples of implementation. Another State party argued that for cases in which extradition was rejected on the grounds of the nationality of a person, the transfer of proceedings was considered part of the obligation to "extradite or prosecute". In all other cases, the transfer of criminal proceedings could be conducted through arrangements on a case-by-case basis.

C. Law enforcement cooperation

Figure III
Challenges in the implementation of article 48 of the Convention, by paragraph

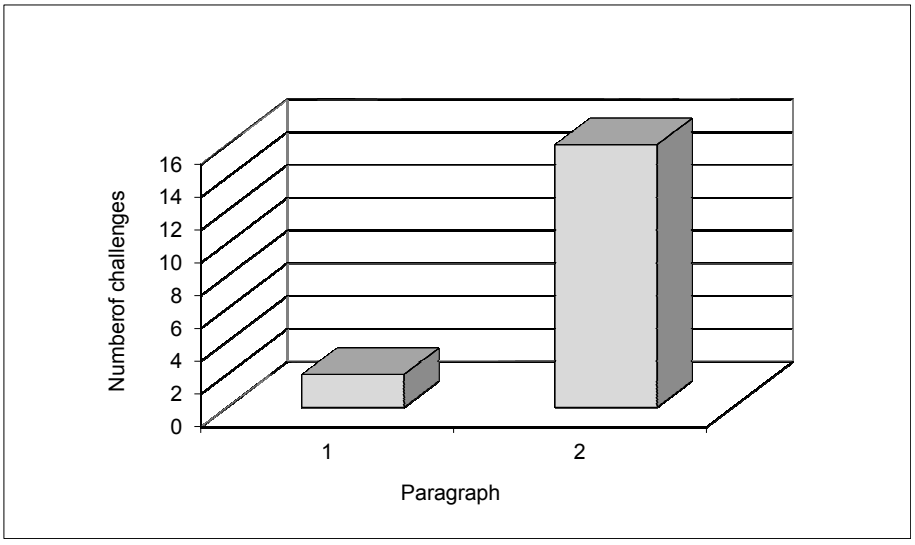
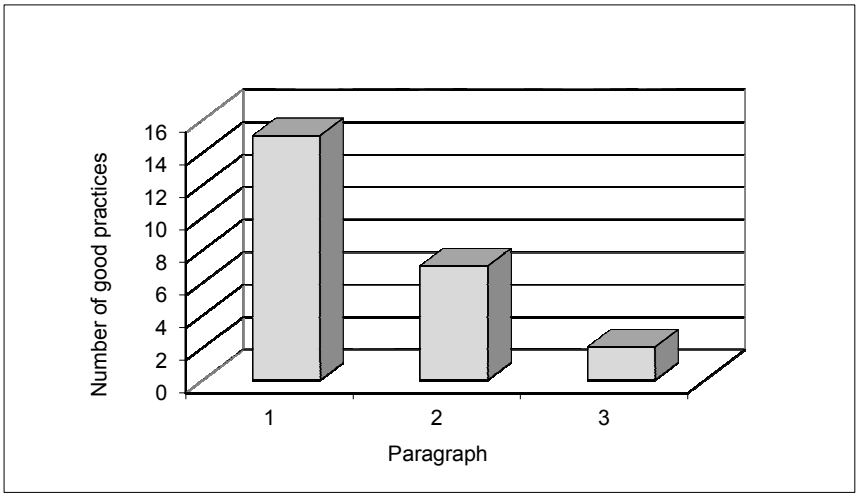


Figure IV
Good practices in the implementation of article 48 of the Convention, by paragraph



35. Channels of communication between competent anti-corruption and law enforcement authorities existed at the bilateral, regional and global levels. Some States parties had domestic legislation to enable such cooperation. One State party had relevant domestic regulations only with regard to money-laundering. Although in many countries law enforcement cooperation did not require a legislative basis, some countries were encouraged to develop legislation to explicitly facilitate such cooperation.

36. In most countries, cooperation was rendered on the basis of bilateral treaties or institutional agreements or memorandums of understanding between authorities (police forces, prosecutors' offices, customs services and financial intelligence units). Some countries also applied specific provisions of their mutual legal assistance treaties; however, it was not considered a sufficient implementation of article 48 if law enforcement cooperation was rendered only through formal mutual legal assistance. Only three States parties had no bilateral or regional agreements on law enforcement currently in place. While 12 States parties could use the Convention as a legal basis for law enforcement cooperation in respect of corruption offences, two States parties explicitly excluded that possibility. Some States parties could also provide law enforcement cooperation on the basis of ad hoc arrangements without a specific treaty base or could use reciprocity as a legal basis. In other countries, informal agreements on a case-by-case basis were preferred to formal agreements.

