



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

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## Working Group of Government Experts on Technical Assistance

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### Assistance in harmonizing domestic legislation with the United Nations Convention against Transnational Organized Crime and the Protocols thereto

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### Discussion paper by the Secretariat

## I. Introduction

1. Pursuant to decision 2/6, the Working Group of Government Experts on Technical Assistance was established by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime to perform the following functions: (a) review needs for technical assistance in order to assist the Conference on the basis of the information bases established by the Secretariat; (b) provide guidance on priorities based on multi-year programmes approved by the Conference and on its directives; (c) take into consideration, as appropriate and readily available, information on technical assistance activities of the Secretariat, as well as of States, and on projects and priorities of States, other entities of the United Nations system and international organizations, in the areas covered by the United Nations Convention against Transnational Organized Crime and the Protocols thereto; and (d) facilitate mobilization of potential resources. In its decision 4/3, the Conference decided that this working group should be a constant element of the Conference.

2. In its resolution 6/4, entitled "Implementation of the provisions on technical assistance of the United Nations Convention against Transnational Organized

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\* CTOC/COP/WG.2/2013/1.



Crime”, the Conference noted that technical assistance was a fundamental part of the work carried out by the United Nations Office on Drugs and Crime (UNODC) to assist Member States in the effective implementation of the Convention and the Protocols thereto.

3. The present report provides an overview of the assistance provided by UNODC to Member States in harmonizing their national legislation with the Convention and the Protocols thereto. The report also contains information on relevant tools developed by UNODC.

## **II. Issues for discussion**

4. States may wish to address the following issues in their deliberations:

(a) What are the particular legal obstacles or challenges that prevent States from ratifying and implementing the Convention and the Protocols thereto?

(b) What would be the most effective approaches which UNODC could adopt in assisting countries that have yet to ratify UNTOC or one of the Protocols?

(c) What would be the most effective approaches that could be adopted by UNODC in assisting countries that have yet to fully implement UNTOC or one of the Protocols?

(d) Which specific aspects of the Convention should UNODC focus on in providing legislative assistance to States?

(e) What are good practices or the best modalities for national legislative reform processes leading to harmonization with the Convention and the Protocols thereto?

(f) How can technical assistance in cross-cutting areas, such as international cooperation, be leveraged to ensure an effective response to all transnational forms of crime?

## **III. Harmonization of national legislation**

5. “Harmonization” of national legislation with the Organized Crime Convention and the Protocols thereto is the process by which national laws are amended or promulgated in order to ensure the existence of measures that are in line with the Convention and its Protocols. As with most international instruments, the Organized Crime Convention, in order to become operative, must be applied within national legal systems. The harmonization of national legislation is thus a crucial component for implementing the Convention at the national level.

6. With the level of ratification of the Convention currently at 177 States parties,<sup>1</sup> the harmonization by States of their national legislation with the Convention and the Protocols thereto can lead to a significant global reduction in “safe havens” for criminals, both from the perspective of offences covered by the Convention, and the penalties applicable for such acts. Harmonization also facilitates effective

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<sup>1</sup> As of July 2013.

international cooperation in criminal matters such as mutual legal assistance and extradition, where the offence is transnational in nature and involves an organized criminal group through, inter alia, supporting fulfilment of national “dual criminality” requirements, and by providing a legal basis for extradition requests.

7. Article 34, paragraph 1, of the Organized Crime Convention provides that each State party shall 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 the Convention.

8. In this respect, it is worth noting that the Convention contains both mandatory and optional provisions. Article 5 (Criminalization of participation in an organized criminal group), for example, requires States parties to adopt either or both of a conspiracy-based offence and a participation-based offence. Other articles, however, such as article 8 (Criminalization of corruption), use the non-mandatory formulation of “shall consider” in respect of the adoption of criminal offences.

9. In addition, a number of articles explicitly state that certain elements of the offence or procedural power are “subject to” the “basic” or “fundamental” “principles” of domestic law.<sup>2</sup> Such “safeguard” clauses provide States parties with the option of not incorporating specific elements of the Convention or its Protocols into national law where to do so would be incompatible with existing national legal systems. In so doing, a State party retains full conformity with its Convention obligations.

