



# Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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## Report of the Chair on the open-ended intergovernmental meeting to explore all options regarding an appropriate and effective review mechanism for the United Nations Convention against Transnational Organized Crime and the Protocols thereto held in Vienna from 28 to 30 September 2015

### I. Introduction

1. In its resolution 7/1, entitled “Strengthening the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime underlined that the review of the implementation of the Convention and the Protocols thereto was an ongoing and gradual process and that it was necessary to explore all options regarding an appropriate and effective mechanism to assist the Conference in that review.

2. In the same resolution, the Conference requested the United Nations Office on Drugs and Crime (UNODC) to convene, within existing resources from the regular budget and without prejudice to other mandated activities, at least one open-ended intergovernmental meeting, with interpretation, to include government officials with practical expertise related to the implementation of the Convention and its Protocols, with a view to analysing the above-mentioned options and submissions by States parties, and to submit to the Conference at its eighth session a report containing concrete recommendations for reviewing, through a possible mechanism or mechanisms, the implementation of the Convention and the Protocols thereto, and recommendations for cooperating with relevant international and regional organizations and non-governmental organizations, in line with article 32 of the Convention and as guided by the principles and characteristics contained in its resolution 5/5.

3. Also in its resolution 7/1, the Conference requested States parties, and invited other interested Member States on a voluntary basis, to submit to the Secretariat their comments and views for the purpose of deliberations at the above-mentioned meetings.



4. At its meeting held on 6 February 2015, the extended Bureau of the Conference agreed that the open-ended intergovernmental meeting to explore all options regarding an appropriate and effective review mechanism for the Convention and the Protocols thereto would be held from 28 to 30 September 2015.

5. At the meeting of the extended Bureau of the Conference held on 27 March 2015, the President of the Conference welcomed Hussam Abdullah Hasan Ghodayeh Al Hussein (Jordan) to the meeting of the extended Bureau in his role as Chair of the open-ended intergovernmental meeting.

## **II. Salient points by the Chair**

6. The review mechanism for the Convention and its Protocols should take into account the principles and characteristics set out in Conference resolution 5/5, which include the following: it should be intergovernmental, transparent, efficient, non-intrusive, inclusive and impartial; it should not produce any form of ranking; it should provide opportunities to share good practices and challenges; it should be non-adversarial and non-punitive; it should promote universal adherence to the Convention and its Protocols; and it should respect the principles of equality and sovereignty of States parties.

7. The review mechanism will be a gradual process; therefore, a set of agreed articles of the Convention and its Protocols will be considered during a first phase of the process, in the lead-up to the consideration of the remaining articles, as required under the Convention and its Protocols.

8. A peer review could be a tool for the review mechanism, provided it is adjusted to the sets of articles of the Convention and its Protocols, to be agreed by Member States, and conducted within the Conference and through its working groups.

9. For the purpose of the review, the main focus of information-gathering will be a questionnaire that is short, precise, focused and not burdensome, and more user-friendly tools, particularly the comprehensive self-assessment software (“omnibus survey software”) and the knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC), will be adjusted to meet the requirements of the review process. Other tools, including country visits, could be considered if voluntary funding were provided.

10. The “Marrakech consensus”, with regard to the role of civil society (see resolution 4/6 of the Conference of the States Parties to the Convention against Corruption), is an agreed starting point for the consideration of the role of civil society in a review mechanism for the Organized Crime Convention.

11. Cost-efficiency is a key factor in considering a review mechanism.

12. Consultations on a review mechanism for the Convention and its Protocols, to be led by the Chair of the meeting, will continue, with a view to providing concrete recommendations for action by the Conference at its eighth session. A second open-ended intergovernmental meeting to explore all options regarding an appropriate and effective review mechanism for the Convention and the Protocols

thereto could be held following those consultations, in accordance with Conference resolution 7/1.

