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**Open-ended Intergovernmental Meeting of
Experts on Possible Mechanisms to Review
Implementation of the United Nations
Convention against Transnational Organized
Crime and the Protocols Thereto**

Vienna, 25 and 26 January 2010

Item 2 of the provisional agenda*

**Consideration of possible mechanisms to review
implementation of the United Nations Convention against
Transnational Organized Crime and the Protocols thereto**

**Possible mechanisms to review implementation of the
United Nations Convention against Transnational
Organized Crime and the Protocols thereto: comparative
analysis of existing review mechanisms under other
international instruments**

Note by the Secretariat

I. Introduction

1. Pursuant to article 32 of the United Nations Convention against Transnational Organized Crime (Organized Crime Convention), the Conference of the Parties has the responsibility to improve the capacity of States parties to combat transnational organized crime and to promote and review the implementation of the Convention, and is to agree, inter alia, upon mechanisms for achieving its objectives.
2. In its decision 4/1, the Conference of the Parties decided that it was necessary to explore options regarding an appropriate and effective review mechanism to assist the Conference in the review of the implementation of the Convention and its Protocols. It requested the United Nations Office on Drugs and Crime to convene at least one open-ended intergovernmental meeting of experts, said meeting to present

* CTOC/COP/WG.1/2010/1.



a report to the Conference at its fifth session on mechanisms for reviewing implementation of the Convention and its Protocols.

3. The present note aims at facilitating the deliberations of the meeting of experts on the possible set-up of a mechanism to review implementation of the Organized Crime Convention and the Protocols thereto, by presenting various options used under other international instruments. It complements the note by the Secretariat on Possible Mechanisms to Review Implementation of the United Nations Convention against Transnational Organized Crime (CTOC/COP/2008/3).¹

4. Much attention has been devoted to the monitoring of implementation of international instruments in a wide variety of areas, ranging from arms control regimes to human rights treaties and multilateral environmental agreements. Implementation is the phase when a State translates intent and formal commitment into action, thereby honouring its legal obligations under an international treaty to which it has become a party.

5. In this context, review mechanisms fulfil the function of systematically examining the status of implementation of international instruments. The establishment of a review mechanism recognizes the fact that shortcomings in the implementation by one State party has a negative impact on other Parties and on the effectiveness of the instrument as a whole. It also recognizes that full and sustained domestic implementation often requires support and dialogue with external partners. Review mechanisms can provide a forum to discuss issues related to implementation of legal instruments and improve policy-making by encouraging the sharing of experiences and mutual learning and contributing to the elaboration and discussion of good practices.

II. Functioning of review mechanisms

6. Review of implementation usually comprises three stages. The first stage consists in the collection of information on implementation. States report on their efforts and results in implementing the international agreement. At the second stage, the information reported is reviewed and analysed. This can be done either by other States parties, or by a team of experts. This is also the time when practical implementation issues are thoroughly discussed. During the third stage, findings are discussed, usually within the Conference of the Parties or similar body established

¹ The mechanisms described in note CTOC/COP/2008/3 include: (i) the Financial Action Task Force on Money Laundering (FATF), (ii) the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, (iii) the Group of Experts on Action against Trafficking in Human Beings set up under the auspices of the Council of Europe, (iv) the review mechanism for the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

The background paper prepared by the Secretariat on Methods for the review of the implementation of the United Nations Convention against Corruption (CAC/COSP/2006/5) could also be a useful reference point for details regarding the operation of corruption review mechanisms, as well as review mechanisms in the area of human rights and multilateral environmental agreements.

under the treaty. Appropriate follow-up is decided upon, ranging from the adoption of recommendations to the provision of technical assistance.

A. Collection of information and reporting

7. For instruments dealing with penal matters, collection of information on implementation usually entails collection of relevant legislation, case law, data regarding prosecution of relevant offences. Such information is usually provided by the States themselves through a self-assessment of their implementation. Self-assessments can take various forms: questionnaires, software survey packages and databases, country reports. Technical assistance may be needed by States in carrying out their self-assessment.

8. As the information collected forms the basis for reviewing implementation, the quantity and quality of such information are crucial for the purposes of the review. Data provided by States also need to be comparable, hence the usefulness of agreeing upon a uniform reporting format, including precise guidelines as to how and what to report.

9. At the stage of collecting information, another key question is whether or not non-governmental sources of information should be admitted to complement the picture of implementation. Many existing review mechanisms encourage the participation of the research community, civil society and the private sector in the provision of information. This usually implies that non-governmental organizations are consulted and that information provided by them may be considered in the review process. Some mechanisms foresee the presentation of alternative country reports by non-governmental actors in formal or semi-formal circumstances.

