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**International cooperation, including at the regional level,
to combat transnational organized crime**

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Working paper prepared by the Secretariat

Summary

The present working paper contains an examination of the role of the United Nations multilateral instruments, such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption, and their two functions, namely as enabling frameworks for the convergence of international cooperation standards and as catalysts for the expansion of treaty networks in the field of international cooperation to give practical effect to their provisions. The paper highlights the regional perspective of international cooperation in criminal matters as such cooperation evolves to keep pace with the increasing challenges posed by transnational crime in its different manifestations. Revisiting the United Nations model treaties on international cooperation in criminal matters, with a view to possible revisions, subject to the views of Member States, is addressed, given the consideration of the matter by both the Congress and the Commission on Crime Prevention and Criminal Justice. The paper is aimed at outlining the most salient considerations related to international cooperation in criminal matters. In that regard, it contains a discussion of the role of relevant stakeholders, such as central and competent authorities and related regional networks. It also contains a discussion of how international cooperation in criminal matters can be enhanced through technical assistance and information-sharing, with a focus on relevant activities by the United Nations Office on Drugs and Crime in this field.

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Contents

	<i>Page</i>
I. Introduction	3
II. Towards a concerted approach to international cooperation in criminal matters: striving for the convergence of bilateral and multilateral agreements and arrangements	4
A. Treaty-based legal tools for international cooperation in criminal matters	4
B. Role of the United Nations multilateral instruments as enabling frameworks for the convergence of international cooperation standards	4
C. Role of the United Nations multilateral instruments as catalysts for the expansion of treaty networks in the field of international cooperation	8
D. United Nations model treaties on international cooperation in criminal matters	9
III. Regional perspective: international cooperation in criminal matters in regional agreements and arrangements	10
IV. Practical approaches to international cooperation in criminal matters	11
V. National and regional stakeholders engaged in international cooperation in criminal matters	13
A. Central and competent national authorities	13
B. Regional cooperation networks of competent authorities	15
VI. Further action to enhance international cooperation in criminal matters	16
A. Collection and dissemination of information about national institutional frameworks and legal requirements for international cooperation	16
B. Technical assistance and capacity-building	17
VII. Conclusions and recommendations	18

I. Introduction

1. The globalization of criminal activities has created a need for strengthened forms and mechanisms of international cooperation. The realization that the investigation, prosecution and control of crime can no longer be confined within national boundaries has led to constant refining, improving and streamlining of existing forms and mechanisms of international cooperation, in order to keep pace with contemporary manifestations of crime, including transnational organized crime, corruption and terrorism.

2. In the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, adopted by the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, held in Salvador, Brazil, from 12 to 19 April 2010, and endorsed by the General Assembly in resolution 65/230, Member States recognized that international cooperation in criminal matters in accordance with international obligations and national laws is a cornerstone of the efforts of States to prevent, prosecute and punish crime, in particular in its transnational forms, and they encouraged the continuation and reinforcement of such activities at all levels. Four years after the Twelfth Congress and within the context of a thematic discussion on the same subject at its twenty-third session, the Commission on Crime Prevention and Criminal Justice reiterated that message, especially with regard to the efficient use of existing multilateral instruments such as the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption for the purpose of advancing international cooperation.¹ Moreover, the Commission, as the preparatory body for the Thirteenth Congress, decided to include in the provisional agenda of the Congress the topic of international cooperation in criminal matters as a demonstration of the constant need to draw the attention of the international community to the challenging task of fostering international cooperation as a response to the ever-evolving globalization and sophistication of crime.

3. Other United Nations forums and intergovernmental processes in the field of crime prevention and criminal justice have continued to generate knowledge, accumulate expertise and delineate policy priorities pertaining to international cooperation in criminal matters. The Working Group on International Cooperation of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime and the open-ended intergovernmental expert meetings to enhance international cooperation under the Convention against Corruption have been used as platforms for the exchange of views and experience among practitioners with a view to assisting the Conference of the Parties to the Organized Crime Convention and the Conference of the States Parties to the United Nations Convention against Corruption in identifying challenges, disseminating information on good practices and further advancing the effective implementation of the provisions of the two conventions on international cooperation. The completed reviews of the first cycle of the Mechanism for the Review of Implementation of the Convention against Corruption, which have focused, inter alia, on the review of

¹ See *Official Records of the Economic and Social Council, 2014, Supplement No. 10* (E/2014/30), chap. III, sect. A, para. 29.

implementation of chapter IV (International cooperation) of the Convention, have been conducive to mapping national approaches to international cooperation and developing cumulative knowledge on obstacles to cooperation and on practical means to overcome them.

