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Open-ended Intergovernmental Working Group on Technical Assistance

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**Implementation of the mandate on technical assistance of
the Conference of the States Parties to the United
Nations Convention against Corruption**

Successful practices and coordination for effective technical assistance

Background paper prepared by the Secretariat**

I. Introduction

1. In its resolution 2005/18, entitled “Action against corruption: assistance to States in capacity-building with a view to facilitating the entry into force and subsequent implementation of the United Nations Convention against Corruption”, the Economic and Social Council called upon Member States to continue to make adequate voluntary contributions to the United Nations Crime Prevention and Criminal Justice Fund to provide developing countries and countries with economies in transition with technical assistance that they might require to implement the Convention; and requested the Secretary-General to provide the United Nations Office on Drugs and Crime (UNODC) with the necessary resources to enable it to promote, in an effective manner, the implementation of the United Nations Convention against Corruption (General Assembly resolution 58/4, annex) through, inter alia, the provision of assistance to developing countries and countries with economies in transition for building capacity in the areas covered by the Convention.

2. Subsequently, in its resolution 60/175, entitled “Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity”, the General Assembly reaffirmed the role of UNODC in providing to Member States, upon request and as a matter of high

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priority, technical cooperation, advisory services and other forms of assistance in the field of crime prevention and criminal justice, including in the area of prevention and control of corruption.

3. Furthermore, the General Assembly, in its resolution 60/207, entitled “Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention against Corruption”, encouraged UNODC to give high priority to technical cooperation, upon request, inter alia, to promote and facilitate the ratification and implementation of the Convention and to provide technical assistance to support national efforts in preventing and combating corrupt practices.

4. Most recently, in its resolution 2006/24, entitled “International cooperation in the fight against corruption”, the Economic and Social Council requested UNODC to continue to assist States, upon request, with sustainable capacity-building focused on promoting the implementation of the Convention; and invited relevant entities of the United Nations system and international financial institutions and regional and national funding agencies to increase their support to and interaction with UNODC in order to benefit from areas of synergy and avoid duplication of effort and to ensure that, as appropriate, activities aimed at preventing and combating corruption were considered in their sustainable development agenda and that the expertise of the Office was fully utilized.

5. At its first session, held in Amman from 10 to 14 December 2006, the Conference of the States Parties to the United Nations Convention against Corruption reiterated the cross-cutting nature of technical assistance and its strong link with the implementation of the Convention. In its resolution 1/5, entitled “Technical assistance”, the Conference decided to establish an interim open-ended intergovernmental working group to advise and assist the Conference in the implementation of its mandate on technical assistance; and also decided that the working group should: (a) review the technical assistance needs; (b) provide guidance on priorities, based on programmes approved by the Conference and its directives; (c) take into consideration information gathered through the self-assessment checklist approved by the Conference; (d) consider information, as appropriate and readily available and in the areas covered by the Convention, on technical assistance activities of the Secretariat and States, including successful practices, projects and priorities of States, other entities of the United Nations system and international organizations; (e) promote the coordination of technical assistance in order to avoid duplication; and (f) formulate project proposals to address the needs identified, taking into account equitable geographical distribution and different legal systems, as appropriate. In addition in its resolution 1/5, the Conference decided that the working group should report on its activities to the Conference at its second session.

6. The present paper provides an overview of methods and tools for assessing technical assistance needs, building on the experience gained and lessons learned from the delivery of technical assistance for the implementation of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I) and the Protocols thereto and the Convention against Corruption. The paper also contains suggestions on areas and related activities for consideration by the Working Group. By drawing on this information the Open-ended Intergovernmental Working Group on Technical Assistance should be

in a better position to recommend to the Conference priorities for technical assistance and proposals for activities, coordination and resource mobilization.

II. Review of needs for technical assistance

A. Diversity of technical assistance needs

7. The Convention against Corruption embodies the most comprehensive international legal framework for preventing and combating corruption. The scope and multidisciplinary approach of the Convention make the related technical assistance needs both complex and diversified. Also, experience has shown that technical assistance needs emerge at different stages of the ratification and implementation process and require different approaches.

