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**Working Group of Government Experts
on Technical Assistance**

Vienna, 6-7 October 2014

Item 4 of the provisional agenda*

**Information-gathering under article 32, paragraph 5,
of the United Nations Convention against Transnational
Organized Crime****Information-gathering under article 32, paragraph 5, of the
Organized Crime Convention****Note by the Secretariat****I. Introduction**

1. The United Nations Convention against Transnational Organized Crime is one of the most widely ratified treaties dealing with criminal law. It offers States parties a framework for international cooperation in combating transnational organized crime and requires action by States parties to harmonize their legislation with Convention requirements. Article 34(1) of the Convention calls upon each State party to take “the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.”
2. In accordance with article 32, paragraph 1, of the Convention, the Conference of the Parties is established “to improve the capacity of States parties to combat transnational organized crime and to promote and *review the implementation of the Convention*” (emphasis added). Article 32, paragraph 5, of the Organized Crime Convention, calls upon each State Party to “provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement the Convention, as required by the Conference of the Parties.”
3. At its meeting held on 11 February 2014, the extended Bureau of the Conference of the Parties to the Convention requested that the Secretariat prepare a background paper on the issue of reporting requirements to be considered by the

* CTOC/COP/WG.2/2014/1.



Working Group on Technical Assistance at its meeting on 6 and 7 October 2014, held concurrently with the plenary of the seventh session of the Conference. The present note has been prepared in response to this request and with a view to contributing to deliberations of the Working Group on item 4 of the provisional agenda, entitled “Information-gathering under article 32, paragraph 5, of the United Nations Convention against Transnational Organized Crime”.¹ The note summarizes the reporting requirements contained in the Convention and describes past and present action taken by States parties in complying with the reporting requirements. The note also refers to projects facilitating efforts of States parties in complying with reporting requirements and provides recommendations on how to improve information-gathering under article 32, paragraph 5, of the Convention.

II. Reporting requirements contained in the Organized Crime Convention

4. In accordance with article 32, paragraph 1, of the Convention, the Conference of the Parties is established “to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of the Convention.” Article 32, paragraphs 3 (d) and (e), call upon the Conference to agree upon mechanisms for achieving these objectives including the periodical review of the implementation of the Convention, as well as recommendations to improve the Convention and its implementation. To this end, article 32, paragraph 4, requires the Conference to “acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and of the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties”. Irrespective of such mechanisms, article 32, paragraph 5, requires each State Party to “provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties”.

5. Article 32 does not specify the nature and frequency of the reporting requirements and the articles to be reported on. The interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto state, with regard to article 32, that the “Conference of the Parties should take into account the need to foresee some regularity in the provision of information required.”² This implies that the modalities of the provision of information are for the Conference to agree upon and would require some periodicity. From its first session in 2004 to its fourth session in 2008, States parties were indeed requested to fulfil such reporting requirements with regularity, for examination by the Conference.

¹ CTOC/COP/WG.2/2014/1.

² A/55/383/Add.1.

III. First and Second reporting cycles, 2005-2008

6. At its first session in 2004, the Conference, in its decision 1/2 entitled “Programme of work of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime”, decided “to carry out the functions assigned to it in article 32 of the United Nations Convention against Transnational Organized Crime by, inter alia, establishing a programme of work that it will review at regular intervals”.³ The programme of work for the second session of the Conference lists three agenda points in this regard.⁴

(i) Consideration of the basic adaptation of national legislation in accordance with the United Nations Convention against Transnational Organized Crime;

(ii) Commencement of the examination of criminalization legislation and difficulties encountered in the implementation of the relevant provisions of the Convention in accordance with its article 34, paragraph 2; and

(iii) Enhancing international cooperation and developing technical assistance to overcome difficulties identified in the implementation of the Convention.