4. It has been acknowledged in all relevant deliberations and proceedings that more concerted efforts are needed to ensure the development and promotion of strategies and mechanisms in the entire range of international cooperation, including extradition, mutual legal assistance, transfer of sentenced persons, transfer of criminal proceedings, international cooperation for purposes of confiscation, including asset recovery, and international law enforcement cooperation, and that Member States may wish to consider the advantages and practical consequences of the complementary use of those modalities, where possible and necessary.²

II. Towards a concerted approach to international cooperation in criminal matters: striving for the convergence of bilateral and multilateral agreements and arrangements

A. Treaty-based legal tools for international cooperation in criminal matters

5. For international cooperation practitioners, the legal basis employed, including the terms of the relevant bilateral or multilateral instrument, can have a significant impact on the success of individual requests for cooperation. Even where a State is able to provide assistance without a treaty, reliance on the agreed terms of a bilateral or multilateral instrument can assist in bridging diverse legal traditions and cultures and national differences in procedural law. In addition, the existence of legal rights and obligations within the bilateral or multilateral instrument provides a clear framework governing the manner in which the requested State should respond to requests.

B. Role of the United Nations multilateral instruments as enabling frameworks for the convergence of international cooperation standards

6. The provisions of multilateral conventions such as the 1988 Convention, the Organized Crime Convention and the Convention against Corruption can play a key role in harmonizing obligations and addressing legal gaps in the field of international cooperation in criminal matters. Focusing on the basic modalities of such cooperation in particular, those instruments provide a basis for extradition and mutual legal assistance in and of themselves, in addition to obligations resulting from other bilateral or multilateral agreements related to international cooperation in criminal matters into which States parties have entered. Thus, the conventions offer both a way of filling possible legal gaps, where no bilateral or multilateral

² See the discussion guide for the thematic discussion on international cooperation in criminal matters (E/CN.15/2014/12), para. 70.

agreement exists between countries seeking to cooperate, and a means for the increased convergence of such bilateral and multilateral agreements.

7. A first criterion to substantiate that point stems from the specific circumstances that necessitated the existence of those instruments, as well as the timing of their negotiation and adoption, which, in turn, also provides an indication of the accumulated expertise and experience employed by Member States to negotiate and finalize the instruments prior to adoption by the General Assembly.

8. The negotiation and adoption of the 1988 Convention became possible primarily because the international community, and specifically States parties to the international drug control treaties, were convinced that the time had come to move forward and to draft a new instrument to address more forcefully, through international cooperation and concerted action, the complex problem of drug trafficking.³

9. Based on the precedent of the 1988 Convention, the negotiation and adoption of the Organized Crime Convention and its supplementary Protocols took place in an era when States parties were signalling their intention to establish lasting rules and institutions based on mutual solidarity and shared responsibilities to combat transnational organized crime, including through enhanced mechanisms of international cooperation. That was particularly illustrated through the inclusion of comprehensive and focused provisions on international cooperation in criminal matters in the final text of the Organized Crime Convention.⁴

10. Similarly, the Convention against Corruption provisions on international cooperation were inspired by the corresponding provisions in the Organized Crime Convention, and in some cases went beyond them. In addition, more extensive provisions on international cooperation and mutual legal assistance for purposes of confiscation were inserted in the text of the Convention against Corruption in support of a major breakthrough of that Convention, namely the incorporation, for the first time in history, of a separate chapter on asset recovery (chapter V). The driving force of that development was the realization that a new international instrument that would deal comprehensively with the phenomenon of corruption, as well as with the parameters of international cooperation to combat it, was needed.⁵

11. As a result of the initiatives of the international community to bring those conventions into force, a corpus of international cooperation provisions emerged, calling for more concerted action by States parties in that field. In these conventions, international cooperation in criminal matters was specifically mentioned either as a purpose or in the scope of application of each of them. The consequent effect is the interrelationship with other parts or chapters of the instruments on issues such as establishment of jurisdiction, criminalization of

³ See *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (United Nations publication, Sales No. E.98.XI.5), p. 1.

⁴ For more information, see the *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5).

⁵ For more information, see the *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Corruption* (United Nations publication, Sales No. E.10.V.13 and corrigenda).

offences, domestic prosecution and investigation of crimes and protection of witnesses.

12. Apart from identifying international cooperation in criminal matters as a “treaty purpose”, the three universal crime-related conventions provide in detail for a wide array of international cooperation modalities, from formal judicial cooperation, such as extradition and mutual legal assistance, to more informal law enforcement modalities or other types of cooperation, such as joint investigations and special investigative techniques.

13. Moreover, the instruments under discussion are coming close to universal adherence, as the table below demonstrates, thus representing state-of-the-art standards. The vast majority of Member States are parties to all three conventions. As a result, the possibility of directly using any of these conventions as the legal basis for international cooperation in criminal matters is particularly high, thus providing a greater degree of stability and consistency to international cooperation.

Table
Status of ratification/accession^a

<i>Convention</i>	<i>Number of parties</i>
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988	189
United Nations Convention against Transnational Organized Crime	185
United Nations Convention against Corruption	173

^a As at 22 January 2015.

14. Another advantage of the universal crime-related conventions is the extended scope of application of their international cooperation provisions. For example, articles 16 and 18 of the Organized Crime Convention, on extradition and mutual legal assistance respectively, extend the scope of their application. Article 16 also applies to serious crime involving an organized criminal group, where “the person who is the subject of the request for extradition is located in the territory of the requested State party”. Therefore, the condition of transnationality of the offence, as described in article 3, paragraph 2, is not strictly necessary for the application of article 16.