10. As such, while the Convention and its Protocols require certain legislative measures, they do not represent single unyielding texts that must be reproduced by States parties at national level. Rather, national drafters are free to focus on the meaning and spirit of the Convention, rather than attempting simply to translate Convention text or include it verbatim in new laws or amendments.<sup>3</sup> In addition, the Convention introduces minimum standards that have to be met by States parties, but each State party remains free to go beyond them.<sup>4</sup>

11. The degree of harmonization of national legislation with the Convention and its Protocols can therefore be viewed as a continuum. At the one end, national legislation may accurately reflect, or go beyond, all elements of the Convention (including the optional elements) even though there is no strict international legal obligation to do so. At the other end, national legislation may reflect only mandatory elements of the Convention, or even contain specific exceptions to Convention requirements, such as when a State party submits a reservation or declaration upon ratification or accession. Harmonization of domestic legislation with the Convention and its Protocols is thus not a “one-time” event, but rather an ongoing process that can take place both prior to and after ratification.

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<sup>2</sup> This is the case for articles on, inter alia, the criminalization of the laundering of proceeds of crime (article 6), and the criminalization of attempts to commit an offence (article 5, Trafficking in Persons Protocol).

<sup>3</sup> See *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, p. 18.

<sup>4</sup> Article 34, paragraph 3, of the Convention provides that “Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.”

12. While the Convention provides for a high degree of flexibility, States may nonetheless encounter a number of challenges when it comes to harmonizing national legislation with its provisions. As discussed in section IV below, such challenges may not only be of a legal nature, since the harmonization process requires the engagement of all relevant political, policy, and legal actors. This can include the challenge of putting the issue on the policy agenda despite limited resources, specific sensitivities or conflicting priorities, or the difficulties of assembling a drafting or legislative oversight committee with representation of all relevant stakeholders. From a legal perspective, challenges may range from gaining a thorough understanding of the requirements of the Convention and its Protocols and assessing the extent to which existing laws meet them, to ensuring accurate and effective drafting of legislative amendments, including requirements for relevant secondary legislation, such as regulations or statutory instruments.

13. In addition, some States may encounter certain legal incompatibilities between existing law and elements of the Convention, which may concern optional provisions of the Convention. Where they relate to mandatory provisions, however, they may play a role, among other factors, in decisions regarding ratification. Some 27 States for example, have signed the Convention or one of its Protocols but have not yet ratified the relevant instrument. Identifying whether non-States parties to the Convention and its Protocols encounter particular legal obstacles or challenges that prevent ratification could be one priority for the delivery of technical assistance in harmonizing national legislation.

14. Experience gained from the delivery of legislative assistance related to the Convention and its Protocols, as well as information received, *inter alia*, through the pilot programme to review implementation of the Convention and the Protocols thereto,<sup>5</sup> (see section IV below) highlighted a number of possible legal challenges to harmonization. Some States, for example, noted that they applied a threshold for “serious crime” that differed from the definition in the Convention.<sup>6</sup> Where thresholds are higher, such as a minimum sentence of five years, the range of crimes covered by the Convention is potentially smaller for those States. Some States also recounted that national law did not recognize the concept of criminal liability for legal persons.<sup>7</sup>

15. In addition, some States highlighted that the possibility to infer knowledge or intent from objective factual circumstances (contained in article 5, paragraph 2, of the Convention) may not be covered by existing approaches to establishing *mens rea*. Other States noted that national law did not generally criminalize solely agreement or conspiracy to commit a crime (as contained in article 5,

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<sup>5</sup> UNODC launched the Pilot Programme to Review Implementation of the Organized Crime Convention and the Protocols thereto in March 2010, pursuant to decision 4/1 of the Conference of the Parties. See conference room paper CTOC/COP/2010/CRP.1 for additional information.

