Methodology for the harmonization of the self-assessment questionnaires for the review of implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto
(Status date 30 March 2020)

Conference Room Paper prepared by the Secretariat

I. Introduction

1. The present conference paper contains the methodology for the harmonization of the self-assessment questionnaires for the review of implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (status date 30 March 2020), as agreed upon by Member States and circulated on 6 April 2020, now formatted as a conference room paper.

II. General information

2. In operative paragraph 6 of its resolution 9/1 entitled Establishment of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, the Conference of the Parties to the Convention against Transnational Organized Crime established an open-ended Intergovernmental Expert Group (IEG) to, inter alia, finalize and harmonize, as necessary, the self-assessment questionnaires for the review of the implementation of the Convention and its three Protocols and submit them to the Conference for its consideration at its tenth session, to be held from 12 to 16 October 2020.
3. After a series of informal consultations, the IEG held its first meeting from 9 to 11 October 2019 to discuss, inter alia, the finalization of the self-assessment questionnaires. The self-assessment questionnaire for the Convention was finalized by the IEG at that meeting, together with questions 1 to 28 of the self-assessment questionnaire for the Trafficking in Persons Protocol. The rest of the questions of the self-assessment questionnaire were further discussed at the informal consultations led by the Chair of the IEG on 18-19 February 2020. An agreement on these questions was reached, except in four pending cases. Preliminary agreement on the questionnaire for the Firearms Protocol is being sought through additional informal consultations to be held ahead of the next IEG. It is noted that the self-assessment questionnaire for the Smuggling of Migrants Protocol was finalized by the Working Group on Smuggling of Migrants at its fifth session, which was held on 4 and 5 July 2018.

4. As per the mandate of the IEG in relation to the self-assessment questionnaires contained in the abovementioned resolution 9/1, the IEG is expected to submit the harmonized four questionnaires to the Conference of the Parties at its tenth session for its consideration. In this context, this document was prepared under the guidance of the Chair of the IEG to reflect a few principles proposed for consideration in harmonizing the four self-assessment questionnaires. After these principles are agreed upon by Member States, the Secretariat will, in cooperation with the Chair of the IEG, prepare harmonized texts of the four questionnaires for consideration by Member States at informal consultations to be held on 15 and 16 April 2020. It is expected that the revised versions of the four harmonized questionnaires resulting from the informal consultations can be presented, after editing and translation into the six UN official languages, to the second session of the IEG, to be held from 13 to 15 July 2020, for finalization and submission to the Conference.

5. In conducting the harmonization process, the IEG does not propose to re-open any of the substantive issues that were dealt with by Member States during the preparation of the self-assessment questionnaires. In drafting the harmonized self-assessment questionnaires, questions that have not been agreed during the negotiations will be reproduced as they stand in the latest versions of the self-assessment questionnaires. The Secretariat will also add a footnote to indicate that further negotiation through informal consultations, or at the second session of the IEG, is needed.

6. Principles proposed for the conduct of that harmonization process include the following:

III. Questions related to provisions of the Convention that apply mutatis mutandis to the Protocols

7. Paragraph 19 of the Procedures and rules for the functioning of the mechanism for the review of the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto states that “provisions of the Convention that apply to the Protocols, mutatis mutandis, will be reviewed under the Convention only”. Therefore, it is proposed to mention in the General guidance for replying to the self-assessment questionnaire on the Convention language to the effect that in answering the questions, national experts are requested to take into account the application of the relevant provisions of the Convention, as appropriate, to the subject matter of each Protocol. Appropriate language is attached to the present document (please see annex I).

8. In reviewing the harmonized version of each question, prior to final adoption, States are also invited to consider any possible exceptions to this principle and the manner and extent to which these exceptions should be formulated, possibly by including additional reference to the Protocols in specific questions.
IV. Cross-referencing of relevant questions among various clusters

9. With a view to facilitating the work of national experts in the review process, when the questions of a previous phase (cluster) are also relevant in the current phase (cluster), cross-reference to the earlier questions, including those pertaining to definitions, will be made. For example, the questions under the review of article 15 paras. 3 and 4 of the Convention (jurisdiction) will be referred to when article 16 of the Convention (extradition), in particular, its paragraph 10 (extradite or prosecute principle) is reviewed.

V. Articles that are not currently being reviewed

10. Substantive provisions of the Convention or Protocols that are not covered by questions will be highlighted for possible further consideration. For instance, the self-assessment questionnaire of the Convention does not include any question that covers article 22 on the establishment of criminal records.

VI. Editing

11. The self-assessment questionnaires will be edited to ensure consistency in the numbering of sub-questions. Consistency in the use of terms will also be ensured, bearing in mind that the substance of negotiated text will not be affected. In addition, the questions related to “difficulties encountered and assistance required” will be reproduced at the end of each harmonized version of the questionnaires.