10. Noteworthy among the numerous review mechanisms that include the provision of information and data from non-governmental organizations as part of the reporting process, are the ones dealing with trafficking in persons² and corruption;³ the review mechanisms of human rights instruments;⁴ and the review mechanisms of multilateral environmental agreements.⁵ Mechanisms to review multilateral environmental agreements, for instance, require national reports to

² The Council of Europe Convention on Action against Trafficking in Human Beings.

³ For example, the United Nations Convention against Corruption; the Asian Development Bank Anti-Corruption Action Plan for Asia and the Pacific; the African Union Convention on Preventing and Combating Corruption; the Council of Europe Criminal Law Convention on Corruption; the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

⁴ For example, the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the African Charter on the Rights and Welfare of the Child; the American Convention on Human Rights; the Council of Europe Framework Convention for the Protection of National Minorities; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

⁵ For example, the United Nations Framework Convention on Climate Change and the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

detail conditions in which the public was consulted and how the outcome of public consultation was taken into account in the national report.

B. Review of the information collected and examination of concrete implementation issues

11. At the second stage of the review process, the information and material collected are analysed, their accuracy verified, and concrete implementation issues and shortcomings are examined. This phase of the review is usually carried out either by peers of the State under review or by a committee of experts, although a combination of both models can also be envisaged (e.g. regional peer reviews and global expert review).

(a) Peer review mechanisms

12. Peer review mechanisms provide for the examination of a State's legislation and practice in specific areas by one or more other States parties to the same instrument. States are usually supported in this endeavour by the secretariat of the conference of the parties of the instrument in question. Some organizations, like the Organization of Economic Cooperation and Development (OECD), use peer-review mechanisms extensively to monitor implementation of the norms and conventions adopted under their auspices.⁶ Peer reviews are also used by regional organizations such as the African Union,⁷ Asian Development Bank,⁸ the Asia-Pacific Economic Cooperation (APEC),⁹ the European Union¹⁰ or the Organization of American States.¹¹

13. The review mechanisms set up under several multilateral environmental agreements also follow the peer review model, with compliance committees consisting in a larger number of elected States parties entrusted with review of implementation of the agreements in question. The Implementation Committee of the Montreal Protocol on Substances that Deplete the Ozone Layer, for example, is made up of ten States parties elected for two years by the meeting of the parties, in accordance with the principle of equitable geographical representation. The Compliance Committee of the Basel Convention on the Control of Transboundary

⁶ See, in particular, the peer review system under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the work of the OECD Economic and Development Review Committee, the Development Assistance Committee peer review mechanism, the OECD Country Reviews on Regulatory Reforms and the OECD Environmental Performance Reviews.

⁷ See, for example, the African Peer Review Mechanism within the African Union-New Partnership for Africa's Development (NEPAD) framework.

⁸ For example, the Asian Development Bank-OEDC Anti-Corruption Action Plan for Asia and the Pacific.

⁹ See, for example, the review process under the Bogor Declaration in the area of trade and investment liberalization.

¹⁰ See, for example, the European Union Peer Review of Competition Law and Policy and the European Union Peer Review in Social Protection and Social Inclusion.

¹¹ See, for example, the mechanism set up under the Inter-American Convention against Corruption.

Movements of Hazardous Wastes and their Disposal is composed of fifteen elected Parties.

14. Those peer review mechanisms bring together States with a similar level of development (e.g. within the OECD) or belonging to the same regional group. However, there are also some instances of peer review mechanisms established at a global scale, including the newly adopted mechanism to review implementation of the United Nations Convention against Corruption.

15. Within peer reviews, discussions about implementation are carried out among equals and create a mutual learning process and exchange of views and experiences. Peer reviews also lead to an effective system of mutual accountability among States parties to a convention. On the other hand, peer reviews tend to be resource-intensive for States parties. In the case of conventions with a wide scope, necessary expertise to cover all issues might not be readily available.

(b) Expert review mechanisms

16. Under expert review mechanisms, legislation and practice in place in each State are reviewed by a group of experts (often called “committee of experts”), set up as a subsidiary organ of the governing body of the instrument in question. Experts are usually independent and serve in their personal capacity. They are appointed by the governing body through a vote.¹²

17. The work of the group of experts is usually supported by the secretariat of the conference of the parties to the convention. The extent of the role played by the secretariat depends on the functions assigned to the experts.¹³

18. Committees of experts are widely used to monitor compliance with conventions of a technical nature. Examples include the International Narcotics Control Board (INCB) monitoring implementation of the United Nations drug control treaties, the Multilateral Evaluation Mechanism of the Inter-American Drug Abuse Control Commission (CICAD-OAS) and the mechanism set up under the Kyoto Protocol.