<sup>6</sup> Article 2 of the Convention specifies that “serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

<sup>7</sup> It should be noted, in this respect, that article 10, paragraph 2, of the Convention allows for liability of legal persons for participation in Convention offences and serious crime, “subject to the legal principles of the State Party” to be of a criminal, civil or administrative nature.

subparagraph 1 (a) (i), of the Convention),<sup>8</sup> or that general criminal jurisdiction did not automatically extend to those bases contained in article 15, paragraph 1, of the Convention. Furthermore, the legal systems of other States may only allow confiscation of proceeds of crime (article 12 of the Convention) as a measure following the criminal conviction of an accused, or may be able to reverse the burden of proof with respect to demonstrating the lawful origin of alleged proceeds of crime (article 12, paragraph 7).<sup>9</sup>

16. The extent to which such legal challenges affect harmonization of national legislation varies, depending both upon the nature of the obligation set out in the Convention, and the possibility for legal solutions at the national level. Technical assistance can play an important role in supporting countries to resolve legal challenges, including through the use of examples of legislation adopted by other States parties, assistance in conducting in-depth legislative reviews, and the development and provision of legal tools, such as model legislative provisions.

#### IV. Overview of legislative assistance activities

17. The provision of legislative assistance for the harmonization of domestic legislation with the Organized Crime Convention and its Protocols is a key function of the Organized Crime and Illicit Trafficking Branch of UNODC. Legislative assistance activities provided by UNODC headquarters and field offices include, upon request, training to relevant authorities and practitioners on the various aspects and requirements of the Organized Crime Convention and its Protocols, gap analysis, advice on existing legislation and support for drafting or amending legislation, including the provision of advice to parliamentarians.

18. From March 2010 to April 2012, UNODC implemented the Pilot Programme to Review Implementation of the Convention and the Protocols thereto, through which it facilitated peer reviews and expert discussions with 11 volunteer countries on various aspects of the Convention, especially the criminalization of participation in an organized criminal group, the liability of legal persons, confiscation and international cooperation. The programme covered both the legal and institutional perspectives on these issues and included the preparation of reports and recommendations.

19. In addition, UNODC has organized a number of training sessions on the Organized Crime Convention and its Protocols, most recently in West Africa under the umbrella of the West African Central Authorities and Prosecutors Network (WACAP) and in the Middle East. UNODC also provided assistance to the Islamic Republic of Iran through a series of presentations on the Convention, technology-facilitated crime, and trafficking in persons.

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<sup>8</sup> It should be noted, in this respect, that article 5, subparagraph 1 (a), of the Convention allows States parties to adopt either or both of the criminal offences contained in article 5, subparagraphs 1 (a) (i), and 1 (a) (ii).

<sup>9</sup> It should be noted, in this respect, that article 12, paragraph 7, provides that States parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

20. Pursuant to the decision of the extended Bureau of the Conference of the Parties to the Convention, UNODC recently circulated a note verbale (CU 2013/58/DTA/OCB/CSS), inviting Member States to complete the omnibus self-assessment checklist on a voluntary basis for the purposes of further identifying technical assistance needs and requesting legal and technical assistance, as required.

21. In the areas of trafficking in persons and smuggling of migrants, since 2008, UNODC has completed national legal assessments of 24 countries, including Benin, Burundi, Colombia, the Congo, Costa Rica, Djibouti, El Salvador, Ethiopia, Guatemala, Guinea, India, Kazakhstan, Kenya, Kyrgyzstan, Mexico, Nepal, Philippines, Republic of Moldova, Sri Lanka, Tajikistan, United Republic of Tanzania, Togo, Turkmenistan and Uzbekistan.

22. Targeted legal assistance was provided to both evaluate the compliance of national anti-human trafficking legislation and/or anti-smuggling legislation with the Trafficking in Persons and Smuggling of Migrants Protocols, and to support efforts to harmonize national legislation with the existing international legal framework. UNODC also organized legislative drafting workshops in 21 countries including regional workshops in Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan), West Africa (Benin, Cape Verde, Guinea and Togo) and Eastern Africa (Djibouti, Ethiopia, Kenya, Uganda and United Republic of Tanzania), as well as national workshops in Burkina Faso, Burundi, the Congo, El Salvador, Guatemala, Libya, Morocco and Yemen.

