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Practical Trends and Challenges in International Cooperation in Corruption Matters: Observations from the United Nations Convention against Corruption Implementation Review Mechanism

Summary

The present conference room paper, which is being made available to the Implementation Review Group at its second resumed ninth session, was initially prepared by UNODC for the third G20 Anti-Corruption Working Group meeting under the German G20 Presidency. That meeting was co-chaired by Germany and Brazil and held at UNODC headquarters in Vienna from 13 to 14 September 2017.

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Practical Trends and Challenges in International Cooperation in Corruption Matters: Observations from the United Nations Convention against Corruption Implementation Review Mechanism

1. Introduction

The Mechanism for the Review of the Implementation of the United Nations Convention against Corruption, with 160 finalized reviews under the first cycle, has produced a vast amount of information related to the implementation of the international cooperation provisions of the Convention.

For the purposes of this note prepared for the G20 Anti-Corruption Working Group, UNODC focused on several practical issues related to the implementation of Chapter IV of the United Nations Convention against Corruption (UNCAC) on international cooperation. They comprise the legal basis for international cooperation and use of the Convention for that purpose, the existence and role of central authorities, regulated timeframe and simplified procedures and the need for consultations in international cooperation.

At the outset, the note makes some generic observations regarding the implementation of the Convention.

The note draws heavily from the forthcoming publication entitled State of Implementation of the United Convention against Corruption: Criminalization, Law Enforcement and International Cooperation that will be launched at the seventh session of the Conference of the States Parties, as well as from the analysis included in the thematic reports on the implementation of Chapter IV of the Convention prepared by UNODC.

The note aims to provide the Working Group with background information useful for its further deliberations with regard to policy-making and the planning of technical assistance activities with regard to international cooperation.

2. Domestic legal framework – general observations

As demonstrated throughout the review process, States parties have different practices with regard to the implementation of their international obligations depending on their legal systems.

In dualist countries where bilateral or multilateral treaties need to be transformed into enabling legislation for implementation, the lack of a domestic legal framework can paralyse international cooperation.

In contrast, monist countries endorse the direct application of treaty provisions. Even here, however, such countries still recognize that national legislation is essential, as it will often contain important requirements for executing extradition or mutual legal assistance (MLA) requests.

During the UNCAC reviews, recommendations were often issued to States parties to develop or strengthen their domestic legal frameworks on extradition and MLA.

The comparative analysis of reports from the countries under review has revealed the following general trends (and associated challenges) in the implementation of Chapter IV provisions in the domestic legal frameworks of States parties:

- A number of jurisdictions had adopted or were planning to adopt regulations at the ministerial level in the area of international cooperation in criminal matters. The use of administrative legal instruments, including for the purpose of giving effect to the provisions of the Convention, offered an opportunity to fast-track normative procedures that did not involve full-fledged and often slow legislative processes. Subject-areas that countries appeared to regulate through

administrative acts were mostly related to the operation of central authorities in MLA matters and case management for incoming MLA requests.

- Several countries implemented the provisions of Chapter IV through legislative instruments that were not specifically designed to give effect to the Convention, but rather broadly addressed the criminal justice response to organized and/or transnational crime. This was particularly the case in the field of special investigative techniques. Additionally, the fact that the vast majority of States parties to the Convention are also parties to the United Nations Convention against Transnational Organized Crime (UNTOC), and in view of the substantial overlap between the provisions on international cooperation in both instruments, might have encouraged States to address the implementation of both conventions as a "package". The advantage of legislation covering both UNTOC and UNCAC clearly lies in avoiding a compartmentalized State response to multiple crimes that are often (and increasingly) intertwined. At the same time, this approach presents the risk of missing some UNCAC-specific requirements that are not in UNTOC.

- On a number of occasions, the impetus for the adoption of domestic legislation in line with the Convention was actually due to internal factors, rather than the obligations under the Convention. For example, in one country the inclusion of an entirely new chapter on MLA in its code of criminal procedure was made necessary following a broad reform of that country's legal system towards an accusatorial criminal justice system.

- While a number of monist States claimed to be able to apply the provisions of the Convention without the need for any implementing legislation, it was noted that a number of Chapter IV provisions only set forth general and non-self-executing legal frameworks. This is the case, for example, for article 45 (Transfer of sentenced persons), article 47 (Transfer of criminal proceedings) and article 49 (Joint investigations). In addition, specific legislation is usually required to exercise coercive measures under article 46. While competent authorities may in theory be in a position to enforce Convention provisions directly, in practice it will be challenging for them to do so unless some form of implementing legislation is enacted domestically.

3. Legal basis for international cooperation and the use of the Convention for that purpose

Article 44(5) provides that States parties that make extradition conditional on the existence of a treaty may consider the Convention as legal basis in cases where they receive an extradition request from States parties with which they have no treaty. Further, subparagraph 6(a) specifically requires States parties that make extradition conditional on the existence of a treaty to notify the Secretary-General of the United Nations whether they will accept the Convention as a basis for extradition.