19. Committees of experts are also used to review implementation of human rights instruments, with a view to avoiding political stakes in the review. Examples in the United Nations system include the Human Rights Committee (HRC), set up to evaluate compliance with the International Covenant on Civil and Political Rights; the Committee of the Rights of the Child, set up to evaluate compliance with the United Nations Convention on the Rights of the Child (CRC); and the Committee on

¹² In the case of United Nations human rights committees for example, experts are nominated or elected by States parties and serve in their personal capacity. A similar procedure applies to the members of the Kyoto Protocol Compliance Committee, who are also independent experts.

¹³ In the case of the United Nations Framework Convention on Climate Change, for example, the secretariat is responsible for compiling and synthesizing the information received from States parties. An in-depth review of such material is then carried out by the experts, who carry out country visits if the State under review agrees to it.

the Elimination of Discrimination against Women (CEDAW). Monitoring of regional conventions on human rights usually operates in a similar fashion.¹⁴

20. Expert review mechanisms are likely to guarantee homogeneity in format and quality of country reviews. They allow States parties to have clear counterparts to discuss specific implementation issues and receive expert advice. The Compliance Committee of the Kyoto Protocol, for example, is charged with promoting compliance as well as providing advice and assistance to States parties on implementation of the Protocol. On the other hand, expert review mechanisms may not allow for as much visibility and ownership of the process by States parties as the peer review system.

21. In the design of expert review mechanisms, a key issue relates to the conduct of country visits. Country visits enable an in-depth and sustained dialogue to take place between experts in charge of the review and experts of the country under review, with a view to producing solutions to problems encountered in implementation. They facilitate the obtention of inputs from various government departments and other sources. They permit not only the assessment of legislation, but also of the institutional framework and national capacities. Country visits are widely used to review implementation of conventions on issues related to the United Nations Convention against Organized Crime and its Protocols,¹⁵ as well as in multilateral environmental agreements.¹⁶

22. In the comments and views by States on possible mechanisms to review implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto,¹⁷ the fact that the Convention and its Protocols represented four instruments and that some States were not parties to all instruments, was noted as a particular challenge to review of implementation.

23. Some of the views received suggested that a gradual approach could be effective, whereby the Conference of the Parties could decide that review should focus on a certain set of provisions whose implementation would be reviewed first (e.g. the international cooperation provisions and their operation under the Convention and in relation to Protocols offences). The issues included in the two reporting cycles of questionnaires established by the Conference may be a useful reference in this respect (Annex). The suggestion was also made that issues addressed in each phase be grouped according to the category of national authority competent to provide answers, such as the judiciary, law enforcement officials, border officials, medical authorities and social welfare authorities, so as to avoid difficulties in compiling cross-institutional responses.

24. Various multilateral environmental agreements are made up of a Convention, which sets down general principles, and one or more Protocols, which set detailed

¹⁴ See for example the African Charter on Human and Peoples' Rights, the American Convention on Human Rights and Council of Europe's Framework Convention for the Protection of National Minorities.

¹⁵ See for example the International Narcotics Control Board (INCB) and the Counter-Terrorism Committee, which both work with a system of country visits.

¹⁶ See for example the United Nations Framework Convention on Climate Change and the Ramsar Convention on Wetlands.

¹⁷ CTOC/COP/WG.1/2009/2.

obligations.¹⁸ This is the case of the United Nations Framework Convention on Climate Change and the Kyoto Protocol, under which two separate review mechanisms have been set up. Another example is the one of the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer, where review is mainly organized around the Montreal Protocol rather than the mother convention.

25. Other examples, with more relevance to the Organized Crime Convention and its Protocols, include (i) the International Covenant on Civil and Political Rights, with its second Optional Protocol aiming at the abolition of the death penalty; (ii) the United Nations Convention on the Rights of the Child, with its first Optional Protocol on the Convention on the Rights of the Child on the involvement of children in armed conflicts and its second Protocol on the sale of children, child prostitution and child pornography. In those cases, the competence of the Human Rights Committee and the Committee of the Rights of the Child, respectively, extends to both the main instrument and its Protocols.

C. Discussion of findings and follow-up

26. During the last stage of any review mechanism, findings are discussed and follow-up ensured before a new cycle of information collection and review is organized.