23. In December 2012, UNODC facilitated a workshop with senior officials of the States members of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) on the ratification and implementation of the Convention and its Protocols.<sup>10</sup> The Bali Process workshop discussed the appropriate focus for implementation of the Convention and its Protocols, including, with respect to the Protocols on Trafficking in Persons and the Smuggling of Migrants, whether provisions were most appropriately situated within migration or criminal laws, and whether separate legislation or a combined framework on trafficking in persons and smuggling of migrants was preferable. Some countries reported that they had progressively established legal and policy frameworks on trafficking in persons or smuggling of migrants before proceeding to ratify the relevant Protocols. UNODC is currently supporting harmonization efforts in Viet Nam in the context of ongoing law reform processes.

24. With respect to trafficking in firearms, UNODC provides specialized legal assistance for the review, assessment and development or amendment of national legislation systems in order to ensure compliance with the Firearms Protocol and the Convention, and foster legislative harmonization at subregional and regional levels. Through its Global Programme on Firearms, UNODC has provided targeted legislative assistance for the implementation of the Firearms Protocol to selected countries in Latin and Central America, South-Eastern Europe and West Africa.

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<sup>10</sup> The workshop was attended by 110 officials and experts, representing the Governments of Afghanistan, Australia, Austria, Bangladesh, Cambodia, Canada, Fiji, Finland, India, Indonesia, Iraq, the Lao People's Democratic Republic, Malaysia, Maldives, Mongolia, Myanmar, Nauru, Nepal, the Netherlands, New Zealand, Norway, Pakistan, Papua New Guinea, the Philippines, the Republic of Korea, Samoa, Spain, Solomon Islands, South Africa, Sri Lanka, Sweden, Thailand, the United States of America and Vanuatu.

In 2012, UNODC also organized, in cooperation with ECOWAS and MERCOSUR, two regional conferences on legislative harmonization for 18 countries, civil society organizations, and regional intergovernmental organizations, which were held in Dakar and Buenos Aires. The conferences resulted in the adoption of “road-maps” for legislative review, amendment and adoption of new national legislation incorporating provisions under the Firearms Protocol.

25. In addition to legislation that is specific to certain crime types, such as trafficking in persons, smuggling of migrants, and illicit manufacturing of and trafficking in firearms, harmonization of national legislation with the Organized Crime Convention involves a number of “cross-cutting” issues, such as money-laundering, witness protection and international cooperation in criminal matters. Provisions in these areas are contained in the Convention and the Protocols thereto, as well as in other international instruments, including the United Nations Convention against Corruption and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

26. In the area of money-laundering, the UNODC Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism works with Member States to build capacity to criminalize the laundering of proceeds of transnational organized crime through the provision of legal reviews and other forms of technical assistance. In 2012, the Global Programme delivered support to Ethiopia and Zimbabwe in revising existing legislation on countering money-laundering, and provided legal advice and drafting assistance on that subject to the Governments of Kazakhstan, Tajikistan and Turkmenistan.

27. The new Anti-Money Laundering Act of Sierra Leone, drafted with substantive inputs from the Global Programme, in conjunction with the World Bank and the Intergovernmental Action Group Against Money Laundering in West Africa, entered into effect in February 2012. Legal advisory services were additionally provided to Cambodia, Mongolia, Palau and Viet Nam to enhance legislation to counter money-laundering, and to Zambia to enhance and implement legislation on asset forfeiture. The countries of the Mekong subregion and several Member States in West Africa received assistance to facilitate the implementation of legislation on countering money-laundering and terrorism financing.

28. With respect to witness protection legislation, in 2009, the UNODC Global Programme for Strengthening the Capacities of Member States to Prevent and Combat Organized and Serious Crime assisted the Government of Kenya to revise its law on the protection of witnesses, which was passed by the Kenyan Parliament in April 2010.

29. With respect to international cooperation in criminal matters, in the course of 2012, the UNODC Regional Office for South-East Asia and the Pacific organized legislative drafting workshops on international cooperation in criminal matters in the Lao People’s Democratic Republic and the Philippines. As a result, a law on mutual legal assistance has been drafted in the Philippines, and a law on extradition enacted in the Lao People’s Democratic Republic. With the launch of the new UNODC regional programme for South-East Asia, the provision of legal advice on harmonization of domestic legislation with the Convention and its Protocols is expected to increase within the region.