7. Paragraph (c) of Conference decision 1/2 requested “the Secretariat to collect information from States parties and signatories to the Convention, in the context of the above programme of work, using for that purpose a questionnaire to be developed in accordance with guidance provided by the Conference of the Parties at its first session.” Further, the decision called upon States to “respond promptly to the questionnaire circulated by the Secretariat” and requested “the Secretariat to submit an analytical report based on the responses to the questionnaire to the Conference of the Parties at its second session.” Regarding the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking in Persons Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air, (Smuggling of Migrants Protocol) similar requests were made in Conference decision 1/5 and decision 1/6, respectively.

8. Ultimately, three questionnaires were developed and circulated in early 2005. The Secretariat received responses from 47 per cent of States parties to the request in Conference decision 1/2. 43 per cent of State Parties responded to the request in Conference decision 1/5 on implementation of the Trafficking in Persons Protocol. With regard to the Protocol against the Smuggling of Migrants Protocol, 45 per cent of States parties responded to their reporting requirements, as stipulated in Conference decision 1/6.⁵

9. At its second session in 2005, the Conference, in its decisions 2/1, 2/3 and 2/4, noted with concern the low response rates on the basis of which the analytical reports of the first reporting cycle were prepared and “urged those States parties

³ CTOC/COP/2004/6, Report of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its first session, held in Vienna from 28 June to 8 July 2004.

⁴ CTOC/COP/2005/8, Report of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its second session, held in Vienna from 10 to 21 October 2005.

⁵ Ibid., decision 2/1, para. (c); decision 2/3, para. (b); and decision 2/4, para. (b).

which had not yet done so to submit their responses to the questionnaire[s] to the secretariat not later than 31 March 2006”, four months after the Conference.⁶ In addition, the Conference broadened its programme of work, listing additional topics and provisions to be included in the reporting requirements for the second reporting cycle and requested information on the implementation of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol).⁷ For this second reporting cycle, the Secretariat developed four new questionnaires covering the additional provisions from the same three instruments as in the first reporting cycle, plus a separate questionnaire on the Firearms Protocol. The Conference again requested the Secretariat to prepare analytical reports on the information received pursuant to the decisions, ensuring that they contained sufficient detail to permit the Conference to review the implementation of the Convention.⁸

10. By the third session of the Conference in 2006, the response rates of the first reporting cycle amounted to less than 50 per cent of the States parties for each instrument, respectively.⁹ Response rates of the second reporting cycle did not exceed 38 per cent, with the questionnaire on the implementation of the Organized Crime Convention achieving the lowest response rate of 32 per cent.¹⁰ Taking into account the fact that such compliance meant responding to up to seven questionnaires comprising a total of 263 questions on four instruments, those response rates reflected a considerable effort by many States parties and signatories. However, considering that the response rate of less than half of the States parties limited the ability of the Conference to carry out a comprehensive and reliable

⁶ Ibid., decision 2/1, para. (d); decision 2/3, para. (c); and decision 2/4, para. (c).

⁷ Ibid., decision 2/1, para. (p); decision 2/3, para. (m); decision 2/4, para. (n); and decision 2/5.

⁸ Ibid., decision 2/1, para. (u) and (n); decision 2/3, para. (k) and (q); decision 2/4, para. (l) and (r); and decision 2/5, para. (f).