Similarly, article 48(2) provides that States parties may consider the Convention as the basis for mutual law enforcement cooperation where they are not bound by other arrangements.

In contrast, article 46(7) stipulates that paragraphs 9 to 29 of Article 46 *shall* apply in relation to MLA requests between States parties who are not bound by bilateral or regional treaties.

The actual trends with regard to the implementation of these provisions are described below, addressing the approaches of States' legal systems to the question of the legal basis required for international cooperation in legal matters and available statistical information.

Extradition

Interestingly, statistically, the majority of States do not require an **extradition treaty as a legal basis** for receiving or sending extradition requests. Most countries that could grant extradition without a treaty required a condition of reciprocity.

While the majority of States parties did not formally require a treaty basis for extradition, in practice most of them still relied to a greater or lesser extent on treaty-based processes.

A vast array of different extradition arrangements was reported, including bilateral treaties, specialized conventions containing international cooperation provisions (including other anti-corruption instruments, such as the OECD Bribery Convention), as well as multilateral arrangements and wide-ranging regional instruments, such as the Inter-American, the European, and the Economic Community of West African States Conventions on Extradition, and the London Scheme for Extradition within the Commonwealth. Overall, bilateral treaties tended to be concluded between countries in the same region, sharing the same language, or sharing close historical or economic ties.

Regarding the requirement of article 44(4) of the Convention, namely to deem corruption offences to be included as extraditable in any extradition treaty already in existence between them, most States parties considered it as implemented, at least to the extent that the offences have been criminalized in domestic law and that the penalties provided are of sufficient seriousness. Additionally, most States appeared conscious of the obligation to include corruption offences as extraditable offences in every treaty they may conclude in the future.

A majority of States parties confirmed their readiness to use the **Convention as a legal basis** for extradition and some of these had informed the United Nations Secretary-General accordingly. Some countries declared that they would use the Convention as legal basis in combination with an undertaking of reciprocity.

In six cases, it was specifically recommended that the State parties under review consider revoking their existing reservations or enacting the necessary legislation to enable the use of the Convention as a legal basis for extradition, in order to compensate for the very limited number of bilateral or multilateral treaties in place.

Generally, most States reported **little or no experience** whatsoever with regard to handling extradition requests, either in general or in relation to corruption-related offences. Several countries reported having handled very few or no corruption-related extradition requests in the years preceding their review.

Although, as noted above, most States parties could in principle use the Convention as a valid legal basis for extradition, it appeared that a very limited number of them had actually done so in practice. Only seven States referred to incoming or outgoing extradition cases in which the Convention had been invoked, with one country having reported that it had granted extradition on the joint basis of the Convention and a bilateral treaty.

All in all, the data provided was limited or fragmented and did not offer a thorough picture of the volume of incoming and outgoing extradition requests for corruption-related offences or the degree to which such requests were successful. In this regard, the Review Mechanism offered an opportunity for involved countries to discuss the need to better streamline information on extradition cases and gather relevant statistical data through the use of electronic systems, with a view to facilitating the monitoring of such cases and assessing the implementation of the Convention more effectively.

Mutual legal assistance

Most of the States reported that no treaty was required for them to provide MLA. In addition, unlike in the situation with extradition, the absence of a treaty did not appear to be a practical obstacle for States to actually provide MLA.

Nevertheless, States still reported a variety of regional and bilateral MLA treaties and diverse experiences with the application of such treaties. While some States had concluded very few treaties, others appeared to rely on them to a significant extent, especially when they had limited domestic legislation on MLA.

Additionally, reciprocity was frequently mentioned as a sufficient basis for mutual legal assistance, with one country requiring specific guarantees as a condition for executing incoming requests.

The vast majority of countries confirmed the possibility of relying on the **Convention itself as a legal basis** for mutual legal assistance. Nonetheless, in practice, bilateral assistance treaties were usually considered to have priority and were expected to be invoked first (or at least in parallel to the Convention) if they were applicable.

States parties were also encouraged, as provided for in article 46(30), to explore the possibility of concluding additional MLA related agreements as a means to give practical effect to the provisions of the Convention in this area.

Country reports placed emphasis on the ability of States parties to fulfil the above requirements and ensure that their system offers adequate guarantees that assistance would be provided for a corruption-related offence.

States parties were encouraged, in general, to prioritize international cooperation in cases involving corruption offences and to better utilize the potential of the Convention as a basis for MLA.

Compared to extradition, States parties generally supplied more precise statistical data outlining the number of MLA requests that were handled. There were large differences reported in terms of the volume of MLA requests specifically related to corruption offences. On the one hand, some countries reported high volumes of requests. In relation to Convention offences, for example, between 2012 and 2014, one country received 211 requests. Another country confirmed the execution of 57 MLA requests for non-coercive measures and 79 requests for coercive measures between January 2009 and July 2013. This data contrasted sharply with that of other countries which reported very few or no MLA requests for corruption-related offences.