## V. Harmonization of legislation and international cooperation

30. While legislative assistance may often focus on specific aspects of the Convention, it is important that assistance efforts also include general laws for international cooperation in criminal matters. Effective international cooperation is a key to effectively combating organized crime and it lies at the heart of the Organized Crime Convention and the Protocols thereto. Among others, articles 16 (Extradition), 17 (Transfer of sentenced persons), 18 (Mutual legal assistance), 19 (Joint investigations), 20 (Special investigative techniques), and 21 (Transfer of criminal proceedings) create a wide-ranging regime for cooperation regarding offences covered by the Convention and its Protocols, as well as serious crimes where the offence is (or is suspected to be) transnational in nature and involves an organized criminal group.

31. In this respect, there is significant potential for leverage of complementary technical assistance activities in this area. International cooperation laws are of high relevance to all forms of criminal activity that possess a transnational element. Thus, technical assistance activities related to combating forms of crime such as corruption, terrorist offences, and cybercrime may all focus on the existence and effectiveness of international cooperation legislation; often with reference to subject-specific standards or considerations.

32. Within UNODC, efforts are under way to explore ways of increasing coordination and linkages between legislative assistance focused on international cooperation and different thematic areas. Networks of central authorities and prosecutors established with the support of UNODC represent one generic and flexible vehicle for the delivery of legislative assistance and the exchange of good legislative practice in the area of international cooperation, irrespective of the particular thematic focus. Another example of coordination and the creation of synergies is the publication of practical guides on the national institutional and legal frameworks for international cooperation in the countries of the Indian Ocean and the Sahel by the Terrorism Prevention Branch, with substantive contributions from the Organized Crime Branch. The questions on international cooperation in the self-assessment survey software have also, for instance, been unified for both the Organized Crime and the Corruption Conventions and can be imported from one part of the software program to the other. The remainder of this section highlights some of the particular legal considerations that may need to be taken into account during the process of harmonization of domestic legislation with the Organized Crime Convention.

33. Challenges concerning the international cooperation provisions of the Convention and its Protocols often relate to their practical application. However, effective national legislation that is in line with Convention provisions on international cooperation can also play an important role in facilitating the widest range of assistance to be given and received by States parties in investigations, prosecutions, judicial proceedings, and extradition in relation to criminal matters.

34. Article 16 (Extradition) of the Convention does not strictly require that its provisions be enshrined in a free-standing domestic extradition law, or other equivalent national legislation. Nonetheless, while the nature of the domestic extradition framework remains within the purview of States parties, article 16 takes



into account that national laws may regulate aspects of extradition, such as the possibility for expedited procedures (article 16, paragraph 8) and restrictions on extradition of nationals (article 16, paragraph 11).

35. In this respect, a majority of States have specific legislation on extradition. Such laws typically establish or define the legal bases of extradition from the national law perspective, set out substantive conditions for extradition and/or grounds for refusal, as well as documentary requirements for extradition proceedings. Where such laws are weak and outdated, they can represent one major obstacle impeding extradition casework.<sup>11</sup> In the process of harmonization of domestic legislation with the Organized Crime Convention and its Protocols, legislative amendments may therefore be required both at the substantive and procedural levels, either to remove existing legal impediments to harmonization, or to promulgate new legal rules on extradition that reflect Convention provisions.

36. A number of legal aspects may be considered in this process. These could include legislative amendments to ensure that, to the extent permitted by the applicable treaty obligations, offences covered by the Convention are deemed extraditable between the concerned parties (article 16, paragraph 3) or, where States parties do not make extradition conditional on the existence of a treaty, amendments to recognize such offences as extraditable offences (article 16, paragraph 6). Other legal aspects can relate to the obligation under article 16, paragraph 10, to submit, at the request of a State party seeking extradition, a case for prosecution where the requested Party does not extradite the alleged offender. The implementation of this obligation may require legislative amendments that ensure that the State party concerned has a legal basis for asserting jurisdiction over the offender (article 15, paragraph 3) and is able to obtain, and use in domestic proceedings, any necessary evidence from abroad.