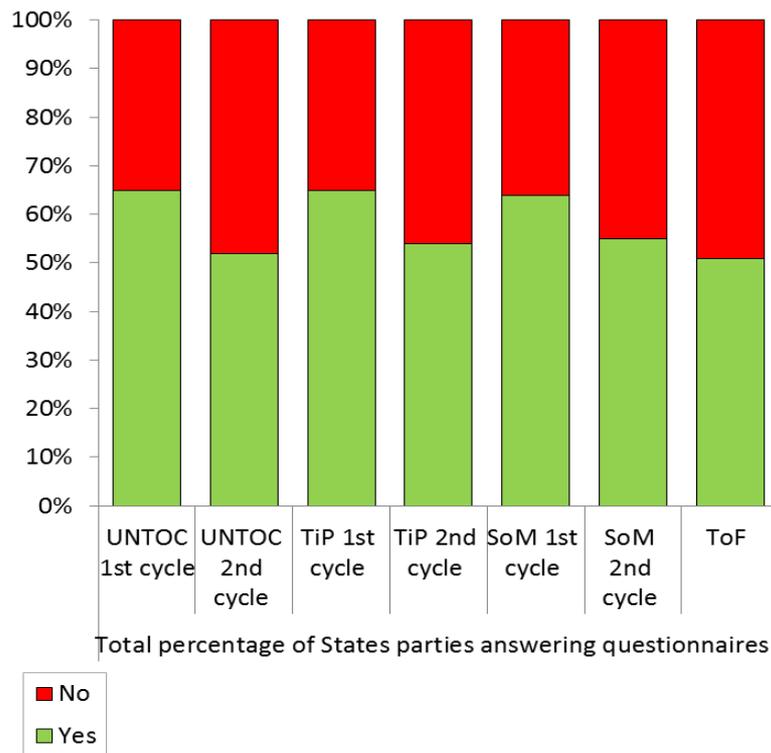
⁹ CTOC/COP/2005/2/Rev.1, Implementation of the United Nations Convention against Transnational Organized Crime: updated information based on additional responses received from States for the first reporting cycle — Analytical report of the Secretariat, para. 12; CTOC/COP/2005/3/Rev.1, Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: updated information based on additional responses received from States for the first reporting cycle — Analytical report of the Secretariat, para. 14; CTOC/COP/2005/4/Rev.1, Implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime: updated information based on additional responses received from States for the first reporting cycle — Analytical report of the Secretariat, para. 14.

¹⁰ CTOC/COP/2006/2, Implementation of the United Nations Convention against Transnational Organized Crime: information received from States for the second reporting cycle — Analytical report of the Secretariat, para. 5; CTOC/COP/2006/6, Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: information received from States for the second reporting cycle — Analytical report of the Secretariat, para. 6; CTOC/COP/2006/7, Implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime: information received from States for the second reporting cycle — Analytical report of the Secretariat, para. 6; CTOC/COP/2006/8, Implementation of 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 — Analytical report of the Secretariat, para. 11.

review of the implementation of the Convention and the Protocols thereto, the Conference again expressed “concern about the low rate of response by many States parties to questionnaires on the implementation of the Convention and the Protocols thereto”.¹¹

11. The challenges identified by States parties resulting in low response rates included: reporting fatigue caused by multiple reporting commitments and the scope of reporting required by the Conference; the difficulties associated with inter-agency cooperation, as many different agencies were responsible for different areas of the questionnaires; and obstacles stemming from a general lack of capacity to report owing to lack of personnel and information.

12. By the fourth session of the Conference in 2008, 66 per cent of States parties had responded to the questionnaire on the Organized Crime Convention for the first cycle, which represents the highest response rate among the seven questionnaires circulated (see chart below). However, over 30 per cent of States parties at the time had not responded to any questionnaire by the fourth session of the Conference.



¹¹ CTOC/COP/2006/14, Report of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its third session, held in Vienna from 9 to 18 October 2006, decision 3/1, para. (c), see also para. 43.

13. At its fourth session, the Conference recalled that it had expressed concern about the low rates of response in its decision 3/1.¹² The President of the fourth session of the Conference noted that information-gathering and the review of implementation of the Convention and the Protocols thereto were intertwined topics. In that regard, it was important for States parties to communicate their status of implementation in order to provide an informed basis on which to direct future action, including the provision of technical assistance.¹³ However, since the fourth session of the Conference, efforts to reach consensus on a review mechanism for the Convention and its Protocols thereto have not been fruitful, thus effectively stalling information-gathering efforts under the Organized Crime Convention and the Protocols.