### **III. Summary of deliberations by the Chair**

13. At the open-ended intergovernmental meeting held in Vienna from 28 to 30 September 2015, participants discussed item 2 on the agenda, entitled “Deliberations on all options regarding an appropriate and effective review mechanism for the United Nations Convention against Transnational Organized Crime and the Protocols thereto”.

14. Several delegations reiterated their commitment to establishing a review mechanism and highlighted the key role of the Convention and its Protocols in effectively tackling transnational organized crime and promoting international cooperation. Reference was made to Conference resolution 7/1 and to the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation, adopted by the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, held in Doha from 12 to 19 April 2015, in which Member States stated that they strived to continue to explore all options regarding an appropriate and effective mechanism or mechanisms to assist the Conference in the review of the implementation of the Convention and the Protocols thereto in an effective and efficient manner. Some speakers noted that a strong commitment by States parties and political will were an important basis for the establishment of a review mechanism.

15. Speakers noted that any future review mechanism for the Convention and its Protocols would need to take into account the principles and characteristics set out in Conference resolution 5/5, including that a review mechanism should be transparent, efficient, non-intrusive, inclusive, intergovernmental and impartial and should take into account the levels of development of States parties, as well as the diversity of judicial, legal, political, economic and social systems and differences in legal traditions, and that it should not produce any form of ranking, should provide opportunities to share good practices and challenges, should be non-adversarial and non-punitive and should promote universal adherence to the Convention and its Protocols and respect the principles of equality and sovereignty of States parties. Many speakers also noted that a review mechanism should identify good practices and gaps in the implementation by States parties of the Convention and its Protocols, should assist States parties in identifying technical assistance needs and should support the delivery of technical assistance. Some speakers stressed the intergovernmental nature of the process, while others stressed that the role of civil society should be taken into account.

16. Different views were expressed regarding the funding model for a future review mechanism or mechanisms for the Convention and its Protocols. A number of speakers stressed that the core elements of a review mechanism should be funded through regular budget resources. A number of speakers also supported a mixed-funding model, whereby core functions would be funded through regular budget resources, while others could be funded through voluntary contributions.

Several speakers also expressed a preference for a mechanism to be supported through existing resources and structures of the Conference and its subsidiary bodies. Many speakers emphasized that the funding of a review mechanism should in any case be predictable and stable. Some speakers noted that funding for the provision of technical assistance activities should be taken into account as part of a funding model for a review mechanism. Most speakers noted that a review mechanism should be cost-effective and make efficient use of the existing resources of States and of the Conference. Some speakers noted that the issue of financing should be discussed after identifying the main guidelines and characteristics of the mechanism, with a view to facilitating the work of the Secretariat in determining the financial implications. Other speakers underlined the importance of bearing cost-efficiency in mind during the course of deliberations on a possible review mechanism or mechanisms.

17. Several models and structures for a review mechanism or mechanisms were discussed. Several speakers indicated that a future review mechanism should take into account best practices and lessons learned from the review of other regional and international instruments, such as those of the Organization of American States and the Council of Europe, as well as those related to the international drug control conventions, including the International Narcotics Control Board, and international human rights machinery and instruments, including the Human Rights Council and the Office of the United Nations High Commissioner for Human Rights. Some proposed that consideration be given to the use of special rapporteurs, while others cautioned against that model because of the risk of polarization of the implementation review process.

18. A number of speakers argued that, *sensu stricto*, article 32 of the Convention had already set in place a mechanism for periodically reviewing the implementation of the Convention, while others stressed that article 32 provided the discretion to the Conference of the Parties to the Convention to agree on supplemental review mechanisms that could assist it in its work.

19. Speakers also discussed whether a review mechanism or mechanisms should review the whole Convention and its Protocols, or whether it should target selected provisions. Models proposed included having a main mechanism with parallel or additional mechanisms that could focus on selected articles, or on the Convention and its Protocols separately, also taking into account the different constituencies of each instrument. Reference was made to gradual review processes, or approaches covering a manageable number of States parties in a certain region or subregion, that could eventually provide a comprehensive view of the state of implementation of the Convention and Protocols thereto. Reference was also made to a more active role for the Secretariat, in particular regarding information-gathering.