VII. Presentation of the self-assessment questionnaires in clusters

12. Two sets of harmonized self-assessment questionnaires will be prepared for consideration by the IEG, noting that the questions themselves will remain the same in both versions.

(a) Four self-assessment questionnaires, one for each instrument, containing the questions grouped on the basis of the clusters, as identified in the appendix of resolution 9/1 (please see annex II – appendix of resolution 9/1). Each self-assessment questionnaire will cover one instrument and include questions on all of its provisions to be reviewed in the different phases of the review process. This set of self-assessment questionnaires will be used as a reference material in the review process.

(b) Four self-assessment questionnaires, one for each review phase (cluster) as identified in the appendix of resolution 9/1. Each self-assessment questionnaire will cover one cluster of articles, which will include questions pertaining to the implementation of the four instruments at the same time. This set of self-assessment questionnaires will be used as the information gathering tool in the review process.
Annex I

General guidance for replying to the questionnaire contained in the self-assessment questionnaire for the Convention, as it appears in the annex to the report on the meeting of the intergovernmental expert group established in accordance with Conference resolution 9/1, held in Vienna from 9 to 11 October 2019, with a new addition of the last paragraph in track change:

- States will be reviewed based on the information they have provided to the reviewing States parties, in accordance with section V of the procedures and rules for the functioning of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto. If they have not yet provided the relevant documents to the Secretariat, States are called upon to upload either any laws, regulations, cases and other documents, or brief descriptions of them which are of relevance for responding to the questionnaire to the knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC).

- Links to the information uploaded to SHERLOC can be then provided as part of the replies to each question.

- In addition to providing links to the information uploaded to SHERLOC, States are called upon to specify the applicable legislation and relevant provisions under each question to which the answer is “Yes” and under any other questions where appropriate.

- States are requested to refrain from attaching any annexes, including hard copies of documentation, to the completed questionnaires.

- When responding to the self-assessment questionnaires, States parties may also refer to information provided in the context of other relevant review mechanisms of instruments to which they are parties. States parties shall bear in mind that any update since previous submissions of information under other review mechanisms are appropriately reflected in the responses. In particular, when reviewing the same legislation for obligations which are identical or similar to those under the United Nations Convention against Corruption, a State party under review may refer to responses and additional documentation that it has submitted under the Mechanism for the Review of Implementation of the United Nations Convention against Corruption.

- The provisions of the Organized Crime Convention and the Protocols thereto entail various degrees of requirements. In accordance with the procedures and rules, the Review Mechanism shall progressively address all articles of the Convention and the Protocols thereto. The different nature of each provision should therefore be taken into account in formulating the responses to the related questions and while reviewing them in the following phases of the country review.

- Article 1 para. 2 of each of the Protocols states that the provisions of the Convention shall apply mutatis mutandis to the Protocols unless otherwise provided therein. Paragraph 19 of the Procedures and rules for the functioning of the mechanism for the review of the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto states that “provisions of the Convention that apply to the Protocols, mutatis mutandis, will be reviewed under the Convention only”. In answering the questions related to the implementation of the Convention, States are requested to take into account the application of the relevant provisions of the Convention, as appropriate, to the subject matter of each Protocol to which they are a party. National experts are therefore reminded to include in their answers reference to the application of such provisions of the Convention to the Protocols to which their country is a party. For instance, in answering the questions on the scope of application of article 10 on liability of legal persons, national experts should take into account the applicability of article 10 to the offences covered by the three Protocols and answer accordingly.
Annex II

Clusters of articles of the Convention and the Protocols thereto for the purpose of the review of implementation

<table>
<thead>
<tr>
<th>Legal instrument</th>
<th>Cluster on criminalization and jurisdiction</th>
<th>Cluster on prevention, technical assistance, protection measures and other measures</th>
<th>Cluster on law enforcement and the judicial system</th>
<th>Cluster on international cooperation, mutual legal assistance and confiscation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organized Crime Convention</td>
<td>Articles 2, 5, 6, 8, 9, 10, 15 and 23&lt;sup&gt;a&lt;/sup&gt;</td>
<td>Articles 24, 25, 29, 30 and 31</td>
<td>Articles 7, 11, 19, 20, 22, 26, 27 and 28</td>
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<td>Trafficking in Persons Protocol</td>
<td>Articles 3 and 5</td>
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<td>Smuggling of Migrants Protocol</td>
<td>Articles 3, 5 and 6</td>
<td>Articles 8, 9, 14, 15 and 16</td>
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<td>Firearms Protocol</td>
<td>Articles 3, 5 and 8</td>
<td>Articles 7, 9, 10, 11, 14 and 15</td>
<td>Articles 6, 12 and 13</td>
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<sup>a</sup> The review of articles 8 and 9 of the Convention is only for those States parties to the Organized Crime Convention that are not party to the United Nations Convention against Corruption.