15. Furthermore, under article 18, States parties are required to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention, including serious crimes, where the requesting State party has reasonable grounds to suspect that the offence is transnational in nature and that it involves an organized criminal group. That allows for assistance to be provided in the early phases of investigations, when the evidentiary basis of the commission of an offence covered by the Convention and its Protocols may still be weak, and it also provides for an enlarged notion of transnationality of the offence.

16. In addition, the notion of “serious crime” is defined in article 2, paragraph (b), of the Organized Crime Convention as meaning “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more

serious penalty”. The definition of serious crime, thus, does not contain any requirements in relation to the gravity, motivation or content of the offence, other than the criminal penalty (at least four years of imprisonment) associated with it. Consequently, the inclusion of the notion of “serious crime” in the Organized Crime Convention enables the application of the Convention to a broad range of offences in a flexible manner. Moreover, new forms and dimensions of transnational organized crime fall under the scope of the Convention, considerably enhancing its use, in particular for international cooperation.

17. The Convention against Corruption was the first global, legally binding instrument against corruption. It includes a comprehensive set of criminalization provisions, both mandatory and optional, covering a wide range of acts of corruption. By virtue of article 65, paragraph 2, of the Convention, each State party may adopt more strict or severe measures for preventing and combating corruption. Therefore, the Convention does not hinder the adoption and implementation of criminalization measures with a wider scope, encompassing a much broader range of economic crimes or offences against the public administration, or even private interests, related to corruption.

18. The comprehensiveness of the international cooperation provisions of the instruments under discussion provides further added value. Article 18 of the Organized Crime Convention and article 46 of the Convention against Corruption, on mutual legal assistance, are typical examples of what may be called a “mini mutual legal assistance treaty”. In addition, article 16 of the Organized Crime Convention and article 44 of the Convention against Corruption set a basic minimum standard for enhancing the efficiency of extradition mechanisms in relation to the offences established by the two conventions. Furthermore, chapter V (Asset recovery) of the Convention against Corruption contains comprehensive provisions laying down specific measures and mechanisms for cooperation in asset recovery.

19. The actual use of the Organized Crime Convention and the Convention against Corruption as legal bases for international cooperation and vehicles for potential convergence in related responses is linked to a number of provisions of the two instruments. For example, article 16, paragraph 4, of the Organized Crime Convention and article 44, paragraph 5, of the Convention against Corruption provide that if a State party makes extradition conditional on the existence of a treaty, the Convention may be considered a legal basis for extradition in respect of an extradition request concerning an offence covered by the Convention received from another State party with which the requested State has no extradition treaty. Similarly, the role of articles 18 and 46 of the Organized Crime Convention and the Convention against Corruption respectively in providing a framework for mutual legal assistance is specifically addressed in paragraph 7 of each of them, which obliges States parties to directly apply the “mini-treaty” contained in paragraphs 9 to 29 of those articles when no bilateral treaty binds the parties, and the States parties are encouraged to apply those provisions in a manner that complements existing mutual legal assistance treaties.

20. Over the last few years, the intergovernmental processes relating to the implementation of both the Organized Crime Convention and the Convention against Corruption have devoted particular attention to the issue of using the two conventions as legal bases for international cooperation. Both the Working

Group on International Cooperation of the Conference of the Parties to the Organized Crime Convention and the open-ended intergovernmental expert meetings to enhance international cooperation under the Convention against Corruption have accorded priority to supporting the use of the conventions as a legal basis and to supporting States parties to assist each other in the investigation and prosecution of cases falling within their scope of application.⁶ Cases in which the Organized Crime Convention was used as a legal basis for international cooperation have been brought to the attention of the Conference of the Parties to the Organized Crime Convention.⁷ The first findings on similar use of the Convention against Corruption (still less frequent in practice compared with the Organized Crime Convention, which entered into force earlier) are being analysed in the Implementation Review Group of the Conference of the States Parties to the Convention against Corruption.⁸

C. Role of the United Nations multilateral instruments as catalysts for the expansion of treaty networks in the field of international cooperation

21. The universal crime-related conventions encourage States parties to seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of international cooperation, including extradition (article 16, paragraph 17, of the Organized Crime Convention and article 44, paragraph 18, of the Convention against Corruption). That complements the “convergence function” described above. The conclusion of bilateral and multilateral agreements or arrangements is also seen as a means to give practical effect to the provisions of the instruments (see article 18, paragraph 30, of the Organized Crime Convention and article 46, paragraph 30, of the Convention against Corruption, on mutual legal assistance). In any case, the language used in the two conventions in relation to certain modalities of international cooperation (transfer of criminal proceedings, transfer of prisoners, joint investigations, cooperation for conducting special investigative techniques and cooperation on witness protection issues) is generic and encourages States to enter into agreements or arrangements to regulate those issues in more detail.

22. Other provisions facilitate the expansion or the more streamlined use of the existing treaty network among States parties. Article 16, paragraph 5, of the Organized Crime Convention and article 44, paragraph 6, of the Convention against Corruption oblige States parties that make extradition conditional on the existence of a treaty but that do not recognize the two conventions as a legal basis for cooperation on extradition to seek to conclude treaties with other States parties. States parties also undertake to include offences covered by the conventions as extraditable offences in their already concluded extradition treaties (article 16, paragraph 3, of the Organized Crime Convention and article 44, paragraph 4, of the Convention against Corruption). Those articles also provide that each of the

⁶ On the Convention against Corruption, see, for example, CAC/COSP/EG.1/2014/3, para. 43.