A number of reasons may explain the low number of MLA requests for corruption related offences. It may be that, even where corruption offences are involved, MLA requests are focused instead on other related criminal activity. For example, one country referred to a prominent transnational organized crime case on illegal trafficking of rosewood in which corruption played an important role in the underlying criminal scheme and yet the MLA request did not include corruption offences.

Law enforcement cooperation, either police to police or via INTERPOL, may be used instead of mutual legal assistance processes to obtain assistance that does not require coercive measures. In these cases, the infrequent use of MLA channels by certain countries would not necessarily reflect a lack of need for transnational exchanges of evidence in corruption-related matters, but rather the willingness, more pronounced in certain countries than in others, to resort to more flexible mechanisms for transmitting evidence. The review findings in relation to article 48 of the Convention (Law enforcement cooperation) seem to suggest that, at least to some extent, the evidentiary requirements of domestic investigations and prosecutions may be fulfilled by the use of informal channels of cooperation.

States reported that article 46 had specifically served as the legal basis for providing mutual legal assistance on numerous occasions. 21 States parties reported at least one request that had been made and/or received under the Convention. As an example, one country reported that it had received 427 MLA requests in the two years proceeding its review. Of those requests, 18 related to corruption offences and 11 of these were made under the Convention or with specific reference to the Convention.

Law enforcement cooperation

The conclusion of **bilateral or multilateral agreements or arrangements** on direct cooperation between law enforcement authorities, which is encouraged in article 48(2), appeared to be the practice followed by a large majority of States parties, even if it was not necessarily considered as a pre-requisite to engage other countries in law enforcement cooperation. Most countries indicated that they had entered or were considering entering into such agreements. These agreements generally set out, *inter alia*, the respective authorities responsible for cooperation; the requirement to designate contact points of these competent authorities in order to ensure rapid and effective communication; the forms, ways and means of cooperation, such as the exchange of data relating to crimes which are being planned or have been committed; the possibility of informal consultations before initiating the submission of extradition or MLA requests in respect of corruption-related offences; and the ability to cooperate in personnel management and training. Sometimes the agreements also contained provisions focusing specifically on corruption.

The conclusion of bilateral or multilateral cooperation agreements or arrangements did not guarantee their successful application in practice. This was especially true in countries with weak institutional frameworks, whose ability to extend effective law enforcement cooperation to foreign countries was limited by issues of inter-agency coordination, insufficient human resources, as well as inadequate technological and institutional capacities.

While 81 States parties confirmed that they could use the **Convention as a basis for mutual law enforcement cooperation** in respect of corruption-related offences, it appeared that in most countries this possibility was mostly theoretical as only three States reported cases where the Convention was actually used for this purpose. Five States parties explicitly excluded the possibility of using the Convention as a basis, relying instead on other agreements and arrangements. The reviews could not establish with sufficient certainty whether the very limited use of the Convention as a legal basis for law enforcement cooperation stemmed from the existence of other cooperation channels and networks, or rather a lack of knowledge about the role that the Convention could play in this field. In any case, Parties were generally encouraged to continue to engage in regional and bilateral cooperation by signing, if appropriate, (additional) agreements to facilitate the exchange of information for law enforcement purposes, and to consider using the Convention as the legal basis in the absence of such arrangements.

Conclusions

A number of interesting observations emanated from the analysis of the reviews on the challenges encountered on the use of the Convention as a legal basis. These were particularly focused on extradition cases, but also seem to be generally applicable to its use as a legal basis for MLA.

Often the lack or limited use of the Convention as legal basis in practice was explained by the fact that most requests involved countries with which bilateral extradition treaties or regional extradition arrangements existed.

With the increasing globalization of crime, however, it is worth noting that one of the major advantages of the Convention is its global coverage. While regional and bilateral arrangements may cover the majority of cases with neighbouring countries or long-established international partners, the Convention may be used as a legal basis even in cases where States parties have not had previous contact prior to the request.

The preference of some States for bilateral/regional treaties over multilateral treaties was motivated by very specific reasons. For example, one State preferred using bilateral/regional extradition treaties because they were more likely to be developed in line with specific domestic legal requirements and the full understanding of parties' respective legal procedures. Some States also expressed a view that bilateral treaties

could be more detailed and comprehensive compared to the provisions of the Convention.

While it is true that some bilateral treaties may be more detailed than Chapter IV of the Convention, it was observed during reviews that the Convention, particularly in paragraphs 9 to 29 of article 46, contains a number of comprehensive and innovative types of assistance that many States would not be able to provide based on their domestic law or other international instruments.

It appears, perhaps because of the fact that the Convention is focused on assistance in corruption-related matters, that there remains a lack of awareness of the possibilities offered by the Convention in the area of international cooperation.