37. The regional level is of particular importance in law enforcement cooperation, as is demonstrated by the multitude of regional organizations and networks. In many country reports, references to regional law enforcement mechanisms were included, such as to the European Police Office; the European Anti-fraud Office; the Ibero-American Network for International Legal Cooperation; the Network of Prosecutors against Organized Crime; ASEANAPOL; the Camden Assets Recovery Inter-Agency Network and similar networks, such as ARINSA and the Asset Recovery Network of the Financial Action Task Force of South America against Money Laundering; the South East Asia Parties against Corruption mechanism; the Organization of American States (OAS), through the Hemispheric Information Exchange Network for Mutual Legal Assistance in Criminal Matters and Extradition (supported by the electronic Groove platform); the Southern African Regional Police Chiefs Cooperation Organization; the Global Focal Point Initiative established by INTERPOL and the Stolen Asset Recovery Initiative; the Regional Organized Crime Information System; and the Schengen Information System. Among the regulatory instruments of regional organizations were the Protocol on Judicial Cooperation of the Pact on Security, Stability and Development in the Great Lakes Region and multilateral customs agreements under the World Customs Organization. Also mentioned were entities such as the Organization of Islamic Cooperation, the Organization for Security and Cooperation in Europe, the Commonwealth of Independent States, the Southern African Development Community, the Financial Action Task Force and its regional bodies and the International Organization of Supreme Audit Institutions and its regional organizations, as well as the Offshore Group of Banking Supervisors and the World Customs Organization. One country participated in a pilot programme on videoconferencing under the auspices of OAS.

38. Membership of INTERPOL was generally regarded as a condition for facilitating law enforcement cooperation at the international level. Reference was made to the I-24/7 global police communications system of INTERPOL as a means of sharing crucial information on criminals and criminal activities worldwide. At the same time, it was noted that INTERPOL could not replace direct channels of communication with law enforcement authorities of other States.

39. The exchange of information appeared to be a common feature among financial intelligence units, as many States parties indicated actual or developing engagement between their units and foreign financial intelligence units, mainly through conclusion of memorandums of understanding or membership in the Egmont Group.

40. With respect to measures of cooperation in inquiries concerning offences covered by the Convention, most States parties provided an overview of the general legal framework within which such measures could be taken. Seven States parties provided information on inquiries that had been effectively conducted in cooperation with other States. Three States parties provided information on specific measures or legislation regarding the supply of items or substances for analytical purposes and means or methods used to commit offences covered by the Convention, while reference was also made to the same measures in direct application of the relevant drug treaties.

41. Regarding coordination through the exchange of personnel or experts, 16 States parties had confirmed the posting of police liaison officers to other countries or international organizations, and four had deployed liaison officers to 20 or more foreign countries. One State party had posted more than 130 liaison officers in 40 countries. Two States parties explained that their police attachés were posted at some of their embassies. While possessing diplomatic status, their activities were conducted under the supervision of the police office. The period of deployment was generally four years. Officials from law enforcement agencies also frequently participated in joint training activities with their international counterparts. One State not only exchanged personnel with other States but also had placed a liaison officer with INTERPOL.

Box 13
Examples of the implementation of article 48, paragraph 1, of the Convention

With regard to effective coordination between authorities, agencies and services, one State party, together with other countries of the same region, had set up a joint network of liaison officers, enabling police officers of any one of those States to act on behalf of the police of any of the others.

One State party reported that its police had engaged in several joint activities with States of the same region in the areas of capacity-building, coordination and collaboration against transnational crime, including corruption-related offences. Those activities had been undertaken through a regional transnational crime network, funded by that State party, which had developed a series of multi-agency (law enforcement, customs, immigration) units to fight transnational crime, which were active across several countries of the region.

The high volume of international cooperation requests in law enforcement matters and the impressive level of execution were highlighted in one State party. Those operations had been carried out both by regular law enforcement authorities and through the effective use of specialized agencies to deal with requests involving particularly complex and serious offences, including offences covered by the Convention. That unique organizational structure specifically was considered a success and a good practice under the Convention. In addition, the operations of aid-funded police units directed at illicit flows and bribery related to developing countries constituted a good practice in promoting the international cooperation goals of the United Nations Convention against Corruption. Also mentioned were efforts made to assist law enforcement authorities in developing States with regard to capacity-building to enable them to investigate and prosecute corruption offences.

One country had since 1995 negotiated over 30 police-to-police cooperation agreements. Twelve of those agreements contained provisions focusing specifically on corruption; four of them contained provisions regarding cooperation in the use of special investigative techniques.

42. The country reviews did not provide one uniform interpretation of possible modalities of cooperation for responding to offences committed through the use of modern technology. Several States parties were not able to provide any information on the topic. Some States parties referred to their legislation on cybercrime and their ratification of the Convention on Cybercrime of the Council of Europe. One State party mentioned as a means of cooperation the establishment of a permanently available focal point in the framework of a regional treaty addressing all forms of cybercrime, while two States parties referred to a bilateral treaty addressing the issue. One country had created within its national police a specialized unit for the investigation of offences committed using modern technology. A number of States referred to technological means which expedited law enforcement efforts, such as the use of databases and surveillance technology.