⁷ See, for example, CTOC/COP/2010/CRP.5 and Corr.1.

⁸ See the report prepared by the Secretariat on the regional implementation of chapter IV (International cooperation) of the Convention against Corruption (CAC/COSP/IRG/2013/11).

offences covered by the Convention should be deemed to be included as an extraditable offence in any extradition treaty existing between States parties.

23. The ultimate objective is for States parties to consider broadening the range of legal bases on which they can rely for international cooperation purposes, through a combined use of multilateral and bilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance international cooperation.⁹ The use of the universal crime-related conventions to interpret the scope — or even the content — of existing cooperation agreements is another option for consideration by the national authorities of Member States.¹⁰

D. United Nations model treaties on international cooperation in criminal matters

24. The United Nations congresses on crime prevention and criminal justice have served as a platform for the development of model treaties in the field of international cooperation in criminal matters. Those model treaties have been endorsed or promulgated through resolutions of the relevant United Nations bodies. Although there is a lack of concrete statistical data, practitioners from a number of Member States have reported to relevant intergovernmental forums on the use of model treaties to achieve uniformity and consistency with international standards in treaty relations or for the negotiation of new bilateral agreements or arrangements.

25. The Model Treaty on Extradition¹¹ and the Model Treaty on Mutual Assistance in Criminal Matters,¹² in particular, are valuable tools for the development of bilateral and multilateral arrangements and agreements in the area of judicial cooperation. Also of relevance are the Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property¹³ and model treaties on issues where the Organized Crime Convention and the Convention against Corruption contain generic provisions, such as their articles on the transfer of criminal proceedings and on the transfer of sentenced persons.¹⁴

26. The model treaties represent important guidance tools facilitating the convergence of related treaty provisions. In that regard, the Conference of the Parties to the Organized Crime Convention endorsed the recommendation of the Working Group on International Cooperation that States should consider, when negotiating bilateral and multilateral agreements or arrangements with other States, making use of the Model Treaty on Extradition, the Model Treaty on Mutual Assistance in Criminal Matters, the Model Agreement on the Transfer of Foreign

⁹ CTOC/COP/WG.3/2014/4, para. 2 (a).

¹⁰ CTOC/COP/WG.3/2014/2, para. 37 (b).

¹¹ General Assembly resolution 45/116, annex, and resolution 52/88, annex.

¹² General Assembly resolution 45/117, annex, and resolution 53/112, annex I.

¹³ Economic and Social Council resolution 2005/14, annex.

¹⁴ See Model Treaty on the Transfer of Proceedings in Criminal Matters (General Assembly resolution 45/118, annex); and the Model Agreement on the Transfer of Foreign Prisoners and the recommendations on the treatment of foreign prisoners (*Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.1, annexes I and II, respectively).

Prisoners, the Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property and other relevant model instruments.¹⁵

27. On the recommendation of the Commission on Crime Prevention and Criminal Justice at its twenty-third session and the Economic and Social Council, in its resolution 2014/17, the General Assembly adopted resolution 69/193, in which it invited Member States, during the consideration of the appropriate agenda item of the Thirteenth Congress, to provide their views regarding the updating or revising of the model treaties on international cooperation in criminal matters. Also in that resolution, the Assembly recommended that the Commission on Crime Prevention and Criminal Justice, at its twenty-fourth session, take into account the input received from Member States and consider initiating a review of particular model treaties on international cooperation in criminal matters.

III. Regional perspective: international cooperation in criminal matters in regional agreements and arrangements

28. Regional agreements and schemes, notably among States of the same region or sharing common legal traditions, began to be concluded during the second half of the twentieth century. From a legal perspective, regional cooperation arrangements may involve treaties between countries or may rely on political or working-level memorandums or declarations. From an international cooperation perspective, many regional treaties focus on specific criminal activities and contain provisions on different forms of international cooperation, while others are ad hoc instruments on various modalities of international cooperation.

29. Early regional agreements¹⁶ have had a historical role in harmonizing extradition and mutual legal assistance relations and practice between States. In an attempt to adjust to ever more complex and sophisticated crime challenges, more recent initiatives at the regional level use the principle of mutual recognition, to go beyond arrangements for mutual assistance. In the European Union, for example, the practice of executing arrest warrants for the surrender of fugitives goes back to 2002, when the relevant framework decision was adopted. States members of the European Union have also agreed, subject to specified grounds for refusal, to recognize and execute European evidence and arrest warrants without any further formalities. Similarly, under a Caribbean Community (CARICOM) arrest warrant treaty, States parties are required to make provision in their national law for the arrest and detention of any requested person pursuant to a CARICOM arrest warrant issued by another State party.

30. Bilateral and regional agreements on extradition and mutual legal assistance represent a significant legal basis for many countries seeking to engage in international judicial cooperation, despite the fact that, from a global perspective, that trend may not represent a uniform system of treaty relations. In view of the function of the universal crime-related conventions as enabling frameworks of

¹⁵ Conference of the Parties to the Organized Crime Convention resolution 7/4, annex.