27. The outcome of reviews may be discussed by a policy-making body, by a technical body, or by both. In the case of the United Nations Framework Convention on Climate Change for example, reports prepared by experts of the review team are sent to the Subsidiary Bodies (Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation), which are policy-making bodies, for their consideration. A more technical organ, the Multilateral Consultative Committee, was later created to remedy some shortcomings of discussions within the Subsidiary Bodies and resolve issues of implementation raised by some States parties.

28. Once findings have been discussed and validated, many review mechanisms provide for the publication of reports and recommendations, systematically or subject to the State party's consent.¹⁹ The comments and views received by States on possible mechanisms to review implementation of the Organized Crime Convention and its Protocols²⁰ commented on possible features of reports, such as

¹⁸ The relation between the Organized Crime Convention and its supplementing Protocols, however, does not follow such a structure, as the Convention is not a framework instrument but contains a comprehensive set of detailed obligations.

¹⁹ Examples include: the Asian Development Bank Anti-Corruption Action Plan for Asia and the Pacific; the African Union Convention on Preventing and Combating Corruption; the Council of Europe Convention on Action against Trafficking in Human Beings; the Council of Europe Criminal Law Convention on Corruption; the Inter-American Convention against Corruption; the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights.

²⁰ CTOC/COP/WG.1/2009/2.

assessing the strengths and weaknesses of the implementation framework put in place by the State under review, presenting good practices in the area of the fight against transnational organized crime, formulating recommendations and implementation goals jointly decided with the State concerned. Such reports would constitute a reference document for policy makers and be the basis for further follow-up and review.

29. Reports are also useful in identifying technical assistance needs and establishing a baseline by which the impact of the technical assistance provided as a result of the review may be measured. The Counter-Terrorism Committee for instance makes recommendations regarding the assistance that should be provided to better implement the universal instruments against terrorism. The Montreal Protocol Implementation Committee is entrusted with arranging the provision of assistance to address specific issues of implementation.

Annex

Topics covered by reporting cycles on assessment of the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto

As of December 2009, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime had established two reporting cycles, covering the following topics (Conference decisions 1/2, 1/5, 1/6, 2/1, 2/3, 2/4 and 2/5):

First reporting cycle:

- (i) United Nations Convention against Transnational Organized Crime:
 - a. Basic adaptation of national legislation in accordance with the Convention;
 - b. Examination of criminalization legislation and difficulties encountered in implementation in accordance with article 34, paragraph 2, of the Convention;
 - c. Enhancement of international cooperation and development of technical assistance to overcome difficulties identified in the implementation of the Convention;
- (ii) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime:
 - a. Basic adaptation of national legislation in accordance with the Protocol;
 - b. Examination of criminalization legislation and difficulties encountered in the implementation of article 5 of the Protocol;
 - c. Enhancement of international cooperation and development of technical assistance to overcome difficulties identified in the implementation of the Protocol;
 - d. Views on and experience regarding the protection of victims and preventive measures, gained primarily in the implementation of articles 6 and 9 of the Protocol, including awareness-raising;
- (iii) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime:
 - a. Basic adaptation of national legislation in accordance with the Protocol;
 - b. Examination of criminalization legislation and difficulties encountered in the implementation of article 6 of the Protocol;

c. Enhancement of international cooperation and development of technical assistance to overcome difficulties identified in the implementation of the Protocol;

d. Views on and experience gained in the implementation of articles 15 and 16 of the Protocol.

Second reporting cycle:

(i) Organized Crime Convention:

a. Measures to combat money-laundering (art. 7 of the Convention);

b. Measures related to the investigation of cases of transnational organized crime, with particular attention to articles 19, 20 and 26 of the Convention;

c. Matters related to the protection of witnesses and victims (arts. 24 and 25);

d. Matters related to international law enforcement cooperation (art. 27);

e. Matters related to preventive measures (art. 31);

(ii) Trafficking in Persons Protocol:

a. Matters related to assistance to and protection of victims of trafficking in persons and the status of such victims in receiving States;

b. Matters related to repatriation of victims of trafficking in persons;

c. Matters related to border measures, security and control of documents and legitimacy and validity of documents;

(iii) Migrants Protocol:

a. Matters related to protection and assistance measures for smuggled migrants;

b. Matters related to the return of smuggled migrants;

c. Matters related to border measures, security and control of documents and legitimacy and validity of documents;

(iv) 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:

a. Basic adaptation of national legislation in accordance with the Protocol;

b. Examination of criminalization legislation and difficulties encountered in the implementation of article 5 of the Protocol;

c. Enhancement of international cooperation and development of technical assistance to overcome difficulties identified in the implementation of the Protocol.