IV. Development of the omnibus survey software

14. In 2007, in view of the difficulties that States parties expressed regarding responding to the many separate questionnaires, and the convergence of the information-gathering mandates emanating from the Conference of the Parties to the United Nations Convention against Transnational Organized Crime and the Conference of the States Parties to the United Nations Convention against Corruption, the Secretariat began developing the omnibus survey software, a comprehensive software to cover both Conventions. This approach also took into consideration the close similarity between a number of provisions of the two instruments and the fact that information furnished on the implementation of such provisions would lend itself to being used in a cross-cutting manner.

15. To ensure the validity of the approach and methodology adopted in the development of the omnibus survey, UNODC undertook a broad consultation process. Two meetings of experts, held in 2007 and 2008, in cooperation with the International Centre for Criminal Law Reform and Criminal Justice Policy, provided guidance for the development of such a comprehensive information-gathering tool in consultation with the States parties and signatories to the Conventions. The features of the survey and elements related to the Convention against Corruption were reviewed by international experts on three occasions between March 2008 and September 2009. In March 2009, UNODC invited States to test the application on a voluntary basis. Thirty-seven States responded to the call and tested the software between March and June 2009. The portion of the software relating to the Convention against Corruption was finalized and endorsed at the third session of the Conference of the States Parties in 2009 and, since then, has been in use in the context of the mechanism for the review of implementation of the United Nations Convention against Corruption.

16. At the meeting of experts on possible mechanisms to review implementation of the Organized Crime Convention, it was decided that the information provided by

¹² CTOC/COP/2008/19, Report for the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its fourth session, held in Vienna from 8 to 17 October 2008, decision 4/1, para. (d).

¹³ CTOC/COP/2008/19, Report for the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its fourth session, held in Vienna from 8 to 17 October 2008, para. 65.

States through the checklist and the omnibus survey should form the basis of any future review mechanism.¹⁴

V. Review mechanism for the Organized Crime Convention

17. At the same time, the Conference, from its fourth session in 2008, began an intergovernmental process to reach consensus on a mechanism to review the Convention and its Protocols. Pursuant to decision 4/1, entitled “Possible mechanisms to review implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”, as well as in accordance with a decision of the extended Bureau of the Conference and the recommendations of the second meeting of experts on possible mechanisms to review implementation of the Convention the Protocols thereto, UNODC launched a pilot programme to review implementation of the Convention in March 2010.¹⁵ The pilot review programme was conceived as a technical assistance project to assist interested States parties in undertaking a detailed evaluation of their compliance with selected provisions of the Convention and to exchange expertise and best practices. In addition to these substantive outputs, the programme was also intended to test the feasibility and modalities of a review mechanism in order to aid the Conference in its consideration of possible review mechanism(s).

18. The following eleven States participated in the programme on a voluntary basis: Chile, Colombia, France, Indonesia, Italy, Mexico, Peru, the Philippines, Romania, Serbia and the United States of America. The programme was organized in two complementary tracks. Track one followed the peer-review model and had a country-level focus, while track two sought to analyse general trends and make general recommendations based on experts’ discussions. A description of this process and of the lessons learned was prepared, in close consultation with the States that participated in the pilot programme, and was presented to the fifth session of the Conference for its consideration.¹⁶ The pilot review programme concluded in April 2012.

19. In addition, in its decision 5/5 entitled “Review of the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”, the Conference of the Parties decided to establish an open-ended intergovernmental working group to consider and explore options and make proposals for the establishment of a mechanism or mechanisms to assist the Conference; and to prepare terms of reference for such proposed review mechanism

¹⁴ CTOC/COP/EG.1/2010/3, para. 6, Final report on the meeting of experts on possible mechanisms to review implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, 25-26 January 2010. For more information see: CTOC/COP/2010/10, Development of tools to gather information from States on the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto — Report of the Secretariat.

¹⁵ CTOC/COP/2008/19, entitled Report of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its fourth session, held in Vienna from 8 to 17 October 2008, decision 4/1.