37. Implementation of article 16 of the Convention may also involve addressing possible legal incompatibilities between existing national laws and Convention provisions. These may relate, for example, to ensuring that requests for extradition cannot be refused on the sole ground that the offence is considered to involve fiscal matters (article 16, paragraph 15). In addition, States parties must ensure that the rights and guarantees provided by domestic law are applicable to any person against whom extradition proceedings are being carried out in connection with offences covered by the Convention (article 16, paragraph 13).

38. In the same way as for extradition, article 18 (Mutual legal assistance) of the Convention does not refer explicitly to a national mutual legal assistance law. Nonetheless, the mandatory obligation to afford the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings may often, depending upon the national legal system, require the existence of relevant national legislation in requesting and requested States. In practice, many countries have mutual legal assistance laws that address elements such as the existence and functions of a central authority for making and receiving assistance requests, the

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<sup>11</sup> Report of the Informal Expert Working Group on Effective Extradition Casework Practice, Vienna, 2004, paragraph 12.

scope of assistance that may be provided upon request, the form in which requests must be received, and rules regarding the provision of assistance.<sup>12</sup>

39. In seeking harmonization of national legislation on mutual legal assistance with article 18 of the Convention, a number of legal aspects may be considered. These can include legislative amendments to ensure that assistance can be provided in relation to offences covered by the Convention, as well as where the requesting State party has reasonable grounds to suspect that such an offence is transnational in nature (article 18, paragraph 1). National legislation should also provide for assistance to be afforded to the fullest extent possible in relation to offences for which a legal person may be held liable (article 18, paragraph 2). National legislation may need to be reviewed in order to ensure that a State party has sufficient legal authority to provide the forms of assistance contained in article 18, paragraph 3. National legislation that restricts, for example, core investigative powers such as search and seizure, to cases of domestic crime may pose a challenge to harmonization with the requirements of article 18.

40. States may further wish to include the broad residual power of article 18, subparagraph 3 (i), in domestic legislation, to afford “any other type of assistance that is not contrary to the domestic law of the requested State party”. In this respect, some States take the approach in domestic legislation of ensuring that those forms of assistance sought may be provided to the same extent and under the same conditions as would be available in the investigation of domestic criminal matters. The national legislation of some States, however, does not permit particular investigative powers, such as real-time access to computer data, that can be used for certain domestic offences to be utilized in response to international assistance requests. Such differences are compatible with the requirements of the Organized Crime Convention, as highlighted in the provisions of article 18, subparagraphs 3 (i) and 21 (d), that provide “safeguards” for States parties, based on existing legislation and the national legal system.

41. Technical assistance for harmonization of domestic legislation must thus take the inherent flexibility of the Organized Crime Convention into account, while still seeking ways and means of promoting the general aim of affording the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings. In particular, technical assistance efforts may focus on ensuring that core features of the international cooperation provisions of the Convention are compatible with national law, while facilitating discussions, including at the regional and subregional level, on common or good practice approaches regarding non-mandatory elements. In this respect, key national legal features that can promote harmonization with elements of article 18, and could be addressed through technical assistance, may include the removal of possible restrictions on rendering mutual legal assistance on the grounds of bank secrecy (article 18, paragraph 8), provision for videoconferencing for the hearing of witnesses or experts by judicial authorities to the extent consistent with fundamental principles of domestic law (article 18, paragraph 18), as well as review of grounds for refusal of assistance that are not reflected in article 18, paragraph 21.

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<sup>12</sup> See the report of the Secretariat entitled “Implementation of the United Nations Convention against Transnational Organized Crime: consolidated information received from States for the first reporting cycle” (CTOC/COP/2005/2/Rev.2).

## VI. Legal tools developed by the United Nations Office on Drugs and Crime

42. Whether harmonization efforts are focused on domestic international cooperation laws, criminalization, or other Convention aspects such as protection of witnesses, the utility of legal tools in the delivery of technical assistance for harmonization is critical. Legal tools offer a common methodology and guidance for all stakeholders, whether involved in the delivery or receipt of technical assistance.