Practitioners often lacked knowledge about the possibility to employ the Convention as a legal basis. While this had been explicitly confirmed by one State party, the overall impression was that, in a number of countries, the issue of whether or not the Convention could and/or should be used as a basis for international cooperation had not yet been the object of sufficient analysis by relevant governmental and judicial authorities.

This observation reinforces the findings in many reviews that States parties have not yet invested sufficient resources to the study of the opportunities that could be provided by the use of the Convention to facilitate international cooperation.

In this sense, it would be crucial to ensure that all criminal justice institutions (law enforcement agencies, prosecutors, judges, etc.) are aware of and utilize the Convention in their work. To the extent that this challenge is also observed in the implementation of other relevant conventions, such as UNTOC, the issue could be addressed cross-sectorially, for example by utilizing the capacity-building resources of national and international technical assistance providers in a more systematic manner. One important objective of this assistance could be to familiarize criminal justice officials with Convention-based mechanisms and promote a culture of considering such mechanisms as standard tools in the day-to-day handling of corruption-related transnational cases.

The fact that 21 States parties reported having made and/or received at least one MLA request using the Convention as the legal basis can be seen as an encouraging sign.

4. Central authorities

Article 46(13) of the Convention requires States parties to **designate central authorities** with the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. The purpose of this designation is to ensure the speedy and proper transmission and execution of the requests received. States parties are further required to notify the United Nations Secretary-General of their designated central authority. All notifications received by the United Nations are disseminated to other States parties through the online password-protected UNODC Directory of Competent National Authorities (http://www.unodc.org/compauth_uncac/en/index.html).

The majority of States had designated a central authority with responsibility for all international treaties on cooperation in criminal matters. This allowed the streamlining of processes and the timely identification of weaknesses in the system.

In those that did not, however, it was observed that the designation of different authorities for requests submitted under different treaties could result in delays to the timely provision of assistance. Several States were given recommendations to reconsider the designation of their central authority with a view to increase effectiveness and provide more clarity to the assistance process. For example, one country had designated a central authority for UNCAC, but had designated several other central authorities for different MLA treaties; in order to ensure more effective MLA, it was recommended that the State party might wish to consider designating a single central authority for all treaties and providing it with the necessary resources.

In two other reviews, the designated central authority was not the one that actually executed the requests and the reviewers recommended that consideration be given to deciding on one central authority to enhance efficiency. Several other countries had not established any central authority for mutual legal assistance and requests were received by several national bodies on an *ad hoc* basis, which prompted the reviewers to issue recommendations to properly designate central authorities. In one case, the country's central authority did not have a mandate with regard to certain types of mutual legal assistance requests, which were forwarded to another body, with no possibility for follow-up. The reviewers encouraged the country to introduce measures to improve the transparency, channels of communication and information sharing between the various authorities. In one country, the existence of four central authorities in corruption-related matters was seen as having the potential of creating a lack of clarity and overlapping responsibilities.

More generally, the establishment of a single, specialized unit on international cooperation in criminal matters to handle both extradition and mutual legal assistance cases was considered as conducive to the effective and timely administration of such cases.

In most countries, the central authority was the Ministry of Justice. Several States had designated the Office of the Attorney-General/Directorate of Public Prosecutions, five States had designated the Ministry of Foreign Affairs, one had designated the Ministry of Home Affairs, and two had designated the national anti-corruption agency. In one review, a recommendation was made to consider designating the national anti-corruption agency as the central authority for all corruption cases, in view of the fact that such agency enjoyed the confidence of its international partners and that most international corruption cases fell within its remit.

Many countries have not yet made the required notification of the designated central authority to the Secretary-General, and as such, requesting States may be unclear as to which body they should address their mutual legal assistance requests. As of August 2017, of the 182 States parties to the Convention, only 127 have provided the required information.

In addition, even for States that have notified the Secretary-General of the designated authorities, some recommendations were made to provide further details. States were encouraged to notify the United Nations of not only the name of the authority, but also of its contact details, with a view to providing as much useful information to requesting States as possible. In addition, recommendations were issued for several States which had notified the Secretary-General of more than one central authority for mutual legal assistance but had not indicated what their respective responsibilities were and, as such, requesting States would not know which authority to contact.

A number of other challenges were identified during the review process in relation to the **effectiveness of the work of central authorities** and the mutual legal assistance process as a whole.

In several reviews, it was noted that the central authorities were not provided with adequate resources, financial, technical and human, to carry out their tasks effectively. For example, some countries were found not to have enough staff within the central authority to adequately process incoming requests for assistance. In one State, it was noted that a growing amount of work was causing difficulties to the under-resourced central authority that negatively influenced its ability to follow up on incoming requests in a timely fashion.