¹⁶ For example, the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters, the Inter-American Convention on Extradition and the Inter-American Convention on Letters Rogatory.

convergence, as described above, carrying out systematic and regular collection of statistical information on the various legal bases for international cooperation may assist Member States in understanding the use, in practice, of existing treaty networks and, accordingly, the most effective methods for fostering international cooperation.

IV. Practical approaches to international cooperation in criminal matters

31. Member States have repeatedly underlined the importance of relying on flexible and practical approaches when cooperating in criminal matters, in accordance with the universal crime-related conventions.¹⁷ In that regard, intergovernmental meetings have continued to highlight practical considerations, such as the simplification of the requirements for extradition and mutual legal assistance and the establishment and strengthening of communication networks between competent authorities.

32. In some instances, the universal crime-related conventions have incorporated innovative provisions that offer practitioners more opportunities for better understanding and informal cooperation, such as:

(a) The transmittal of information without prior request, also known as “spontaneous transmission of information”, which may include both publicly and non-publicly available information (article 18, paragraphs 4 and 5, of the Organized Crime Convention and article 46, paragraphs 4 and 5, of the Convention against Corruption);

(b) The expeditious handling of mutual legal assistance requests (article 18, paragraph 24, of the Organized Crime Convention and article 46, paragraph 24, of the Convention against Corruption);

(c) The use of videoconference for witness hearings (article 18, paragraph 18, of the Organized Crime Convention and article 46, paragraph 18, of the Convention against Corruption);

(d) The option of cooperation for the purpose of non-conviction-based confiscation (article 54, paragraph 1 (c), of the Convention against Corruption);

(e) The requirement for States parties to interpret dual criminality based on the underlying conduct rather than the strict wording of the legislation (article 43, paragraph 2, of the Convention against Corruption);

(f) The possibility to expand cooperation to cover civil and administrative proceedings relating to corruption (article 43, paragraph 1, of the Convention against Corruption);¹⁸

¹⁷ See the following reports of the regional preparatory meetings for the Thirteenth Congress: A/CONF.222/RPM.1/1, para. 18; A/CONF.222/RPM.2/1, para. 18; A/CONF.222/RPM.3/1, para. 37; and A/CONF.222/RPM.4/1, para. 25.

¹⁸ For more information and recommended action on this issue, see CAC/COSP/EG.1/2014/3, paras. 24-33, 48 and 49.

(g) The option of executing mutual legal assistance requests “in accordance with the procedures specified in the request” if not contrary to the domestic law of the requested State (article 18, paragraph 17, of the Organized Crime Convention and article 46, paragraph 17, of the Convention against Corruption).

33. Similarly, more practical provisions with respect to traditional forms of cooperation in criminal matters can be found in bilateral and regional arrangements and in national legislation. Examples of more expeditious modalities of cooperation in regional multilateral instruments include the regional arrest warrant arrangements in Europe, CARICOM and the Nordic countries and the simplified extradition procedure envisaged in the Southern African Development Community Protocol on Extradition.

34. Novel approaches aimed at reducing traditional impediments to the execution of requests for mutual legal assistance and extradition may encompass the following: (a) relaxing the strict application of the non-extradition of nationals, including through alternatives such as the temporary surrender of nationals to the requesting State for purposes of trial only and on the condition of return to the requested State for serving the sentence; (b) affording legal assistance in the absence of dual criminality, when such assistance does not involve coercive measures; and (c) allowing the provision of any type of legal assistance, providing that it is not contrary to the domestic law of the requested State.

35. Over the last few years there has been an increased acceptance of the use of videoconference for criminal proceedings, and it is now a widely used technology in national and international contexts.¹⁹ Videoconference may be a useful tool for cooperation, allowing for the virtual presence of the person in the territory over which the State conducting the investigation has jurisdiction.²⁰

36. With regard to the application of the conventions’ provisions on the exchange of information, Member States have underlined practical approaches such as the negotiation of memorandums of understanding, the creation of national systems with secure communication channels and the importance of making online information available to prosecutors on the instruments that each country has concluded to grant international cooperation.²¹

37. While such informal approaches help States obtain more timely cooperation, practical and legal barriers remain, as a result of differences between domestic legal frameworks, institutional structures and language requirements. Member States have underlined a number of steps that could be taken to strengthen the effectiveness of international cooperation, including the use of consultations prior to formal requests, the use of videoconferencing, the establishment of a strong role for central authorities and direct communication among them, the use of electronic means for transmission of requests, the provision of information on national laws and

¹⁹ See the report of the Secretariat on the expert group meeting on the technical and legal obstacles to the use of videoconferencing (CTOC/COP/2010/CRP.8), para. 11.

²⁰ See the note by the Secretariat on the technical and legal obstacles to the use of videoconferencing (CTOC/COP/2010/CRP.2).