8. In the pre-ratification phase, technical assistance may be required to support legislative and political action designed to ensure adherence to the Convention. Such assistance may include knowledge-building and awareness-raising in order to generate, sustain or strengthen momentum for States to initiate or advance in the ratification or accession process. Technical support is also likely to be required for translating the provisions of the Convention into domestic legislation, a process that is key to successful implementation.

9. Beyond legislative assistance and legal advisory services, technical assistance may include (a) advisory services to support the development and adoption of anti-corruption policies and action plans for their implementation; (b) training and capacity-building for relevant institutions to ensure the implementation of anti-corruption legislation or policies; and (c) the establishment or strengthening of the institutional framework prescribed by the Convention, such as independent anti-corruption bodies (article 6) or central authorities responsible for processing requests for mutual legal assistance (article 46, paragraph 13). Institution-building may require specified assistance aimed at prompting structural changes and institutional reform. Even after the adaptation process, States may require follow-up support to assess and consolidate their achievements. Technical assistance may also be needed to enable States parties to meet legal reporting and notification obligations emanating from the Convention, as some States may lack the expertise or resources to properly fulfil such obligations.¹

¹ One example of assistance provided in this area was the workshop on information-gathering mechanisms to support and facilitate the work of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, held in Vienna on 2 and 3 March 2006. One of the objectives of the workshop, which was organized jointly by UNODC and the Organization for Security and Cooperation in Europe (OSCE), was to assist OSCE member States in responding, in a timely and accurate manner, to the questionnaires on the implementation of the Organized Crime Convention, thus addressing the underreporting problem observed by the Conference of the Parties to the Organized Crime Convention.

B. Assessing technical assistance needs in order to design policies, measures and activities

10. To be effective and have a sustainable impact, technical assistance requires a method for the identification of needs and priorities. For over a decade, providers of technical assistance have been developing and applying a range of different approaches, methodologies and instruments aimed at assessing countries' legal and institutional frameworks, weaknesses and implementation capacity. Depending on their nature and design, such instruments have been used for three different purposes: (a) to provide a basis for knowledge-based policy development and strategic planning; (b) to identify gaps in the technical, human and financial resources required to implement such policies and strategies; and (c) to develop benchmarks for determining impact and progress.

11. Assessing needs and priorities requires the collection of accurate and complete information from countries. By developing and strengthening ownership, such an approach offers significant possibilities for success and sustainability. Information-gathering tools, such as questionnaires and checklists, are the most commonly used mechanism established by treaty bodies to collect information on compliance. Such tools may also be utilized to collect useful information on implementation gaps and technical assistance requirements. That, for instance, is the approach chosen by both the Conference of the Parties to the United Nations Convention against Transnational Organized Crime and the Conference of the States Parties to the United Nations Convention against Corruption. While the former Conference adopted questionnaires and established reporting cycles, the latter – cognizant of the underreporting problem encountered by the former – opted for a different approach: a self-assessment checklist.² The objective of the checklist is to ascertain the implementation status of selected articles of the Convention and identify technical assistance needs related to their implementation. By promoting a self-assessment exercise, the approach offers the advantage of fostering ownership by reporting States, as they are requested to identify their own gaps and needs. However, such an approach presents two possible limitations. The first is one of scope as, in its present formulation, it covers only 15 of the 71 articles of the Convention. The second weakness, common to any country-led information-gathering process, lies in the risk that the reporting obligation may go unfulfilled or that the information provided may be incomplete or inaccurate. Additional sources may therefore be necessary in order to complement available information and thereby focus and fine-tune relevant action, especially regarding the provision of technical assistance.