Several reviews found that staff within the authorities was not sufficiently trained to deal with incoming requests. In such cases, it was recommended that adequate resources and attention to training and capacity-building for the authorities be provided. Some countries were encouraged to develop guidance principles, manuals or guidelines for internal use by competent authorities to enhance the effectiveness and speediness of the process and to standardize the way in which requests were handled. In two cases, it was recommended that such guidelines specifically set out

the appropriate timeframes in which the execution or transmission of requests should be done. In one country, the reviewers went even further and recommended that existing guidelines be translated and made public so as to improve the transparency and predictability of procedures for requesting States. One State self-identified the need for technical personnel such as statisticians and IT officers to capture data on mutual legal assistance requests and to monitor their processing and transmission to the relevant bodies.

Other concerns were raised during the reviews regarding the effectiveness and efficiency of the **procedures related to mutual legal assistance**. One country was encouraged to establish more channels of communication with the competent authorities of other States parties to the Convention, while another country was recommended to continue the practice of establishing direct contacts with foreign counterparts to avoid mistakes in translation of requests and accompanying documents.

Several countries were encouraged to expedite the execution of mutual legal assistance requests by, for example: producing specific requirement forms or model request forms for requesting States; monitoring the length of time needed for carrying out mutual legal assistance requests and taking action if the length was considered unsatisfactory; specifying appropriate timeframes in the legislation within which mutual legal assistance should be executed; taking measures to reduce the average time needed for the execution of mutual legal assistance requests; and, formalizing the procedures for mutual legal assistance in domestic legislation and treaties.

Despite these challenges, a number of positive examples with regard to central authorities were highlighted in reviews. For example, the central authority of one State had a dedicated unit on international cooperation that was well resourced and equipped with approximately 70 experienced and skilled staff members. In the execution of requests, the authority worked closely with investigators from various law enforcement agencies in preparing and responding to MLA requests and encouraged their efficient and proper execution. The national financial intelligence unit, for example, regularly provided bank and financial records in response to MLA requests, and even provided early notifications to reporting institutions to alert them to an upcoming request in order to be able to provide a timely response.

In terms of **channels of communication**, while a number of countries explicitly confirmed that their central authorities were enabled to communicate directly with the central authorities of other States parties, a significant number of States still required that MLA requests be submitted or at least formalized through diplomatic channels. The reviews also identified situations in which the use of direct communication channels was subject to conditions and limitations. Under one State's legal framework, for example, foreign authorities were allowed to transmit requests directly to the central authority, but could not be notified of the results of the process before the official request was received through diplomatic channels. In other cases, States parties in principle authorized their central authorities to communicate directly, but in practice, diplomatic channels were preferred. Another party required the use of diplomatic channels for requests submitted by States with which it had no treaty or where a treaty required diplomatic channels.

In at least 14 cases, urgent requests could be addressed directly to the competent authority from which assistance was sought, reflecting a growing trend of using the most direct methods of communication available. In one country, requests related to money-laundering could be directly transmitted through financial intelligence units. 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.

The reviews also revealed that some central authorities kept only limited **statistics** on requests for international cooperation and were unable to report on information such as the volume of incoming and outgoing requests, the types of assistance sought and requested, processing time and duration of proceedings, or how many requests had

been rejected or processed. Many States received recommendations to put in place or render fully operational case management systems with the goal of compiling in a systematic manner information on requests for extradition, mutual legal assistance and other forms of international cooperation. It was noted by those reviewers that case management systems would allow for effective monitoring and tracking of incoming and outgoing requests, measure the effectiveness of the national systems and the implementation of international cooperation arrangements, identify areas that required attention and improvement, and gather comprehensive and reliable statistics. In some reviews, it was also emphasized that case management systems enabled exchanges between national authorities involved in different stages of international cooperation requests. In some reviews, the reviewing experts noted that such systems could include a database of practical examples and cases on mutual legal assistance and extradition. The lack of adequate resources was often cited as the reason for poor statistical record-keeping.

Conclusions

Several lessons can be drawn from the reviews conducted in the first cycle of the Implementation Review Mechanism with regard to central authorities under article 46 of the Convention.

Firstly, States should clearly designate their central authorities and equip them with sufficient authority to conduct the work efficiently. The selection of the authority for this role should be carefully considered, taking into account the national context and ensuring that the central authority is indeed ‘centrally’ placed and able to communicate and coordinate with other relevant national authorities swiftly and effectively.

A good practice that was identified through the reviews is the designation of a single central authority for all legal assistance matters. In many instances, that measure was recommended in order to improve the efficiency and effectiveness of international cooperation processes.

Unfortunately, the designated central authorities are often not sufficiently known – both at the international and national levels. For requesting States, it is of key importance to know to which body they should address for mutual legal assistance requests. Therefore, those States that have not yet fulfilled their notification obligation under article 46(13) are strongly encouraged to do so by informing UNODC, as the Secretariat to the Conference of the States Parties, of their designated central authorities. All collected information on central authorities is accessible through the online Directory of Competent National Authorities. Requesting States may consult the Directory to obtain reliable information about the names and contact details of the central authorities in other countries. In addition, with a view to improving the transparency and predictability, States may also wish to make publicly available (including through the Directory) further information that may be useful to requesting States, such as the requirements for the requests, the description of the procedure and timeframes, the identification of acceptable languages for requests or model request forms where such forms exist.