¹⁶ CTOC/COP/2010/CRP.1, entitled Progress report and lessons learned from the Pilot Programme to Review Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.

or mechanisms, guidelines for governmental experts and a blueprint for the country review reports, for consideration and possible adoption by the Conference at its sixth session.

20. At its first session in May 2011, the working group discussed options and proposals for the establishment of a mechanism or mechanisms to assist the Conference in the review of the implementation of the Convention and the Protocols thereto and considered the draft terms of reference. At its second session in January 2012, the working group approved the revised draft terms of reference of the mechanism, with the exception of a few paragraphs for which no consensus was reached; the revised draft guidelines for governmental experts and the Secretariat in the conduct of country reviews; the revised draft blueprint for country review reports and executive summaries; and the revised allocation of the articles of the Convention and the Protocols thereto. At this meeting, the Chair urged States parties and signatories to continue consultations on the outstanding issues prior to the sixth session of the Conference of the Parties.

21. At the 6th session of the Conference, States attempted to resolve the two outstanding issues in the informal negotiations of the review mechanism, namely, funding of the mechanism and the participation of observers. In this context, States diverged in their views on whether the mechanism should be funded exclusively through extrabudgetary contributions or through a combination of regular budget and extrabudgetary funds, as well as on the form of participation of observers in the mechanism. States also referred to the draft provisions in the terms of reference of the mechanism regarding the participation of observers in the sessions of the Palermo Implementation Review Group. Ultimately, the Conference was unable to establish a mechanism for the review of implementation of the Organized Crime Convention and the Protocols thereto.

VI. Current status

22. As stated above, lack of consensus on the finalization of an efficient and user-friendly information-gathering software and on a review mechanism have effectively stalled the reporting requirements under the Organized Crime Convention since 2008. By the seventh session of the Conference, six years will have passed, representing half of the time that the Convention has been in force, since systematic information-gathering efforts have been carried out, pursuant to article 32 of the Convention. Furthermore, it should be noted that 34 new parties have ratified or acceded to the Convention since 2008, illustrating the pressing need for the Conference to be informed of efforts by States parties in implementing the Convention. A request, sent by note verbale in 2013 to States parties by the extended Bureau, requesting voluntary reporting via the omnibus survey software, resulted in only six responses.

23. This lack of information on implementation of the Convention and the Protocols thereto make it very difficult to gauge effectively the implementation of the Convention the Protocols thereto, in order to improve the capacity of States parties to combat transnational organized crime and to promote and review the implementation of the Convention, including through technical assistance.

24. Since the sixth session of the Conference, lacking any formal mandate for information-gathering or monitoring implementation of the Convention and the Protocols thereto, the Secretariat has focused on expanding the knowledge base on transnational organized crime, pursuant to Conference resolution 6/1 entitled “Ensuring effective implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”.¹⁷ This has been accomplished by developing background papers on legal issues concerning implementation of the Convention (criminalization of participation in an organized criminal group, liability of legal persons, obstruction of justice, and organized crime strategies) as well as needs assessment tools for assessment of implementation of the Organized Crime Convention.¹⁸ UNODC continues to provide technical assistance in the implementation of the Organized Crime Convention.

25. In addition, UNODC has developed a knowledge management portal on crime, called SHERLOC (“Sharing Electronic Resources and Laws on Crime”), available at sherloc.unodc.org. UNODC commenced development of SHERLOC in mid-2012. The portal consists of three components: a case law database, a database of legislation and the Competent National Authorities Directory. The case law database contains cases and law enforcement operations from States around the world, searchable by country, keyword, crime type and cross-cutting issue. Crime types include all of the crimes proscribed in the Organized Crime Convention and the Protocols thereto, as well as fraudulent medicine, cybercrime, drug offences, trafficking in cultural property and wildlife and forest products, as well as piracy. Cross-cutting issues include special procedures and provisions of the Convention that may facilitate the effective prosecution of transnational organized crime, such as extradition, mutual legal assistance, joint investigative teams or special investigative techniques.

