



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

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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, 28-30 September 2009

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**

**Compilation of comments and views received from States on  
possible mechanisms to review implementation of the  
United Nations Convention against Transnational  
Organized Crime and the Protocols thereto**

**Note by the Secretariat**

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## I. Introduction

1. Pursuant to article 32 of the United Nations Convention against Transnational Organized Crime, 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 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 a group of experts in Vienna by September 2009. The group would then present a report to the Conference at its fifth session on mechanisms for reviewing implementation of the Convention and its Protocols.
3. In the same decision, the Conference requested Member States to submit their comments and views to the Secretariat for the deliberations of that meeting and requested the Secretariat to organize the views and comments received so as to facilitate the deliberations. A note verbale regarding this matter was sent to States parties and signatories to the Organized Crime Convention on 2 July 2009.
4. The present note reflects the views submitted by 19 States in response to the note verbale.<sup>1</sup> It highlights possible topics of discussion for the Intergovernmental Meeting of Experts, such as the relevance of a review mechanism, the nature of the mechanism, the methods it could adopt and the principles that should underpin it.

## II. Discussion on the necessity of a review mechanism

5. Most responding States considered that a mechanism to review the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto would be important and necessary. For France, any delay in defining and establishing a review mechanism would be perceived as reflecting a lack of adequate implementation of the Convention, or even a lack of will to effectively fight transnational organized crime, trafficking in persons, smuggling of migrants and trafficking in firearms and ammunitions.
6. China, however, expressed the opinion that a review mechanism was not currently needed. In the view of China, the response rates to the questionnaires/checklist remained too low. Thus, the most urgent matter was to improve the data-collection methodology in order to have a better picture of the implementation of the Convention and its Protocols by States. Only after having fully understood and examined the difficulties of implementation should the Conference of the Parties decide whether a review mechanism is needed and what its characteristics should be.

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<sup>1</sup> Argentina, Belgium, Canada, Chile, China, Colombia, Ecuador, Finland, France, Jamaica, Japan, Mexico, Netherlands, Panama, Peru, Philippines, Romania, Turkey, United States of America.

7. Most responding States considered that an in-depth review would foster effective implementation of the Organized Crime Convention and its Protocols. It would also help raise awareness about the Convention and strengthen international cooperation. The point that a review mechanism would be instrumental in identifying and overcoming difficulties in the implementation of the Convention and its Protocols was emphasized by many. Turkey, for instance, expressed the opinion that a review mechanism would ensure that technical assistance truly met priority needs. Japan underlined that such a mechanism would help to make technical assistance more efficient.

### **III. Nature and methods of the review**

#### **A. Nature of the review**

8. Most responding States emphasized that the authority of the Conference of the Parties should be upheld, and that a review mechanism should be established only under its guidance and remain an intergovernmental process.

9. A great majority of responding States expressed the opinion that a single review mechanism, encompassing all four legal instruments (the Convention and its three Protocols), would be more coherent, as well as simpler to operate. For China, overlapping reviews should be avoided in order to minimize the burden put on States. For France, establishing four distinct mechanisms would carry the risk of undermining the review process as a whole. In the view of France, the main challenge lay in the identification of a team of experts who would be able to deal with all topics covered by the Convention and its Protocols.

10. On the other hand, Ecuador and the Philippines expressed the opinion that four distinct review mechanisms would be needed in order to fully take into account the wide variety of issues tackled by the Convention and its Protocols. To address this challenge, some (from Mexico, Panama and Romania) suggested that a single mechanism be established, but that it include several sub-mechanisms, or chapters, that would deal with the issues related to each of the four instruments.

11. Other responses suggested proceeding step by step. For example, Japan expressed the opinion that the review should initially focus on a small number of provisions and then gradually expand its scope. Finland suggested that review cycles be established, each of them consisting of several phases including a cluster of issues. Finland also proposed 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. For Colombia, the structure of the review mechanism should be flexible. Colombia expressed the opinion that each State should be able to decide at the time of evaluation whether it wants to undergo an assessment of its implementation of all instruments, or of only some of them. This could also be a way to take into account the fact that some States parties to the Convention are not parties to the Protocols.

12. In the end, many responding States considered that these parameters would very much depend on the type of review that is adopted. In this respect, Mexico expressed the opinion that experiences under other international instruments would

be relevant. It considered, in particular, that the review process launched by the Inter-American Drug Abuse Control Commission under the aegis of the Organization of American States presented interesting aspects that could be used in the design of a review mechanism for the Organized Crime Convention and its Protocols. Jamaica also underlined the importance of fully utilizing the potential of regional and subregional organizations to assist in the implementation of the Convention and its Protocols.

## **B. Methods of the review**

13. Many responding States expressed the opinion that the review mechanism should be based on the principle of a peer review carried out by experts. In this respect, Finland and France provided a very detailed description of possible steps that could be included in a review process.