²¹ CTOC/COP/WG.3/2014/4, para. 6.

requirements, the involvement of liaison officers and the establishment of policies on *de minimis* requests.²²

V. National and regional stakeholders engaged in international cooperation in criminal matters

A. Central and competent national authorities

38. Article 18, paragraph 13, of the Organized Crime Convention requires States parties to designate a central authority 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. A similar obligation is contained in article 7, paragraph 8, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and in article 46, paragraph 13, of the Convention against Corruption. States parties to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, are required to designate an authority or authorities to receive and respond to requests relating to vessels (article 8, paragraph 6, of that Protocol). States parties to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime must also identify a national body or single point of contact to act as a liaison on matters relating to the Protocol (article 13, paragraph 2, of that Protocol).

39. Since the entry into force of the universal crime-related conventions, States parties have constantly reiterated the importance of central and competent authorities in facilitating international cooperation in criminal matters. In that regard, in the Salvador Declaration, Member States were called upon to establish or strengthen, as appropriate, central authorities fully empowered and equipped to deal with requests for international cooperation in criminal matters.

40. The ability to promptly request and respond to requests for international cooperation is particularly important, given the serious nature of the offences and their transnational nature. Therefore, the designation of a central and/or other competent authority that can be clearly identified by other States parties, and with which they may be in contact for the purpose of requesting mutual legal assistance and/or other forms of cooperation, is central to the implementation of the pertinent provisions of the Organized Crime Convention and the Convention against Corruption.

41. The most commonly designated central authorities for mutual legal assistance are ministries of justice, offices of the attorney general and ministries of foreign affairs.²³ In the case of countries that have designated more than one authority, it is often a combination of those three institutions.

²² E/2014/30-E/CN.15/2014/20, chap. III, sect. A, para. 33.

²³ CAC/COSP/IRG/2014/8, para. 43.

42. Within the context of the first review cycle of the Implementation Review Mechanism, particular attention has been given to the structure and role of central and/or competent authorities as key institutions for the effective implementation of chapter IV of the Convention against Corruption. Some States parties give their central authority a purely administrative role, whereby the authority is only in charge of receiving and sending mutual legal assistance requests, while in other States parties, central authorities may be responsible for the execution of requests, the substantive coordination or the follow-up to the request among national institutions. Those different roles have an impact on the communication of the central authorities with their foreign counterparts and on their participation in regional or international cooperation networks that might help to facilitate the mutual legal assistance process.²⁴

43. Irrespective of their functions in mutual legal assistance, central authorities will almost certainly need to be engaged, to varying degrees, in a coordinating role, both domestically and internationally. That is particularly true given the broad range of domestic actors that may be involved in the implementation and initiation of requests.

44. In addition to their core functions of sending and receiving requests, many central authorities also facilitate the process of international cooperation, which may include the provision of information on national mutual legal assistance laws and procedures to other States prior to the formal submission of a request. In addition, the central authority, as a possible single focal point for incoming and outgoing requests, may act as a key collector and provider of statistical information on the type of assistance requested,²⁵ as well as the legal basis employed.

45. States have discussed and shared their experiences on topics related to the establishment of effective central authorities, such as 24-hour availability, competence for mutual legal assistance purposes under different treaties and communication practices. In the Working Group on International Cooperation of the Conference of the Parties to the Organized Crime Convention, States underlined the importance of strengthening the coordinating role of central authorities at the domestic and international levels, including through the development of strong links and effective lines of communication between them, the setting up of mechanisms for consultation with competent authorities involved in the execution of the requests, the development of systems for tracking the status of requests and the exercise of quality control over requests.²⁶

46. The extent to which central authorities are able to perform an effective coordination role is often dependent upon the availability of resources, in terms of

²⁴ CAC/COSP/IRG/2013/11, para. 40.

²⁵ In relation to the Convention against Corruption, a recommendation that is made consistently in the country reviews conducted within the framework of the Implementation Review Mechanism is that States parties put in place — or continue efforts to do so — and render fully operational information systems compiling in a systematic manner statistical data on extradition and mutual legal assistance cases, with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of international cooperation arrangements.

²⁶ CTOC/COP/WG.3/2014/4, para. 12.

infrastructure, staffing and training opportunities.²⁷ Relevant United Nations bodies have continued to mandate the United Nations Office on Drugs and Crime (UNODC) to, inter alia, provide technical assistance to Member States in order to enhance the capacity of the experts and staff of central authorities to deal expeditiously with mutual legal assistance requests, develop tools to facilitate international cooperation in criminal matters and support central authorities in strengthening communication channels and information exchange.²⁸

B. Regional cooperation networks of competent authorities

47. One of the most effective means of facilitating international cooperation is through regional and international coordination mechanisms and networks. At the operational level, regional cooperation arrangements may include the designation of international cooperation focal points, communication of national requirements and procedures for cooperation, creation of secure communication channels or platforms and mechanisms for handling cases and sharing experiences between authorities of participating States. Such activities may focus on the facilitation of formal judicial cooperation and informal law enforcement cooperation and intelligence-sharing. Those activities are not necessarily dependent upon a treaty basis and may exist alongside or in the absence of regional cooperation treaties.

48. In general, regional cooperation networks can play a significant role in pursuing transnational or regional approaches to criminal investigations. Such regional networks enhance personal contacts, build mutual trust between practitioners and are conducive to forming a better understanding of their respective legal, procedural and operational requirements.