26. The database of legislation demonstrates how States implement the Organized Crime Convention and the Protocols thereto in their legislation through the same lexicon of crime types and cross cutting issues. The CNA Directory lists the competent national authorities designated to receive, respond to and process requests for mutual legal assistance, extradition, transfer of sentenced persons, as well as requests for cooperation to suppress illicit drug trafficking and the smuggling of migrants by sea.

VII. Future options for information-gathering

27. Due to the lack of information regarding implementation of the Convention and the Protocols thereto, the Conference, at its seventh session, may wish to issue a systematic information-gathering mandate. In this regard, the Conference may wish to remind States parties of their reporting requirements under article 32 of the Convention and request information via the omnibus survey software on all or some articles of the Convention and Protocols. One advantage of using the

¹⁷ CTOC/COP/2012/15, Report of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its sixth session, held in Vienna from 15 to 19 October 2012.

¹⁸ Please see the documentation for the Working Group on Technical Assistance and Conference of the Parties.

omnibus survey software for future information-gathering is that it is ready to be downloaded and installed from the UNODC website at www.unodc.org/unodc/en/legal-tools/software-omnibus.html. Many countries are already familiar with the software since it has been used in the course of the mechanism for the review of implementation of the Convention against Corruption. However, States parties have also reported difficulties downloading and using the omnibus survey software and have found it cumbersome, too long or difficult to operate and share among colleagues. Moreover, the omnibus survey software was lately redesigned in the context of the review mechanism on the United Nations Convention against Corruption. Therefore, if the cross-references between the two Conventions are to be maintained, a restructuring of the portion of the software relating to the Organized Crime Convention and the Protocols thereto would also be required.

28. Another vehicle by which information on implementation of the Convention and Protocols could be gathered is the SHERLOC knowledge management portal. In this approach, a new, light and web-based information-gathering tool could be developed as a further component of SHERLOC, in order to gather much needed information from States parties on implementation of the Organized Crime Convention and the Protocols thereto. This tool could follow the structure of crime types and cross-cutting issues, already in place on SHERLOC, to gather information on legislation and case law, with reference to each article of the Convention. Parties could be given accounts with password protection for security, or a paper-based questionnaire for States parties which may, at times, face difficulties with Internet connectivity. In this way, States parties could easily and quickly input or update national data on laws, jurisprudence and law enforcement operations, as well as appoint focal points for ease of communication with the Secretariat. Moreover, through SHERLOC, States parties could easily access legislation and jurisprudence from other States parties, possibly including lessons learned, trends and strategies. A function to request technical assistance could be added to the portal. Through the web-based application, States parties could more easily coordinate inputs across government agencies in order to ensure timely completion of submissions. Once gathered, this information could be used as a first step to assess technical assistance needs in States requesting such assistance or be used in desk reviews, prior to possible country visits or field missions to undertake technical assistance. Information gathered could be used to analyse trends and patterns, or as part of a larger monitoring or implementation exercise, subject to a mandate from the Conference.

VIII. Conclusion

29. The lack of information on the implementation of the Convention and the Protocols thereto makes it difficult for States to gauge the effectiveness of the implementation efforts and hampers the efforts of UNODC to effectively provide systematic technical assistance. The Conference, at its seventh session, may wish to issue a systematic information-gathering mandate. In this regard, the Conference may wish to remind States parties of their reporting requirements under article 32 of the Convention and request information on implementation via the omnibus survey or a lighter, web-based tool connected to SHERLOC. Knowledge and

information-gathering are at the core of the mandate of the Conference. Through making that information available in SHERLOC, conclusions could be drawn and analysis made about the implementation of the Convention and the Protocols thereto, enabling the Conference to fulfil its mandate to improve the capacity of States parties to combat transnational organized crime.