It is also important to ensure that central authorities are able to directly communicate with their counterparts in other States. Direct communication between central authorities could either supplement the formal requirement for diplomatic communication or replace this requirement altogether.

At the national level, there is also often a lack of understanding or confusion around the central authority, as well as its role and powers. States should ensure that other relevant national authorities understand the role of the central authority. Awareness-raising or training activities of relevant national bodies could be undertaken with a view to enhancing national cooperation, coordination and information sharing on extradition and mutual legal assistance.

Lastly, the reviews revealed that the central authorities often lack the human, financial and technical resources to carry out their responsibilities in accordance with the Convention. As discussed above, that deficiency could have serious negative consequences for many important aspects of the MLA process. States should step up their efforts in providing their central authorities with the necessary resources, including through the provision of adequate funding, dedicated training, the development of guidelines and manuals for staff, as well as the introduction of systems for the effective monitoring and tracking of incoming and outgoing requests. This could also be an important area for technical assistance.

5. Regulated timeframes and simplified procedures

Given the complexity and time-consuming nature of international cooperation in criminal matters, efforts to regulate timelines and simplify procedures are conducive to the success of extradition and mutual legal assistance. Article 44(9) the Convention urges States parties to expedite extradition procedures and to simplify evidentiary requirements. Article 46(24) requires States parties to execute the requests for mutual legal assistance as soon as possible and to take as full account as possible of any deadlines suggested by the requesting States parties for which reasons are given.

Extradition

The reviews revealed substantial divergences as to the **average duration** of the relevant proceedings, which ranged from a period of one to two months to a period of 12 to 18 months. According to one country, approximately 50% of extradition cases were completed within 18 days, especially those with neighbouring countries. In contrast, another country reported that such proceedings might sometimes take up to two years, the longest period for completing extradition proceedings reported.

Individual countries reported that the differences in the time needed to complete extradition proceedings often depended on the circumstances in which the request had been submitted. One European Union country, for example, indicated that a longer time (of approximately one year) was generally necessary in order to extradite persons sought to non-EU countries. Common reasons for delays related to the complexity of the case, translation requirements, the duration of appeal proceedings, parallel asylum proceedings, and back and forth communication due to insufficiencies in the extradition request. In one country, a proceeding that would normally last 12 months could be reduced to four months if the documentation supporting the extradition request was properly submitted. Another country reported that it had faced obstacles in obtaining cooperation from other States, including delays in receiving assistance due to the high costs involved and cumbersome procedures.

The Prosecutor-General of one country had enacted procedures requiring the timely consideration of requests for extradition while at least five States had adopted legislation imposing specific time-frameworks. No information was provided, however, as to the consequences of missing the specified deadlines. In this regard, an interesting decision of the Supreme Court of one country was reported, according to which a failure to process a request in a reasonable period of time could violate the rights of the sought person and lead to a denial of the request on grounds of the extradition law's "*ordre public*" provisions. While no extradition had been denied on that basis, this decision provided a strong incentive to consider even complex extradition requests in a timely basis.

About half of the States parties under review had provided for **simplified proceedings** in their domestic laws, typically based on the person's consent to be extradited, or had taken concrete measures to streamline the extradition process. Efforts were also reported to establish more effective cooperation networks, in order to exchange real time information with foreign authorities, either before a formal extradition request has been submitted or during its submission. In one State, simplified extradition proceedings were only available to non-nationals and in two other States, they were only applicable under their anti-money-laundering acts. According to another State

party, simplified proceedings were used in around half of the cases and could lead to extradition being granted within a few days or even hours. A further country estimated that if no translation of documents was required, a simplified extradition proceeding could be completed within 24 hours.

Simplified proceedings and shorter timeframes are also prescribed under multilateral or regional arrangements, for example in the context of the London Scheme for Extradition, the European Arrest Warrant, the Inter-American Convention on Extradition, the Protocol to the Council of Europe Convention on Extradition (Third Protocol), the Pacific Islands Forum scheme, and the multilateral agreement on extradition between Nordic countries.

States parties that had not done so yet were encouraged to introduce measures to expedite extradition proceedings, such as setting time limits for making decisions to extradite, preparing guidance for internal use by competent authorities, and establishing open channels of communication with foreign counterparts. Moreover, several reviewers noted the importance of taking proactive steps to sensitize all stakeholders about applicable laws, procedures and timeframes as well as of enabling the monitoring of extradition cases and the collection of data on the exact duration of extradition proceedings. Many reviews also recommended the establishment of case management systems, although it was clear that specific challenges linked to the lack of IT expertise in creating and managing electronic databases were present in a number of countries.