12. UNODC and others have developed and tested a variety of approaches, including a systematic comparison of entire national legal and institutional

² The Conference of the States Parties to the United Nations Convention against Corruption in its resolution 1/2, decided that a self-assessment checklist should be used as a tool to facilitate the provision of information on implementation of the Convention and requested the Secretariat to finalize such a tool in consultation with and reflecting input from States parties and signatories (CAC/COSP/2006/12, para. 1). The checklist, which was finalized, embedded in a software package and distributed to State parties and signatories on 15 June 2007, can be downloaded from the UNODC website (http://www.unodc.org/unodc/en/crime_convention_corruption.html). Ad hoc support is offered to States that encounter difficulties in using the application or filling out the checklist.

frameworks and implementation capacities vis-à-vis the requirements of the Convention. That approach, known as “gap analysis”, is adopted at the request of the state concerned and provides not only a useful overview of the level of compliance of a state with its obligations under the Convention, but also a basis to determine the areas where measures are required to enhance the legal framework, strengthen relevant institutions and build capacity. However, while gap analysis can prove useful in identifying areas requiring normative or institutional intervention, it is not designed to provide guidance on *how* to intervene. To conduct a full needs assessment, other tools may be necessary. Among those, the Criminal Justice Assessment Toolkit of UNODC (http://www.unodc.org/unodc/criminal_justice_assessment_toolkit.html) or the methodology developed by Transparency International to assess national integrity systems (http://www.transparency.org/policy_research/nis/methodology) can provide more detailed information on the level of alignment with relevant standards, norms and good practices.

13. All such tools can contribute considerably to assessing the requirements of national legal and institutional frameworks and to designing concrete policies and measures to address them. However, they are bound to offer limited insight on whether such policies and measures result in improvement in such areas as transparency, accountability and governance in the public sector, efficiency in service delivery and public trust. In short, the above-mentioned tools are not designed to assess the impact of action taken against corruption. Impact and results can be measured through quantitative survey instruments, such as the Worldwide Governance Indicators of the World Bank (<http://govindicators.org>), the UNODC Crime and Corruption Business Survey (<http://www.unodc.org/unodc/en/ccbs.html>) or the stakeholder survey tools used by UNODC in its assessments of integrity and capacity in the justice sector (http://www.unodc.org/pdf/corruption/publications_nigeria_assessment.pdf and http://www.unodc.org/pdf/corruption/publications_indonesia_e_assessment.pdf). The disadvantage of survey-based tools is that their application is significantly more complex, time-consuming and resource-intensive than that of other tools. In addition, there are differing views on the accuracy and reliability of many existing survey tools. The foregoing notwithstanding, properly designed survey instruments can ultimately offer national stakeholders, international partners, domestic and foreign businesses and, most importantly, citizens the possibility of determining impact, which will greatly enhance the success and sustainability of anti-corruption efforts.

14. The above-mentioned approaches, methodologies and assessment tools are neither exhaustive nor exclusive, as some of them may be used in combination with one another. They all have specific advantages and disadvantages to be mindful of when deciding, on a case-by-case basis if need be, on the most effective assessment strategy. The choice of instrument will need to take into account country-specific requirements, the purpose of the assessment, the resources available and the extent to which the data are urgently needed.

15. Irrespective of the assessment methodology adopted, it is important that its outcome be utilized to guide policy development, implementation, monitoring and evaluation. That is less problematic in the case of compliance-based assessment tools, such as the self-assessment checklist, gap analysis and criminal justice assessment toolkit, because in those cases requirements are predetermined by the Convention, international standards and norms or recognized practices. Thus, areas

of action and measures to be taken are to a large extent determined by the gaps identified. Greater care needs to be taken where policy development is based on quantitative data. In such cases, data must be analysed with a view to identifying the causes for certain shortcomings in order to then determine policies, measures and technical assistance activities to address them effectively. Independently of the type of assessment used as the basis for the planning exercise, it is crucial that the diagnosis be effectively utilized to identify specific needs, linking them to concrete and realistic action, measurable results, a realistic budget and time frame, and proper monitoring and evaluation mechanisms.

III. Guidance on priorities for technical assistance

16. To assist the Conference and provide guidance on priorities and activities for technical assistance, the Working Group was requested to consider information, readily available and in the areas covered by the Convention, on technical assistance activities conducted by UNODC and others, including successful practices. To this end, the Working Group may wish to consider (a) the outcome of the seminars conducted to promote the ratification and implementation of the Convention; (b) the relevant work done in the context of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, taking stock of the similarities between the two conventions and any needs that may be common to different States when implementing new crime-related international treaties; and (c) successful practices and lessons learned from technical assistance activities. By considering such information, the Working Group should be able to build on the relevant experience of delivering technical assistance in support of implementation of the two conventions. Furthermore, the information contained in the paragraphs below may stimulate discussion not only on how to identify priority areas for technical assistance but also on how technical assistance should be delivered in such areas in order to maximize its impact.