49. At the regional level, UNODC has continued to support Member States in setting up informal networks of prosecutors and central authorities to facilitate international cooperation, such as the Central American Network of Prosecutors against Organized Crime and the Network of West African Central Authorities and Prosecutors.

50. UNODC has also been working in promoting the so-called “networking the networks” initiative. The initiative is aimed at building stronger cooperation links between various regional and international law enforcement organizations to ensure interregional criminal intelligence-sharing and to support multilateral joint or coordinated operations. Moreover, it facilitates the building of contacts and links between law enforcement, prosecutorial and financial intelligence networks, with a view to efficiently targeting transnational organized crime.

51. Acknowledging the contribution of regional networks to the effectiveness of international cooperation, Member States have continued to share views and focus attention on key aspects such as the need to ensure proper financial support for those networks,²⁹ the development of a global network through a virtual

²⁷ See A/CONF.222/RPM.1/1, para. 20, and A/CONF.222/RPM.3/1, para. 41.

²⁸ See, for example, General Assembly resolution 69/193, paras. 8-10.

²⁹ CTOC/COP/WG.3/2014/4, para. 7.

environment³⁰ and the establishment of international networks and partnerships among Member States.³¹

52. In the field of asset recovery, based on relevant mandates of the Working Group on Asset Recovery of the Conference of the States Parties to the Convention against Corruption, UNODC created a database of the asset recovery focal points designated by States parties. As at 19 June 2014, 55 States parties and 2 signatories had notified the Secretariat of their designated focal points. The online directory of designated central authorities and asset recovery focal points is available on the UNODC website (www.unodc.org). States parties are encouraged to circulate information on the online directory of designated central authorities to relevant national institutions.³²

53. UNODC and the Stolen Asset Recovery (StAR) Initiative have also been active in supporting the establishment and/or strengthening of regional networks engaged in asset recovery and confiscation.³³ In addition, 196 dedicated focal points representing 108 countries participate in the global focal point initiative, which was established by the StAR Initiative in partnership with the International Criminal Police Organization (INTERPOL) in 2009. It is a platform geared towards supporting international cooperation and informal assistance for the purpose of identifying, tracing, freezing and ultimately recovering the proceeds of corruption and economic crime.

VI. Further action to enhance international cooperation in criminal matters

A. Collection and dissemination of information about national institutional frameworks and legal requirements for international cooperation

54. During the past few years, UNODC has developed technical assistance tools to facilitate international cooperation in criminal matters, including the directory of competent national authorities, the Mutual Legal Assistance Request Writer Tool and manuals on international cooperation. More recently, with the development of the knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC), the imperative of expanding the collection and dissemination of relevant information has become evident. SHERLOC is aimed at consolidating the lists of competent national authorities under the Convention against Corruption, the Organized Crime Convention and the 1988 Convention, with a view to enhancing usability and efficiency.

55. In addition, the Counter-terrorism Learning Platform, launched by UNODC (<http://ctlp.unodc.org>), which is a technologically advanced tool for strengthening international cooperation in criminal matters, provides a gateway to a worldwide community of practitioners (mostly criminal justice and law enforcement officers,

³⁰ Ibid., para. 2 (r).

³¹ Ibid., para. 15.

³² CAC/COSP/WG.2/2014/3, para. 61.

³³ Ibid., para. 64.

with more than 1,200 users from more than 120 countries) for networking, exchanging information and sharing best practices.

56. Further to relevant mandates,³⁴ UNODC is currently pursuing the upgrading of all its existing tools into an up-to-date platform. UNODC has focused on the development of databases and repositories that are complemented by search engines that make an array of information on, inter alia, case law, legislation, bilateral and multilateral treaties and national legal and procedural requirements easily accessible to all users. The tools also contain links to national websites, where available.

57. The upgrading of UNODC tools takes into account the relevant recommendations made by Member States, such as the possibility of enabling users to upload information directly into SHERLOC, linking UNODC tools with relevant tools and initiatives developed by regional intergovernmental organizations and creating an expert forum within SHERLOC that could allow experts to communicate online.

B. Technical assistance and capacity-building

58. By including provisions on technical assistance, training and information exchange with regard to the prevention and combating of the types of criminal activities they cover, the universal crime-related conventions pave the way towards greater levels of specialization among practitioners, including the use of special investigative techniques, joint investigations and evidence-gathering.

59. The provision of legislative assistance for the ratification and implementation of the conventions is a key function of UNODC. Such assistance includes training for relevant authorities and practitioners on the various aspects and requirements of the conventions, gap analysis, advice on existing legislation and support for drafting or amending legislation, including the provision of advice to parliamentarians.