20. Reference was made to the Mechanism for the Review of Implementation of the United Nations Convention against Corruption; speakers discussed its benefits — such as its inclusiveness and comprehensive nature — and its disadvantages — such as its costs and the burden that replying to the self-assessment checklist could be for government experts. Several speakers noted that the Implementation Review Mechanism had met with success in promoting the implementation by States parties of the Convention against Corruption and in developing relevant legislation. Some speakers favoured applying the principles and guidelines of the Implementation Review Mechanism to a future review mechanism for the Organized Crime

Convention, while others expressed caution regarding such application, in view of the different scope of the two instruments. In terms of the substantive provisions subject to potential review, some speakers considered the scope of such a review of the Organized Crime Convention taking into account the corresponding provisions in the Convention against Corruption, which had already been reviewed or were to be reviewed under its Implementation Review Mechanism. Several speakers highlighted the different membership, content and scope of the two instruments.

21. Speakers discussed the advantages and disadvantages of a peer review mechanism and of a review mechanism carried out by designated experts. Some speakers noted that a peer review mechanism allowed for the participation of a larger number of stakeholders, inter alia, as a result of the opportunity to carry out country visits. Some speakers made reference to the experience of the Organized Crime Convention review mechanism pilot programme, and noted that a peer review allowed for a comprehensive process of identifying gaps in implementation while bringing together national stakeholders and learning from other States. One speaker noted that a peer review was a possible way forward, although it was a broad and flexible concept that required further discussion to determine its modalities and potential costs. Other speakers were of the view that a strict distinction between the peer review and expert review models might not be beneficial, as overlapping components existed in both of them. They therefore suggested the consideration of a “hybrid” review model. Speakers noted that a country-focused review was able to produce more concrete recommendations that could aid States parties in furthering the implementation of the instruments. Some speakers noted that videoconferences could be a cost-effective yet still beneficial alternative to country visits.

22. Some speakers indicated that a more practical, expert-level engagement among States parties would be advantageous in reviewing the implementation of the Convention and its Protocols, and the Working Group on International Cooperation was cited as an example. Reference was made to the role that the working groups of the Conference could and did play in that regard, for example by bringing together experts to discuss issues of particular concern to States and by devising recommendations for consideration by the Conference. The involvement of those working groups would also contribute towards having a cost-effective mechanism.

23. It was argued that a peer review process could “unfold” within the structure of the working groups of the Conference of the Parties to the Convention and that possible ways of giving practical effect to that option might need to be examined, including, for example, through the organization of high-level, thematically focused debates. However, other speakers expressed caution in that regard, given the different nature of the discussions in the existing working groups, issues of confidentiality that could arise and inherent limitations stemming from the limited duration of the sessions of the working groups. As an alternative, one speaker proposed the establishment of a peer review process that, for the purposes of cost-effectiveness, could enhance the existing structure of the working groups by providing a platform for further discussions on the margins of deliberations between peer reviewers and the country under review.

24. Some speakers underlined that the objectives of a review mechanism for the Convention and its Protocols should focus on supporting the work of practitioners, with an emphasis on strengthening international cooperation, including mutual legal assistance, identifying technical assistance needs and supporting the Conference and

States parties in gathering information. Speakers supported the use of lighter self-assessment tools and of country reports that could be made publicly available. Other suggested models included creating a pool of experts from practitioners of central authorities in a review mechanism or creating workplans for the Conference working groups.

25. The inclusion of civil society organizations and non-governmental organizations in a review mechanism was also discussed. Some speakers indicated that they favoured the inclusion of civil society in the review process, especially in relation to topics such as trafficking in persons or smuggling of migrants. Other speakers favoured a solely intergovernmental review process. The participation of the private sector in a review mechanism was also discussed, as was the nature of the information that could be used in such a review.