17. Further information to assist the Working Group will be provided by the findings of the self-assessment checklist, which will determine the implementation status and related assistance requirements of key provisions in the following thematic areas: (a) prevention;³ (b) criminalization and law enforcement;⁴ (c) international cooperation;⁵ and (d) asset recovery.⁶

³ Anti-corruption policies and practices (art. 5), anti-corruption bodies (art. 6) and public procurement and management of public finances (art. 9).

⁴ Bribery of public officials (art. 15), bribery of foreign public officials and officials of public international organizations (art. 16), embezzlement (art. 17), laundering of proceeds of crime (art. 23) and obstruction of justice (art. 25).

⁵ Extradition (art. 44) and mutual legal assistance (art. 46).

⁶ Prevention and detection of transfers of proceeds of crime (art. 52), measures for direct recovery of property (art. 53), mechanisms for recovery of property through international cooperation in confiscation (art. 54), international cooperation for purposes of confiscation (art. 55) and return and disposal of assets (art. 57).

A. High-level seminars to promote the ratification and implementation of the United Nations Convention against Corruption and the working group on technical assistance established by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime

18. In the course of 2005 and 2006, UNODC conducted seven high-level regional seminars to promote the ratification and implementation of the Convention against Corruption. The seminars gathered policymakers and practitioners from more than 130 Member States and provided a platform for sharing experiences, good practices and innovative initiatives. The following priority issues emerged at the seminars: (a) the criminalization of corruption offences, in particular the mandatory ones; (b) the promotion of mechanisms for international cooperation, especially in the areas of extradition and mutual legal assistance; and (c) the development of a methodology for assessing progress in the implementation of the Convention. In addition to those issues, which parallel issues identified by the Working Group of Government Experts on Technical Assistance established by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime (see para. 19 below), the seminars also highlighted a number of issues specifically related to corruption: (a) the need to develop and strengthen mechanisms for asset recovery; (b) the importance of developing national anti-corruption strategies; (c) the establishment of anti-corruption bodies with adequate political, functional and budgetary independence; and (d) the central role of civil society and the media in raising public awareness on corruption. The fact that those issues emerged consistently throughout the seven regional seminars is noteworthy and could be instrumental to the identification of technical assistance priorities.

19. At its third session, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, in its decision 3/4, endorsed the recommendations formulated by the Working Group of Government Experts on Technical Assistance to assist it in the implementation of its mandate on technical assistance (CTOC/COP/2006/14, para. 1). The priorities identified by the Working Group were (a) criminalization of the offences covered by the Convention and its Protocols; (b) international cooperation in criminal matters and for the purpose of confiscation, with special emphasis on extradition and mutual legal assistance; and (c) assistance in the establishment or strengthening of central authorities dealing with requests for mutual legal assistance or extradition. The Working Group also recognized the need to develop the capacity of States parties to collect data on organized crime and to provide, upon request, technical assistance in that regard. Furthermore, recognizing that non-compliance with reporting and notification obligations emanating from the Organized Crime Convention and the Protocols thereto might be due to insufficient capacity, the Working Group recommended the provision of technical assistance, upon request, either individually or through subregional or regional activities. The Working Group noted that the determination of technical assistance needs should be done on the basis of requests from States parties, using information provided by them in the context of fulfilling their reporting obligations.

B. Successful practices and lessons learned in technical assistance

20. The paragraphs below present a non-exhaustive overview of successful practices and lessons learned over the years that may assist the Intergovernmental Working Group on Technical Assistance in establishing how technical assistance should be delivered:⁷

21. First and foremost, experience has shown that awareness-raising activities and dissemination of knowledge and expertise on the Convention against Corruption play a crucial role in building political support and ensuring sustainable changes in practice and behaviour. Those activities should therefore be a key component of a comprehensive anti-corruption strategy.