Mutual legal assistance

Similar concerns as to the effectiveness and efficiency of the procedures were also raised with regard to mutual legal assistance. In particular, States were found to lack a domestic legal framework, including both substantive internal regulations and procedural operative guidelines, to control the time for MLA processes or for applying an expedited procedure. In this context, States were recommended to speed up the execution of MLA requests through developing **internal guidelines** or manuals for practitioners, producing specific requirement checklists or model request forms for requesting States, specifying appropriate timeframes within which mutual legal assistance should be executed in the legislation, and formalizing the procedures for mutual legal assistance in their legal framework.

The average period of **time needed to respond** to an MLA request generally ranged from one to six months. In some cases, the processing of the request could take over one year. MLA is normally a paper-intensive process whereby the request is transmitted to a foreign State’s central authority, which assesses compliance with formal and substantive requirements before referring the request to the competent domestic body for execution. Once the requested action has been taken, the evidence is transmitted back through the central authority to the authority in the requesting State. These procedures are meant to provide the parties involved with some level of comfort that the information has been obtained following procedural safeguards and that the continuity of the chain of evidence has not been broken which facilitates the admissibility of the evidence at trial. It also ensures a higher measure of protection for sensitive information.

It is, however, possible to significantly reduce the length of the procedure when required. In this regard, some States parties reported that, in urgent cases, requests could be executed within a few days. Three States reported that they would respond to all requests generally within one to two weeks – which was regarded as an exemplary performance – while another State mandated its competent prosecutorial and law enforcement authorities to implement the requested measures within 10 days and held them liable for unnecessary delays. Three further States confirmed their ability to execute certain measures, such as the freezing of bank accounts, within the shortest time possible, sometimes within hours.

As stressed by several States, the time required to respond to requests depended to a considerable extent on the complexity of the matter, including on whether or not

coercive measures were required. Where coercive measures are needed for example, to obtain search and seizure, production of documents, or the tracing, restraint or confiscation of the proceeds of crime, the execution of MLA requests normally demanded more time and an authorization at a higher level. Further factors that influenced the length of time required were the quality of the request (including the quality of its translation), additional translation requirements, lack of sufficient details, the place of execution of the action requested, the competent court, grounds for urgency given by the requesting authority, mutual assistance laws and processes in the foreign country and the applicable legal basis. It was generally accepted that requests submitted by neighbouring countries or by States sharing the same legal, political or cultural background as the requested State were easier to process and thus were responded to more rapidly. One country reported that the requests it had made under UNCAC were generally responded to within a timeframe of one to five months.

Some reviews highlighted specific challenges in certain countries where issues of domestic coordination or the involvement of multiple authorities at different stages of the procedure would significantly slow down the process. To reduce delays, the Public Prosecutors Office in one State brought a circular to the attention of all competent departments stressing the need to respond to letters rogatory strictly within the necessary timelines.

Several reviews highlighted the importance of giving careful consideration to the **collection of data**, making best use of statistics and putting in place workflow processes and case management systems within the central authority for MLA requests to facilitate the regular monitoring of the length of MLA proceedings and to improve standard practice. Some reviews also encouraged the development of internal guidelines, procedural manuals, written standard operating procedures or practice papers, which would set timelines for executing requests and give guidance as to how to handle any problems that might arise, including modalities for follow-up action with the requesting State.

Although no concrete cases of **postponement** of the execution of requests due to interference with ongoing criminal investigations were reported under article 46(26), one State noted that this was an extremely rare occurrence. Several States argued that such postponement might well be envisaged in accordance with domestic legislation or by direct application of the Convention or another international instrument. In cases where no national legislation on the matter existed, it was recommended that States consider whether the development of more specific provisions concerning the timelines of rendering MLA and the circumstances in which the assistance could be postponed could enhance transparency and predictability in favour of requesting States.

Furthermore, in a limited number of States where interference with ongoing investigations was a ground for refusal of the request, it was recommended that the possibility of the mere postponement of the assistance be introduced in the applicable laws. However, there were also countries with similar legislation where the relevant provisions were deemed to allow, as a matter of practice, the postponement of MLA. One State suggested a pragmatic approach whereby the execution of the request or the transmission of the evidence could be split in such a way as to avoid interfering with any pending domestic case.

Conclusions

The review process has revealed that many States face difficulties with burdensome legal assistance procedures. Some States did not have clear timeframes for reaching procedural decisions defined in their legislation, which may impact on the effectiveness of the system and result in unnecessary prolongation of the extradition and MLA proceedings. These States were encouraged to take necessary measures, including making legislative amendments, to expedite and increase effectiveness of their procedures.

In addition to gaps in the legal framework, the importance of substantive internal regulations and procedural operative guidelines to control the time for extradition and MLA process or apply an expedited procedure was also highlighted. In this context, States were recommended to speed up execution of incoming requests through developing internal guidelines or manuals for practitioners, producing specific requirement checklists or model request forms for requesting States, specifying appropriate timeframes within which mutual legal assistance should be executed in the legislation, and formalizing the procedures for mutual legal assistance in their legal framework.