26. Some speakers made reference to the existing tools that had been created for data-gathering, such as the SHERLOC knowledge management portal, needs assessment tools, questionnaires and the omnibus survey software, and noted that several of those could be useful in a future review mechanism.

27. Speakers discussed the idea of having a gradual, comprehensive review process or processes for the Convention and its Protocols, including the possibility of a progressive review of clusters of articles from the instruments.

28. Speakers noted the importance of information-gathering as a first step in a future review mechanism, particularly in order to identify challenges, gaps, technical assistance needs and priorities to further the implementation of the Convention and its Protocols. The importance of including an agenda item in the deliberations of the Working Group on International Cooperation on the types of information needed by practitioners in order to give practical effect to the relevant provisions of the Convention was highlighted.

29. Some speakers noted that the process of information-gathering itself, in the form of replying to questionnaires or self-assessment checklists, was a useful exercise for Governments and aided in strengthening cooperation and dialogue at the national level among relevant agencies and stakeholders. Therefore, coordination among different stakeholders and institutions at the national level, including through the establishment of concerted teams with focused responding tasks, was mentioned as a good practice.

30. However, many speakers identified several important challenges in structuring an effective information-gathering mechanism. In that regard, reference was made to a number of problems, including: the lack of capacity in some cases to respond efficiently to questionnaires; overburdening national officers with tight deadlines and conflicting reporting obligations; the length and complexity of reporting tools that may have an impact of the cost-effectiveness of the overall process with regard to, among others, translation; and the problem of underreporting, which had been encountered in particular during the early stages of the work of the Conference of the Parties to review the implementation of the Convention through questionnaires and within two reporting cycles (2005-2008). The importance of providing, upon request, technical assistance to competent national officers or authorities at the early stage of filling out questionnaires or other reporting tools was noted.

31. Some speakers cited the importance of protecting national subject-matter experts from burdensome requests for data and information on processes, which detracted from their ability to implement the Convention through international cooperation. A number of speakers noted that any mechanism that generated more surveys would divert resources and personnel from using the Convention in investigations and prosecutions.

32. Speakers noted that the omnibus survey software, one of the existing information-gathering tools created by the Secretariat, covered both the Organized Crime Convention and the Convention against Corruption and was designed to provide information on the implementation of provisions that were similar in both Conventions. However, some speakers expressed concerns regarding its functionality and lack of user-friendliness, citing the length and complexity of the survey and its comprehensive scope.

33. In that connection, some speakers suggested simplifying reporting processes, which could involve further work on the omnibus survey software to produce an optimized version that would be more user-friendly and flexible, or the development of a “lighter” and shorter tool, based on the omnibus survey software, to facilitate the work of practitioners entrusted with providing information on national legislation and other measures. Further discussion was made on the feasibility and desirability of generating a new, streamlined information-gathering tool, which could be integrated into a web-based platform and have a paper-based version for those with poor Internet connectivity. Looking at possible synergies among existing tools to gather information in a consistent manner was discussed.

34. The common denominator was that a sine qua non condition for designing an efficient and effective information-gathering mechanism for reviewing the implementation of the Convention was agreeing upon the scope of the reporting obligations and the nature of the outcome of the overall process (country focus versus thematic reports).

35. One speaker proposed that the Secretariat draft an aide-memoire containing, for reference purposes and with a view to facilitating further consultations, a list of all the pertinent documents that had been prepared over the years within the framework of the Conference of the Parties to the Convention and its subsidiary bodies on information-gathering aspects pertaining to the implementation of the Convention.

36. The Chair invited delegations to consider the participation of civil society in a review mechanism for the Convention and its Protocols and the use of the Implementation Review Mechanism of the Convention against Corruption model for civil society participation (the “Marrakech consensus”) as a starting point in that regard, on the understanding that further, detailed discussions would follow, including during informal consultations.