22. From an operational point of view, experience has also shown the following:

(a) In order to prepare the ground for further capacity-building, legal assessments and advisory services need to be delivered first. Legal assistance needs to be provided in an integrated manner, considering the Convention in the wider context of a country's overall criminal justice system, its existing laws and institutions and other international commitments, particularly those emanating from the other conventions for which UNODC is custodian. Legislative guides, model legislation, electronic libraries containing relevant national legislation and other tools can play an important supporting role, especially if adapted to specific country needs;

(b) Human capacity-building and training are also key issues: in order to be effective, training should be focused and should target key actors. Self-sustaining and reusable training tools, including e-learning or computer-based training programmes, to be used for medium- and long-term capacity-building activities, can further reinforce this component. Train-the-trainer methodologies have also yielded positive results;

(c) In more complex and demanding areas (such as asset recovery), a learning-by-doing approach has appeared to be adequate in ensuring hands-on assistance for capacity-building over a longer period of time and on-the-job learning to allow practitioners to adapt the principles enunciated in the conventions to specific country situations. The use of mentors has also proved effective.

23. Institution-building and international cooperation are long-term endeavours. Institution-building, for example, requires a comprehensive approach that involves all relevant players, ranging from preventive to repressive anti-corruption bodies and including the judiciary, prosecution services, law enforcement agencies and central authorities. Effective institution-building entails (a) the existence of an adequate organizational structure and internal administrative and staffing procedures; (b) a clear institutional mission and vision, proper legal foundations and the necessary powers for institutions to effectively discharge their functions, as well

⁷ For a more detailed overview, see the working paper on technical assistance prepared by the Secretariat for the third session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime (CTOC/COP/2006/9) and the background paper prepared by the U4 Anti-Corruption Resource Centre for the International Cooperation Workshop on Technical Assistance for the Implementation of the United Nations Convention against Corruption, held in Montevideo in June 2007.

as adequate human, technical and financial resources; and (c) functional inter-institutional coordination mechanisms and ability to process corruption-related requests for international cooperation. In this context, the deployment of mentors and advisers has proved a cost-effective solution for day-to-day support to national institutions. Similarly, international judicial cooperation in criminal matters requires the combined provision of legal expertise and relevant training and the development of appropriate technical tools intended to facilitate international cooperation casework. Practical tools for extradition and mutual legal assistance, such as the UNODC Mutual Legal Assistance Request Writer Tool, have proved particularly effective.

24. Complementary to the foregoing are the following methodological considerations:

(a) The collection and analysis of reliable data on corruption patterns and trends and on the impact of anti-corruption strategies are essential to ensuring evidence-based policymaking. To support the analysis of national and regional trends and informed decision-making, data collection should be an integral part of any anti-corruption strategy;

(b) As far as the duration of assistance is concerned, a differentiated approach seems to be recommendable. While short-term assistance programmes may serve the immediate purpose of building knowledge and the necessary normative body, full implementation of the Convention rests on a combination of short- and long-term actions, thereby promoting structural reform and enduring changes in national practices and institutional and legal frameworks;

(c) To produce a sustainable impact, technical assistance requires not only a good planning and implementation strategy but also adequate follow-up, monitoring and evaluation to assess progress, introduce corrective measures and adapt to the changing environment;

(d) A technical assistance strategy aimed at pursuing universal ratification and implementation of the Convention needs to have a broad geographical approach. The lack of predictable, sustained funding has prevented UNODC from developing long-term and geographically balanced assistance strategies.

C. Towards the identification of activities for technical assistance: a two-pronged approach

25. In its resolution 1/5, the Conference requested inter alia that UNODC, on the basis of guidance provided by the Conference and the Working Group, develop project proposals to address the needs identified. To facilitate the provision of such guidance, some areas and related activities are suggested below for possible consideration by the Working Group. The areas and related activities indicated are not intended to prejudice the prerogative of the Conference to determine its own priorities and develop related programmes of work. They are aimed simply at facilitating the deliberations of the Working Group and the formulation of informed recommendations based on the set of services that UNODC can render.