43. Model legislative provisions, model laws and legislative guides represent important components of the set of tools for facilitating and systematizing the provision of assistance in harmonizing national legislation. Model laws and provisions are not intended to be incorporated directly into national laws. Rather, model provisions are designed to be adapted to the needs of each State in light of its particular legal, social, economic, and cultural traditions, further to a careful and holistic review of the legislative context in any given State. Similarly, legislative guides are not intended to prescribe ways and means of implementing the Convention and its Protocols, but rather to furnish a range of options and examples that national drafters may wish to consider, taking into account different legal traditions and varying levels of institutional development.

44. The Conference of the Parties has recognized the importance of model laws and legislative guides, inter alia, through its resolution 5/8, in which it requested UNODC to promote and disseminate the *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, as well as to promote the use of model laws on extradition and mutual legal assistance developed by UNODC.

45. UNODC developed several model provisions and laws pertaining to the Convention and the Protocols thereto, including: *Model Legislative Provisions against Organized Crime* (2012); *Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition* (2011); *Model Law against the Smuggling of Migrants* (2010); *Model Law against Trafficking in Persons* (2010); *Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime* (2009);<sup>13</sup> “Model law on mutual assistance in criminal matters” (2007); *Model Legislation on Money Laundering and Financing of Terrorism* (2005);<sup>14</sup> *Model Law on Extradition* (2004); and *Model Law on Witness Protection* (2008).<sup>15</sup> UNODC also developed a model treaty on extradition, as well as a model treaty on mutual assistance in criminal matters.<sup>16</sup>

46. These tools are complemented by a series of UNODC manuals, which provide additional information on international cooperation processes, including the *Manual on Mutual Legal Assistance and Extradition*, the *Manual on International*

<sup>13</sup> Produced for common law legal systems.

<sup>14</sup> Produced for civil law systems.

<sup>15</sup> Currently under review.

<sup>16</sup> The model laws are available on the UNODC website at [www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html](http://www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html).

*Cooperation for the Purposes of Confiscation of Proceeds of Crime, and the Handbook on the International Transfer of Sentenced Persons.*<sup>17</sup>

47. The use of such tools in the process of legislative assistance regarding the Convention and its Protocols must strike a delicate balance. Assistance must be flexible enough to fit the needs of different legal traditions, including their constitutional principles and existing legal structure and enforcement arrangements, as well as different social, economic, cultural and geographic conditions. At the same time, it must be sufficiently systematic to achieve an adequate degree of legislative harmonization for each country to be able to exchange mutual legal assistance and extradition requests, conclude agreements or arrangements on joint investigations, and participate in other forms of international cooperation.

48. With a view to meeting these requirements, UNODC takes an evidence-based and participatory approach to technical assistance for harmonization of national legislation. When a request for assistance is received, the legislative process in the requesting country is researched, relevant stakeholders and actors are consulted, and potential obstacles to the process are identified. A background document, detailing applicable international obligations, existing constitutional requirements and applicable laws on the matter, as well as an analysis of both legal challenges and opportunities may be prepared to justify the legislative process. Most importantly, drafting of new laws, or amendments to existing laws, must be nationally owned and led, with the role of technical assistance to provide background expertise, advice and support as required.

49. With technical support, national legislative drafters should bear in mind the ultimate users of legislation, both justice system professionals and the general public, who will read and use legislation, and draft in the style and format of existing laws. In this respect, existing national legislative drafting manuals are as important as international legal tools. In accordance national legal systems, existing legislation and draft laws may also aim to incorporate provisions for transparent, accountable and participatory monitoring and evaluation mechanisms.

50. With a view to supporting the periodic national processes of law review and assessment as well as the planning and delivery of technical assistance, UNODC has started the development of a needs assessment guide on the Organized Crime Convention.<sup>18</sup> The purpose of this tool is to provide guidance for assessing actions that can be taken in a State party in order to ensure that the full potential of the Organized Crime Convention can be realized.