14. In the view of Finland, international experts (appointed by two or more other States parties in each individual case) would review the results of a self-assessment exercise conducted by the State under review. This would involve a country visit by those experts, unless exceptionally regarded as unnecessary. On the basis of its experience, Finland was of the view that such country visits allowed for greater interaction between the reviewing experts and the experts of the country under review, making for a true learning process on both sides. Finland also stressed that such a method often produced solutions to problems encountered in implementation. Turkey had a similar concept, whereby country visits should be conducted in a way that promoted an active and constructive dialogue among experts.

15. The method proposed by France was similar to the one described by Finland. Responses to reporting tools such as the questionnaires, checklist or comprehensive software should be analysed by a team of experts, which would include at least one expert from the same regional group as the State under review. The involvement of experts from the same region was also an aspect deemed important by Colombia. As a second step, an in-depth dialogue between the representatives of the State under review and the team of experts should be conducted. Field visits could be conducted to gather additional information as necessary, with the agreement of the State in question. In the view of France, the review process would conclude with the preparation of a report.

16. France expressed the opinion that a draft report should first be transmitted by the team of experts to the State under review, which would provide comments, before a final report was adopted. The objective of the final report would be to assess the strengths and weaknesses of the framework put in place by the State in order to implement the Convention and its Protocols. The report would also present good practices in the area of the fight against transnational organized crime, as well as identify priorities to improve the implementation of the Convention and its Protocols, and corresponding technical assistance needs.

17. According to France, the report could contain, if necessary, a list of recommendations to help facilitate implementation. In this case, the State under review would have to inform the team of experts and the Conference of the Parties of measures taken to follow up on these recommendations. Mexico, Peru and Turkey were also in favour of drafting recommendations for the consideration of the State

under review. Mexico emphasized that recommendations should be constructive and respectful, allowing the State under review to receive feedback. Turkey stressed that the consultation of the State under review would be critical to ensure the ownership of findings and possible recommendations.

18. Finally, France was in favour of the creation of an organ made up of experts designated by States parties, which would examine final reports and draft a summary report including recommendations for the Conference of the Parties to consider. Recommendations would bear on priorities to improve the implementation of the Organized Crime Convention and its Protocols, on action deemed necessary to fulfil this objective and on technical assistance needs. The report prepared by the organ would be an official document of the Conference of the Parties, which would, as such, be made public.

### **C. Information basis of the review**

19. The discussion of the methods of review led to the consideration of what information ought to be taken into account as part of the review process. Many responding States expressed the opinion that the questionnaires and checklist would be a valuable source of information and a good starting point for the collection of information. China expressed the view that a review mechanism should be based solely on information directly provided by each State to the Conference of the Parties.

20. Several States expressed the view that, while the questionnaires and checklist would be a good starting point, they could not be seen as a replacement for other sources of information. Canada expressed the opinion that the review would need to have information from various sources, including open-source information and information provided by civil society. Finland was also of the view that efforts should be made to encourage the participation of the research community, civil society and the private sector in the information-gathering process, subject to the condition that any information used in the country report is credible and reliable. In the same context, France proposed that the State party under review be allowed to present comments on the relevance of the information collected from other sources.

21. Several countries also stressed that the use of material produced in the course of other possible reviews or studies could help avoid unnecessary duplication of work. In this respect, Argentina and France pointed at the synergies between a review mechanism for the Organized Crime Convention and other international and regional frameworks. Likewise, Finland expressed the opinion that information gathered in connection with the review of the United Nations Convention against Corruption could be readily used in connection with the review of the Organized Crime Convention. Panama further suggested that the review mechanism include a survey of both the public and the private sector regarding the perceptions of corruption and the penetration of organized crime, while Mexico considered that an analysis should be produced on the issue of transnational organized crime in various regions of the world.

#### **D. Role played by the Secretariat**

22. All responding States recommended that the Secretariat play an important role in supporting and facilitating a possible review mechanism. Some States expressed the view that the Secretariat should be involved in the analysis of information collected. Finland noted that the Secretariat should assist in compiling and circulating self-assessments, as well as making all practical arrangements for country reviews. In the view of Finland, the Secretariat should also, together with the experts, prepare reports for a review-of-implementation group, which would in turn report to the Conference of the Parties. Finally, Japan expressed the opinion that the review process should be carried out by the Secretariat within existing resources. Chile underlined that the Secretariat should be given the necessary resources to strengthen its technical assistance programmes.

### **IV. Principles underpinning the review mechanism**

#### **A. General principles**

23. Several States referred to the characteristics and principles of a review mechanism delineated in resolutions 1/1 and 2/1 of the Conference of the States Parties to the United Nations Convention against Corruption. In particular, some States underlined that the review mechanism should not be conducive to any type of ranking (Ecuador, Philippines). It should instead allow for a better exchange of good practices and help to solve practical implementation problems. The mechanism should also be impartial, efficient, transparent, flexible and reliable. Peru also insisted on the need for the review mechanism to be inclusive, involving all relevant institutions in the review exercise.