37. Speakers noted that a continuing dialogue was needed in order to discuss the details of such participation. Some speakers noted that it would be important to first decide on the structure and features of a review mechanism or mechanisms, in order to then discuss the role of civil society in that context, including, for instance, participation in working groups of the Conference.

38. It was noted that the Marrakech consensus could be a starting point for exploring options for the Organized Crime Convention model. Several speakers noted that, at its forthcoming sixth session, the Conference of the States Parties to the Convention against Corruption would discuss the issue of civil society participation in the Implementation Review Mechanism and therefore it would be useful to wait for the outcomes of those discussions before having an in-depth discussion in the context of the Organized Crime Convention. It was also noted that other models existed for civil society participation besides the Convention against Corruption model, which could serve as examples for an Organized Crime Convention model.

39. Speakers further noted that, although the Convention against Corruption model was a useful one and had been agreed on by all States parties to that instrument and some lessons could be drawn from it, the specificities of the Organized Crime Convention and its Protocols needed to be taken into consideration when discussing how civil society would interact in the review of implementation of those instruments. Mention was made, for instance, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention, in which clear roles were already envisaged for civil society in assisting States parties to implement the Protocols, and to the participation of civil society in the working groups of those Protocols. It was noted that any model for civil society participation in a review mechanism would need to be conducive to supporting States parties in implementing the Convention and its Protocols.

40. Speakers also noted that civil society already participated at the national level in aiding States to implement the instruments, but that it remained the obligation of States to implement the Convention, and that official information provided by Governments regarding the implementation of the Convention and its Protocols provided a higher degree of reliability. Some speakers noted that the term “civil society” made reference not only to non-governmental organizations, but also to academia and the scientific community, for instance as envisaged in article 28 of the Convention. The participation of the private sector and regional and international organizations in a review mechanism was also highlighted as a topic that would merit further detailed discussion.

41. The Chair invited delegations to consider the matter of participation of regional and international organizations in a future review mechanism. Several speakers noted that synergies between a review mechanism and relevant intergovernmental organizations could enhance information-gathering mechanisms, take advantage of the possible synergies among the respective mandates of such organizations and contribute towards establishing a cost-effective review mechanism. Some speakers noted that cooperation among intergovernmental organizations was already taking place, for instance in the context of the universal periodic review, and that that type of cooperation was encouraged in the context of the Sustainable Development Goals and the Economic and Social Council. Some speakers noted that caution should be taken in relation to the extent of cooperation with regional and international organizations because of their differing mandates and activities. It was also noted that the matter should be further considered in future discussions. One speaker proposed that the Secretariat prepare — as a

mapping exercise — a more detailed and comprehensive list of organizations supporting review mechanisms. Such an exercise would have a two-pronged objective: drawing inspiration from existing mechanisms and exploring the ground for potential synergies and cooperation on issues that may be of relevance for the purposes of a future review mechanism. Another speaker argued that such a mapping exercise should include a comparative analysis of review mechanisms established only in relation to United Nations instruments.

## **IV. Organization of the meeting**

### **A. Opening of the meeting**

42. The meeting was opened by Hussam Abdullah Hasan Ghodayeh Al Husseini (Jordan), Chair of the meeting. He addressed the meeting and presented an overview of the mandate of the meeting, its objectives and the subjects under its consideration.

43. At the opening of the meeting, introductory presentations were made by Filippo Formica (Italy), the Chief of the Corruption and Economic Crime Branch and Officer-in-Charge of the Division of Treaty Affairs of UNODC, and one other representative of the Secretariat.

44. Following the introductory presentations, statements were made by representatives of the following States parties to the Convention: Austria, Canada, China, France, Iraq, Jordan, Kenya, Mexico, Morocco, Netherlands, Nigeria, Romania, Russian Federation, South Africa and United States of America. The representative of the European Union, a regional economic integration organization that is a party to the Convention, also made a statement.