60. The Conference of the Parties to the Organized Crime Convention, through its Working Group on Technical Assistance, has recently mapped out areas of particular relevance for the development of technical assistance, including: (a) assistance, good practices and the comparison of national legislation in the area of identifying and protecting victims of and witnesses to organized crime; (b) establishing capacity-building programmes for prosecutors, members of the judiciary and law enforcement agencies, including to enhance inter-agency cooperation and coordination; and (c) assistance in harmonizing national legislation with the Organized Crime Convention. Similarly, the Conference has formulated recommendations in three main thematic areas: (a) criminalization of participation in an organized criminal group; (b) liability of legal persons; and (c) information-gathering under article 32, paragraph 5, of the Organized Crime Convention.³⁵

61. Within the context of the Implementation Review Mechanism, the findings on the implementation of chapter IV of the Convention against Corruption provide a solid body of knowledge about technical assistance needs that should be addressed

³⁴ General Assembly resolution 69/193.

³⁵ See Conference of the Parties to the Organized Crime Convention resolution 7/3.

in order to enhance the capacity of States parties to better use international cooperation mechanisms, in line with the requirements of the Convention.³⁶

62. An important initiative in the field of capacity-building for enhancing the effectiveness of international cooperation for purposes of confiscation is a two-year project on the management, use and disposal of seized and confiscated assets, which was launched at the beginning of 2014 by UNODC, in cooperation with the Region of Calabria. An expert group meeting was held in Reggio Calabria, Italy, from 2 to 4 April 2014, which was attended by 80 experts from 35 countries, agencies and organizations with experience and expertise in the area of managing, using and disposing of frozen, seized and confiscated assets. Taking into account the findings and recommendations of that expert group meeting,³⁷ a number of activities and knowledge products for practitioners are being developed with the aim of advancing international cooperation in identifying, seizing and confiscating criminal assets, particularly assets of Mafia-based criminal organizations; domestic management, use and disposal of seized and confiscated assets; and management of returned assets in asset recovery cases. The project builds upon previous work carried out by UNODC and Member States in the field, in particular as part of the StAR Initiative.

VII. Conclusions and recommendations

63. The Thirteenth United Nations Congress on Crime Prevention and Criminal Justice may wish to consider the following recommendations:

(a) Member States should continue to explore further opportunities to broaden the range of legal bases on which they can rely for international cooperation in criminal matters, including the possibility of concluding bilateral and multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the pertinent provisions on international cooperation of the 1988 Convention, the Organized Crime Convention and the Convention against Corruption;

(b) Member States should enhance their capacity to carry out a systematic and regular collection of statistical information on the various legal bases for international cooperation as a means of understanding the use, in practice, of existing treaty networks and, accordingly, the most effective methods for fostering international cooperation;

(c) Member States should continue their efforts to build and promote flexible and efficient schemes of international cooperation for purposes of confiscation by, inter alia, developing or reviewing domestic legislation or practice to enable greater flexibility in dealing with tracing, freezing and confiscation requests, including requests for the enforcement of foreign orders and judgements, as well as non-conviction-based asset confiscation, where consistent with domestic law;

(d) Member States that have not yet done so should designate central authorities under the different provisions of the universal crime-related conventions and, where required, inform the Secretary-General accordingly;

³⁶ For detailed information on those technical assistance needs, see CAC/COSP/IRG/2014/3.

³⁷ Contained in CAC/COSP/WG.2/2014/CRP.1.

(e) UNODC should undertake efforts to collect information from Member States on different possible models for central authorities for mutual legal assistance, with a view to sharing experience with Member States wishing to establish or strengthen a central authority and to gaining a better understanding of the functioning and operation of central authorities at the national and international levels;

(f) Member States, with the support of UNODC, where necessary, should continue establishing regional networks of central authorities or judicial authorities and supporting the strengthening of existing networks, including the Central American Network of Prosecutors against Organized Crime and the Network of West African Central Authorities and Prosecutors;

(g) Member States should continue providing their views regarding the updating and revising of the model treaties on international cooperation in criminal matters so as to enable the Commission on Crime Prevention and Criminal Justice to take into account the input received and consider initiating a review of particular model treaties, with a view to keeping them up to date with recent developments in the field of international cooperation, including at the regional level;

(h) Member States should consider using new forms of technology, including, where appropriate, online platforms, to enhance their ability to securely share information to combat transnational organized crime, corruption and terrorism;

(i) Member States should make efforts to put in place or strengthen information systems and databases compiling statistical information on international cooperation cases, with a view to facilitating the monitoring of such cases and the gathering of information on the nature of the assistance requested or provided, the legal basis for the provision of such assistance, the classification of requests according to the offences in question and the time needed for the execution of the requests;

(j) Member States should enhance the efficiency of law enforcement cooperation mechanisms by, inter alia, developing effective systems of information-sharing, establishing channels of communication between their relevant authorities and, if needed, concluding arrangements to foster operational assistance;

(k) UNODC should continue its work to collect and disseminate, including through SHERLOC, relevant national laws, guidelines and materials that can assist practitioners in the preparation and submission of requests for mutual legal assistance;

(l) Member States should consider supporting technical assistance efforts, including those undertaken by UNODC, to strengthen knowledge and capacity within central authorities and other relevant institutions and assist in streamlining legislation related to international cooperation in criminal matters;

(m) UNODC should continue developing tools for the promotion of international cooperation in criminal matters, with emphasis on the use of new technologies for the collection and dissemination of information and as a means of overcoming problems that hinder cooperation in a number of areas, such as witness testimony by videoconference, where applicable, and the exchange of digital evidence.