26. The effective delivery of technical assistance requires the careful focus and calibration of activities, developed in accordance with regional or country

specificities and underpinned by a rational combination of the thematic areas to be covered (for instance, international cooperation in conjunction with asset recovery). In order to match needs and priorities with concrete action, the Working Group may wish to reflect further on how to give full effect to the two-pronged approach of short- and medium-term assistance on the one hand and long-term support on the other. It should be recalled that the Conference expressed a clear preference for that approach. While short- and medium-term activities are designed to establish the necessary knowledge base and support the development of the necessary legal framework, long-term activities are primarily aimed at creating or strengthening institutional and human capacities. The latter group of activities may warrant or induce deep structural reform, making their impact more far-reaching. Long-term activities, however, are not subordinated to the completion of the short-term ones, as in some instances the former may represent an operational extension of the latter (as in asset recovery). In other instances, both sets of interventions can commence in parallel and continue with different paths and durations. Below is an indicative set of such activities that takes into account equitable geographical distribution and different legal systems.

D. Short- and medium-term activities

Support to States in the accession to and ratification and implementation of the Convention against Corruption

27. Activities aimed at supporting States in acceding to, ratifying and implementing the Convention may include (a) building knowledge and raising the awareness of leaders and policymakers regarding the importance of becoming a party to the Convention; and (b) providing assistance in identifying ratification or accession requirements and in developing national action plans for accession to and ratification and implementation of the Convention.

Collection and analysis of data on corruption

28. Research on and analysis of corruption patterns and trends complement and reinforce the technical assistance repertory. Research provides baseline data in order to more effectively direct technical assistance and measure its impact. Furthermore, a solid knowledge base on the multifaceted nature of corruption and its criminal dimension would provide a better understanding of its root causes, its links to other criminal activities and its adverse impact on development, thus supporting policy analysis and evidence-based decision-making. To this end, such tools as the Criminal Justice Assessment Toolkit, the Corruption and Crime Business Survey and the standard survey instrument to assess justice sector capacity and integrity (see paras. 13 and 14 above) could be further utilized and expanded.

Provision of legislative assistance and legal advisory services to facilitate implementation of the Convention against Corruption, focusing on the criminalization of corruption offences and including the development of model legislation, model treaties and other relevant reference and training materials

29. Legislative assistance and advisory services to facilitate implementation of the Convention may include (a) legislative assistance and advisory services to enable

requesting States to review legislative and regulatory frameworks, identify gaps and recommend action to comply with the requirements of the Convention; (b) assistance in the development or adjustment of domestic legislation for the criminalization of corruption offences established in accordance with the Convention, in particular the five mandatory ones; and (c) dissemination to lawmakers of the *Legislative Guides for the Implementation of the United Nations Convention against Corruption*⁸ and the Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto.⁹ Where appropriate, the development of a new generation of tools, guides, handbooks and model legislation could be considered. In that context, work is being conducted to develop an online library containing relevant national legislation, policies, tools and other documentation. Similarly, consideration is being given to the development of a model law on asset recovery.

Support for strategic planning, including the development of anti-corruption policies

30. In the area of strategic planning, technical assistance may include advisory services and technical input to design, implement and monitor anti-corruption action plans at the national and local levels and also sector-specific policies for the prevention and control of corruption. With a view to supporting policies aimed at enhancing transparency, accountability and governance and preventing opportunities for corruption in the public and private sectors, assistance may be rendered to review and develop (a) codes of conduct for public officials; (b) public complaint mechanisms; (c) asset declaration systems; (d) merit-based human resource management frameworks; (e) whistle-blower protection measures and systems; (f) effective management of public resources and transparent public procurement; (g) access to information; and (h) public education and awareness-raising. In this connection, the technical guide for the implementation of the Convention for policymakers and practitioners may prove a useful tool.

Promotion of international cooperation in criminal matters, in particular extradition and mutual legal assistance

31. With regard to the promotion of international cooperation in criminal matters, technical assistance activities may include (a) knowledge- and capacity-building for practitioners in international cooperation, with particular attention to extradition and mutual legal assistance; and (b) the establishment of a directory of central authorities responsible for processing requests for mutual legal assistance. The delivery of technical assistance in that area may be greatly facilitated by the use and further development of information technology solutions.¹⁰ The UNODC Mutual Legal Assistance Request Writer Tool, for instance, has proved so effective that a similar application is being developed in the area of extradition. An online directory

⁸ United Nations publication, Sales No. E.06.IV.16.