51. The guide will consist of standardized sets of indicators and questions designed to enable experts from international organizations, non-governmental organizations, national governments, as well as relevant institutions, in particular, policymakers and legislators, to conduct a comprehensive or specific assessment of selected aspects of implementation of the Organized Crime Convention. This includes identifying gaps in existing legislation and implementation; facilitating the formulation and development of technical assistance projects that adequately

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<sup>17</sup> The international cooperation tools and publications are available on the UNODC website at [www.unodc.org/unodc/en/organized-crime/international-cooperation-tools.html](http://www.unodc.org/unodc/en/organized-crime/international-cooperation-tools.html).

<sup>18</sup> To be published in 2014.

respond to the gaps and needs identified; and facilitating the development of performance indicators for evaluating progress in implementation.

52. UNODC has previously developed the *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking*<sup>19</sup> and the *Assessment Guide to the Criminal Justice Response to the Smuggling of Migrants*.<sup>20</sup> These tools have enabled experts from international organizations, non-governmental organizations, national development agencies and other governmental entities, as well as relevant institutions, to conduct comprehensive or specific assessments of selected aspects of a country's criminal justice response to the two crimes. A more specific focus is reflected in a series of technical papers issued by UNODC, such as on *Combating Trafficking in Persons in Accordance with the Principles of Islamic Law*.<sup>21</sup>

53. Information on the efforts of States parties to harmonize their national legislation with the provisions of the Convention and its Protocols will also soon be available in the database of legislation on the UNODC organized crime knowledge management portal entitled "Sharing Electronic Resources and Laws against Organized Crime" (Sherloc), which will also include a case law database and a link to the directory of competent national authorities. Through Sherloc, UNODC aims to gather, on a single website, all information pertaining to international, regional and national efforts to combat organized crime with a view to facilitating the dissemination of information. UNODC will launch Sherloc in late 2013.

## VII. Recommendations

54. The Working Group may wish to consider:

(a) Discussing recommendations on the best approaches for UNODC to support the ratification and implementation of the Organized Crime Convention and the Protocols thereto;

(b) Discussing and identifying the most salient legal and practical challenges related to the ratification and implementation of the Organized Crime Convention and the Protocols thereto on which it would like UNODC to focus its legislative assistance delivery in the coming period;

(c) Encouraging State parties to take the necessary legislative measures to bring their national legal frameworks in line with the Organized Crime Convention. Furthermore, States parties may wish to prioritize the adoption of measures aimed at harmonizing their national legislation with the Convention's mandatory provisions;

(d) Reminding States parties that UNODC stands ready, upon request, to assist them, through the delivery of tailored technical assistance, in their efforts to harmonize their national legislation with the provisions of the Organized Crime Convention;

<sup>19</sup> Available from [www.unodc.org/documents/human-trafficking/Needs\\_Assessment\\_Toolkit\\_ebook\\_09-87518\\_June\\_2010.pdf](http://www.unodc.org/documents/human-trafficking/Needs_Assessment_Toolkit_ebook_09-87518_June_2010.pdf).

<sup>20</sup> Available from [www.unodc.org/documents/human-trafficking/Migrant-Smuggling/UNODC\\_2012\\_Assessment\\_Guide\\_to\\_the\\_Criminal\\_Justice\\_Response\\_to\\_the\\_Smuggling\\_of\\_Migrants-EN.pdf](http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/UNODC_2012_Assessment_Guide_to_the_Criminal_Justice_Response_to_the_Smuggling_of_Migrants-EN.pdf).

<sup>21</sup> [www.unodc.org/documents/human-trafficking/Islamic\\_Law\\_TIP\\_E\\_ebook\\_18\\_March\\_2010\\_V0985841.pdf](http://www.unodc.org/documents/human-trafficking/Islamic_Law_TIP_E_ebook_18_March_2010_V0985841.pdf).

(e) Encouraging non-parties to the Organized Crime Convention (both signatories and non-signatories) to consider requesting UNODC technical assistance, notably with regards to the existence in their domestic legislation of discrepancies with the Organized Crime Convention;

(f) Inviting Member States to make extensive use of UNODC legal tools in their efforts to further harmonize their national legislation with the Organized Crime Convention.

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