D. Joint investigations

43. Approximately half of States parties had adopted agreements or arrangements allowing for the establishment of joint investigative bodies, some of them on the basis of regional agreements. Another 10 States parties mentioned that their legal systems and practice enabled them to conduct joint investigations on a case-by-case basis, and eight of them confirmed that they had done so on a number of occasions. The police of one State party had established such teams with foreign law enforcement authorities in more than 15 cases relating to organized crime, drug-related offences and Internet-based crime. Three States parties mentioned the formation of teams in relation to offences under the United Nations Convention against Corruption. The investigative authorities of one country made frequent use of joint investigation teams to address the problems that could arise between countries with civil-law and common-law systems with regard to the receipt of intelligence and investigative cooperation.

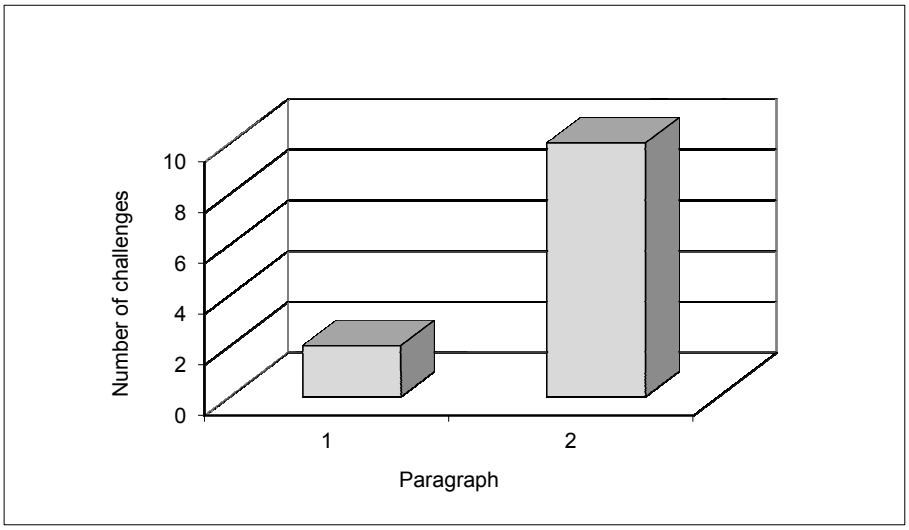
44. Fourteen States parties had neither concluded bilateral or multilateral agreements with a view to carrying out joint investigations nor undertaken such investigations on an ad hoc basis; however, one of those States parties indicated that draft legislation had been under consideration at the time of the review. One of those countries had opted out of a provision of a regional convention concerning joint investigation teams.

Box 14
Examples of the implementation of article 49 of the Convention

One country gave examples of various major joint investigations in corruption cases. In one case, a joint investigative team had been established in 2011 in relation to a major case of illegal sports betting. The investigative team had been established based on a regional legal act. Six countries had participated in the operation, in which the country had also conducted surveillance activities (see also article 50). The same country also reported on a joint undercover operation with another State of the same region. Finally, the same country mentioned that three joint investigation teams — related to bribery, tax fraud and human trafficking — had been in place at the time of the country visit.

E. Special investigative techniques

Figure V
Challenges in the implementation of article 50 of the Convention, by paragraph



45. Special investigative techniques and their admissibility in court were regulated in the legislation of the majority of the States parties under review. However, in two countries such techniques were authorized solely with respect to specific criminal offences which did not include corruption, and in two other countries at least some of the relevant techniques were available only in cases involving drugs or organized crime. Most commonly used techniques included controlled deliveries, interception of telephone communications and undercover operations, and could normally be authorized only by court order. Some countries only foresaw the use of some of the mentioned techniques. One State party mentioned the recent introduction of a new technique, namely the monitoring of Internet activity, which could be initiated upon the request of a foreign country. Ten States parties did not make use of special investigative techniques, but two of them noted that such techniques would be allowed under draft legislative provisions under discussion at the time of the review. Two countries did not give specific powers to law enforcement to use special investigative techniques. That was not understood as a ban of those techniques, however, but rather as a limitation of the evidentiary value of the collected information, which was not admissible as evidence in court but could be used to build direct evidence.

46. International agreements or arrangements as mentioned in article 50, paragraph 2, of the Convention had been concluded by 13 countries, usually involving counterparts in the same region or members of the same regional organization. Among the States parties that had not concluded such agreements, one reported that it was possible to use special investigative techniques if requested by States with which a treaty on mutual legal assistance in criminal matters had been concluded.

47. Special investigative techniques could be used at the international level in the absence of relevant international agreements and on a case-by-case basis in 18 States parties. Among those, two States parties would use such techniques only on condition of reciprocity. Another State party did not permit the use of special investigative techniques at the national level but would cooperate on a case-by-case basis as long as the resulting evidence was not used in national courts.

Box 15
Example of the implementation of article 50 of the Convention

In 2009, one State party received a request from the investigative authorities of another State party to implement certain investigative measures. Although there was no treaty or agreement between the agencies of the two countries in force, the request was implemented in compliance with the requirements of the legislation of the requesting jurisdiction, provided that it did not contradict the legislation of the implementing country.