6. Consultations

As was exemplified above, it is not uncommon in practice that extradition and mutual legal assistance requests entail prolonged processes or even remain without a response if there is no proper communication between counterparts. The requirement of consultation before refusal or postponement of extradition or MLA requests gives the requesting State an opportunity to either rectify defects that may be present in its request or at least acquire new knowledge on the requirements of the requested State. Article 44(17) requires that States parties consult with the requesting State party before refusing a request for extradition. This would provide a requesting State with the opportunity to present its opinions and to provide additional information that may be required. Similarly, article 46(26) requires the requested State party to consult with the requesting State party to consider whether assistance may be granted subject to such terms and conditions, as it deems necessary before refusing or postponing mutual legal assistance.

Extradition

The reviews demonstrated that there appeared to be no uniform interpretation and application of the requirement to engage in consultations with the requesting State before refusing extradition. In many cases, such consultations constituted standard practice. While two countries' laws provided for the possibility that the requesting State participates as proxy party to the extradition proceedings, the vast majority of States considered that no implementing legislation was needed, either because they regarded the duty of consultation as part of international comity or practice or considered article 44(17) of the Convention as being directly applicable and self-executing in their own legal system. In the same spirit, one State party argued that prosecutors, in their capacity as representatives of the requesting State before the extradition authorities, were implicitly bound to keep the requesting State informed of all of their actions.

Another State reported that extensive use was made of regional cooperation networks and asserted that it was common practice that domestic judges would ask for additional information in order to avoid the refusal of a request for extradition or surrender. Such additional information could involve details concerning the description of the facts of a crime, the foreign national legislation related to the statute of limitations or information relating to diplomatic guarantees (for example, with regard to the death penalty, permanent sanctions, amnesties, etc.). One State underlined that, although consultations could take place through diplomatic channels and their outcomes could be presented to the judge during the extradition hearing, the judge could not have direct contact with the foreign authorities.

Finally, in seven cases, the lack of both legislation and practice resulted in a finding that this provision had not been implemented, and recommendations were made for the States parties to consult with requesting States parties before refusing an extradition.

Overall, while this provision could be regarded as implemented through an established practice and administrative procedures without the necessity of express legislation, as long as there was no contrary provision in the Constitution and/or legislation, reviewers emphasized that this is a mandatory requirement of the Convention. Therefore, in their view, a high degree of proof was required to show that the relevant practice had gained the force of law through long usage and that it was

applied uniformly. Otherwise, reviewers found that States might wish to consider directly addressing the matter in their extradition laws and reviewing treaties to ensure compliance with the Convention.

Mutual legal assistance

Most countries reported that they engaged in consultations with requesting States before refusing or postponing a request, and some referred to bilateral treaties expressly regulating the matter. However, they provided only a limited number of examples of the concrete manner in which consultations had been conducted.

Conclusions

Direct consultation between States parties is of major importance to the success of extradition and MLA, considering its time-efficient and cost-effective nature. However, its significance has not been widely acknowledged by all the States parties of the Convention.

When cooperation mechanisms are in place, consultations regarding a sophisticated crime such as corruption require particularly close exchanges between criminal justice authorities. Experienced and trained staff and adequate financial support are key parameters in ensuring the success of these consultations. The personnel involved in the consultation must have professional knowledge in criminal justice, especially in domestic extradition and mutual legal assistance practice and requirements, with a view to maintaining effective cooperation and exchange on what type of information is needed to execute requests or if there are any insurmountable barriers for the successful execution of requests. The reviews revealed that law enforcement officers in many States were not aware of the obligation to consult with their counterparts. During the review, recommendations were issued to several States to allocate more resources both human and financial, and to strengthen internal capacity building.

7. Way forward

The reviews indicated a trend towards the convergence between countries belonging to different legal traditions, language or region, which is a reflection of the growing recognition of the importance of effective international cooperation.

Despite the fact that many countries had put in place a wide array of normative and practical tools to meet the requirements of the Convention, a number of difficulties were identified on the operational level. These could be summarized as follows:

- Inadequate domestic legal framework
- Lack of awareness regarding the opportunities the Convention and other international instruments provide to domestic practitioners
- Problems in domestic interagency cooperation
- Inadequate resources provided to central authorities and other domestic agencies tasked with different mandates related to international cooperation and need to further enhance their capacities

In general, the findings of the reviews indicate that most challenges in relation to international cooperation were identified in developing countries and countries with economies in transition. This could indicate that technical assistance in relation to capacity-building and awareness–raising, as well as increased exposure to networks and forums in which international cooperation is discussed in practice, could assist in overcoming some of these shortcomings.

UNODC hopes that the information provided in this initial analysis will be useful for the Working Group in determining which actions the Group may wish to take for its future work on addressing these and other challenges related to international cooperation in the fight against corruption.