⁹ United Nations publication, Sales No. 06.V.5.

¹⁰ Computer-based applications for international cooperation in criminal matters capitalize on a wide range of instruments developed by UNODC over the years, including model laws and treaties on extradition and mutual legal assistance. See the UNODC website for further information (http://www.unodc.org/unodc/en/legal_advisory_common.html).

of central authorities responsible for mutual legal assistance could help promote virtual networking, open channels of direct communication and facilitate exchanges of experiences, expertise and successful practices. Those and other innovative solutions, such as computer-based training programmes on the freezing, seizure and confiscation of criminal assets, asset recovery, law enforcement cooperation and special investigative techniques, could also be considered.

Building knowledge and legal capacity for asset recovery

32. The chapter on asset recovery is the most innovative and complex of all the chapters in the Convention against Corruption. Aside from the difficulties posed by differences in legal systems and normative gaps, the successful implementation of the chapter on asset recovery rests largely on a full understanding of its yet-unexplored potential. Consolidating the knowledge base is therefore a prerequisite to the establishment of effective international cooperation mechanisms, in particular in the areas of direct recovery and mutual legal assistance for the purpose of confiscation. Furthermore, the nature of that chapter lends itself to an illustrative distinction between the short- and medium-term activities necessary to implement the Convention and the long-term ones. In the short run, building knowledge and legal capacity for asset recovery is essential. Activities to that end may include activities (a) to increase the awareness and understanding of asset recovery and its mechanisms among relevant stakeholders; and (b) to build legal capacity to enable States to successfully recover stolen assets.

Support to enable States to comply with their legal reporting obligations

33. The underreporting problem observed during the first two reporting cycles of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime demonstrated that States may have insufficient capacity to fulfil reporting obligations emanating from international treaties. In this regard, the Conference of the Parties to the Convention acknowledged, at its third session, that the determination of technical assistance needs should be done on the basis of requests from State parties, using information provided by them in the context of fulfilling their reporting obligations. The need to provide assistance in this area thus exists, and providing such assistance would serve a dual purpose: (a) greater compliance with the Convention against Corruption through enhancement of national reporting capacities; and (b) better identification, through timely, complete and accurate information, of technical assistance needs. To achieve those objectives, the following activities may be considered: (a) provision of ad hoc assistance to requesting States through training workshops and seminars; and (b) voluntary programmes to test mechanisms for gathering information and reviewing implementation. Also in this area, the expansion of such innovative solutions as the computer-based self-assessment checklist should be considered.

E. Long-term activities

Institution- and capacity-building: establishing and strengthening specialized institutions prescribed by the Convention against Corruption

34. Once comprehensive preventive policies have been developed, the Convention requires States to ensure the existence of adequate bodies to implement those policies. Technical assistance in this area, which may benefit from having mentors in situ to offer on-the-job support, could include activities aimed at ensuring that anti-corruption bodies and units, financial intelligence units and central authorities responsible for mutual legal assistance are, as appropriate, operationally and politically independent and adequately staffed, trained and resourced. To that end, consideration could be given to the establishment of an online repository of the various models and approaches adopted by other States and of a network of both Government and independent experts readily available to provide policy advice and assistance. Also in this area, computer-based training tools for financial investigations and for activities to counter money-laundering,¹¹ for example, may prove useful.