### **B. Statements**

45. Under agenda item 2, panel presentations were made by Christian Manquet, Vice-President of the Group of States against Corruption of the Council of Europe, and by Angela Crowdy, Assistant Executive Secretary of the Inter-American Drug Abuse Control Commission of the Organization of American States.

46. Also under agenda item 2, statements were made by representatives of the following parties to the Convention: Afghanistan, Algeria, Argentina, Austria, Australia, Belgium, Brazil, Canada, China, Colombia, Costa Rica, Cuba, Ecuador, Egypt, European Union, Finland, France, Germany, Ghana, India, Indonesia, Iraq, Israel, Italy, Jordan, Kenya, Mauritius, Mexico, Netherlands, Norway, Pakistan, Peru, Portugal, Romania, Russian Federation, Senegal, Slovenia, South Africa, State of Palestine, Sweden, Switzerland, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States, Venezuela (Bolivarian Republic of) and Viet Nam.

47. The observers for the signatory States Japan and the Republic of Korea made statements.

48. The representatives of the Group of 77 and China and the Group of Latin American and Caribbean States also made statements.

49. Statements under agenda item 2 were also made by the Secretary of the Conference and two other representatives of the Secretariat.

### **C. Adoption of the agenda and organization of work**

50. At its first meeting, on 28 September 2015, the meeting adopted the following agenda:

1. Organizational matters:
  - (a) Opening of the meeting;
  - (b) Adoption of the agenda and organization of work.
2. Deliberations on all options regarding an appropriate and effective review mechanism for the United Nations Convention against Transnational Organized Crime and the Protocols thereto.
3. Other matters.
4. Adoption of the report.

### **D. Attendance**

51. The following States parties to the Convention were represented at the meeting: Afghanistan, Algeria, Angola, Argentina, Armenia, Australia, Austria, Belarus, Belgium, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Germany, Ghana, Guatemala, Guinea, Hungary, India, Indonesia, Iraq, Israel, Italy, Jordan, Kenya, Kuwait, Latvia, Lebanon, Libya, Luxembourg, Malta, Mauritania, Mauritius, Mexico, Montenegro, Morocco, Namibia, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Moldova, Romania, Russian Federation, San Marino, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Spain, State of Palestine, Sudan, Sweden, Switzerland, Tunisia, Turkey, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela (Bolivarian Republic of) and Viet Nam.

52. The European Union, a regional economic integration organization that is a party to the Convention, was also represented at the meeting.

53. The following States signatories to the Convention were represented by observers: Iran (Islamic Republic of), Japan and Republic of Korea.

54. A list of participants is contained in document CTOC/COP/WG.8/2015/INF/1/Rev.1.

### **E. Documentation**

55. The meeting had before it the following:

- (a) Annotated provisional agenda (CTOC/COP/WG.8/2015/1);

(b) Compilation of comments and views received from States on all options regarding an appropriate and effective review mechanism for the United Nations Convention against Transnational Organized Crime and the Protocols thereto (CTOC/COP/WG.8/2015/2);

(c) Briefing note by the Secretariat on methods employed by existing global implementation review mechanisms (CTOC/COP/WG.8/2015/CRP.1);

(d) Briefing note by the Secretariat on information-gathering and reviewing implementation (CTOC/COP/WG.8/2015/CRP.2);

(e) Briefing note by the Secretariat entitled “Five years of UNCAC reviews — what have we learned?” (CTOC/COP/WG.8/2015/CRP.3);

(f) Non-paper by Italy entitled “Food for thought on the establishment of a mechanism to review the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto” (CTOC/COP/2014/CRP.3).

## **V. Adoption of the report**

56. On 30 September 2015, the meeting endorsed the Chair’s decision to submit the present report as the Chair’s report on the meeting.

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