24. Furthermore, China and Colombia emphasized that a review mechanism should respect the principle of State sovereignty. Likewise, Colombia and the Philippines considered that a review mechanism should not be intrusive. China stressed that the data collected should not be disclosed or used for hostile interference in internal affairs. The Philippines also recommended that the information submitted should be kept confidential by the Secretariat. Only lessons learned and best practices should be made available to other States parties. Panama, along the same lines, underlined that information collected should be accessible only to the highest authorities in a State (the head of State, the president of the national assembly, the president of the supreme court and the general prosecutor or attorney general). Each of these authorities could then decide whether the information should be shared or not. Finland, on the other hand, expressed the opinion that the reports should be made public, subject to the approval of the country under review. The reports should, at a minimum, be made available to the members of the implementation review group as well as to other States parties.

#### **B. Linkages between a review mechanism and technical assistance**

25. For many States, a significant advantage of a review mechanism would be to help better identify technical assistance needs. Thus, many responding States

believed that there should be a relationship between the review mechanism and the identification of technical assistance needs. Japan underlined that the purpose of the review mechanism would not be to criticize specific countries, but rather to identify needs and make technical assistance more efficient. Ecuador and Peru also saw the review mechanism as an opportunity to reinforce technical assistance related to the Convention and its Protocols. France recommended that the outline of technical assistance needs in the final country report be the basis for the provision of subsequent technical assistance. It emphasized that technical assistance needs could be expressed for every stage of the review process, from filling in the reporting tools to the dialogue with the team of experts and the submission of comments on the experts' draft report.

26. In this respect, Panama suggested that the review include a description of the necessary human and material resources to implement the Convention and a description of the resources planned in the departments of public security and national defence and the judiciary. In the view of Colombia, there should be a direct relation between the review mechanism and the provision of technical assistance. Immediate and effective technical assistance should be provided to address the difficulties identified during the review, assuming that the State in question agreed to it.

27. Chile and China expressed the opinion that technical assistance should not be conditional on the fulfilment of the Convention's obligations by a State. Panama also recommended that the decision on providing technical assistance should not be excessively influenced by the results of a review.

## **V. Conclusion: relevant points from other implementation review processes**

28. Most responding States saw the review mechanisms for the Convention against Corruption and for the Convention against Transnational Organized Crime as interconnected and, in certain respects, complementary processes. Most States expressed the opinion that the discussions on the possible mechanism to review the implementation of the Organized Crime Convention and its Protocols would be informed by the intergovernmental discussions of the review of implementation of the Convention against Corruption. In the view of Canada, the work done to date with respect to the development of a review mechanism in the corruption context would offer valuable insight, ensuring that the lessons learned inform the development of discussions in the organized crime context. It was hoped that this would help focus the discussions and build on the successes achieved in the corruption context.

29. Finland and Turkey were of the view that the mechanism for the review of implementation of the Organized Crime Convention should follow the lines emerging in connection with the parallel discussion on the review of implementation of the Convention against Corruption. Belgium and France also believed that the terms of reference currently being negotiated for a corruption review mechanism could be easily adapted to fit the organized crime context, while Japan would find it natural to have a single review mechanism for both conventions.

30. Argentina warned against automatically transposing the review mechanism discussed in the corruption context to the organized crime framework. The United States of America felt that the review mechanism should be tailored to the Convention's specific scope, objectives and provisions. The Philippines expressed the opinion that the review mechanism developed for the Convention against Corruption should serve only as a reference for discussion. Mexico and the United States considered that the important lessons and recommendations emerging from the pilot review programme launched for the Convention against Corruption would be of much use in the reflection on a review mechanism for the Organized Crime Convention and its Protocols.

31. In this connection, the Netherlands was hesitant to have decisions taken on a review mechanism for the Organized Crime Convention until it had more information about the experience and added value of a corruption review mechanism. The Netherlands expressed the opinion that such mechanisms should not be duplicated, as they are very resource-consuming for both the Secretariat and the States parties. The Netherlands considered that more practical measures to improve cooperation in fighting organized crime were needed. Belgium recommended that the discussion of a review mechanism take into account the recommendations that have already been made by other working groups, in particular the recommendations of the working group on human trafficking regarding the implementation of the Protocol.

32. For Canada, should a review mechanism be agreed upon, it should be at least as rigorous and inclusive as any possible review mechanism that is agreed in the corruption context. In the view of Canada, anything less would run the risk of undermining the processes in both the organized crime and corruption contexts and could ultimately have an impact on the implementation of the legal instruments themselves.

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