Strengthening the integrity and capacity of criminal justice systems

35. Work in the area of strengthening the integrity and capacity of criminal justice systems has two main dimensions. The first relates to the need to enhance transparency and integrity within the justice system and reduce its vulnerability to corruption. To that end, the following activities, the effectiveness of which could be enhanced through mentors in situ, could be considered: (a) advisory services to design or review human resources policies, terms of reference and codes of conduct for the judiciary; (b) training on ethics and integrity standards; and (c) support for national policies and measures aimed at establishing an environment conducive to the effective and independent performance of judicial functions. The second dimension relates to the need to increase the overall capacity of criminal justice systems and their specific ability to detect, investigate, prosecute and adjudicate corruption cases. That objective can be achieved through (a) training for law enforcement personnel on specialized investigative techniques and cross-border cooperation to detect and investigate cases of corruption; and (b) training for prosecutors and judges on the Convention against Corruption and on the application of domestic legislation to ensure efficient and effective adjudication of cases of corruption. Activities in this area may draw on the *Legislative Guide for the Implementation of the United Nations Convention against Corruption*,¹² the Bangalore Principles of Judicial Conduct (E/CN.4/2003/65, annex) and the commentary thereon, the training manual on judicial ethics and the draft United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators (<http://www.unodc.org/pdf/crime/corruption/Handbook.pdf>). In support of the objectives in this area, UNODC is developing a computer-based training tool on judicial ethics. It should be noted that a long-term approach to strengthening the criminal justice systems would be a task shared with the Conference of the Parties to the United Nations Convention against Transnational

¹¹ See the UNODC website for an overview of the UNODC e-learning programme (<http://www.unodc-elearning.org>).

¹² United Nations publication, Sales No. E.06.IV.16.

Organized Crime. Assistance in that field must receive appropriate attention as a matter of urgency, as it will require significant investment that is sustained over longer periods. The matter is directly linked to the need to consolidate and expand the acknowledgement of the importance of the criminal justice system as a pillar of the rule of law and thus a key developmental issue.

Development of mechanisms for asset recovery

36. Once the necessary knowledge base and legal capacity have been created, efforts can be devoted to the legal framework and institution-building. Relevant activities could include (a) provision of specialized assistance to bring national legal frameworks in line with the requirements of the Convention against Corruption; (b) assistance to set up legislative and regulatory frameworks for the detection, seizure, freezing and confiscation of assets at the national and international levels; (c) support for the adoption of preventive measures to detect suspicious transactions and the transfer of proceeds of criminal activities; (d) support for the adoption of measures for the direct recovery of property and recovery through international cooperation for confiscation, including provisions for the return of such assets; (e) support for a broad review of institutional arrangements in order to provide law enforcement personnel and prosecutors with the necessary investigative powers and to provide competent judicial and central authorities with the power to process direct requests for asset recovery; and (f) assistance in the creation or strengthening of specialized units, including financial intelligence units, charged with asset recovery and international cooperation. Innovative solutions in this area are being explored and their expansion should be considered. The goAML application (<http://goaml.unodc.org/goaml/index.html>) developed by UNODC, for instance, is an integrated database and intelligence analysis system that is intended for use by financial intelligence units and allows for the collection, rule-based analysis, risk-scoring, profiling and rapid dissemination of information to law enforcement agencies.

IV. Coordination on technical assistance activities

A. Initiatives and approaches to coordination

37. The workshop on technical assistance for the implementation of the Convention against Corruption, hosted by the Government of Uruguay in Montevideo from 30 May to 1 June 2007, emphasized the importance of using technical assistance resources effectively in order to enhance consistency and coherence and avoid duplication of technical cooperation in support of anti-corruption efforts. While participants recognized the existence of a number of initiatives to enhance the effectiveness of aid and improve coordination, they concurred that bilateral donors, multilateral development banks, entities of the United Nations system and other international organizations needed to significantly improve alignment, cooperation and coordination in the areas of anti-corruption work and good governance.

38. At present, many States that receive technical assistance are endowed with coordination mechanisms that bring together relevant donors, technical assistance providers and, in some cases, national counterparts. As there is no common

approach, the composition of those groups varies significantly and depends largely on the willingness of key donors to coordinate with a wider range of stakeholders. While such groups can be highly effective for the coordination of programmes, projects and activities at the country level, they are often not integrated with coordination efforts at the regional or international level. Thus, the ability of those groups to draw on internationally available instruments, tools and best practices depends largely on the information available to their individual members and the technical backstopping they receive from their respective headquarters or capitals. As a result, technical assistance activities at the national level often do not fully benefit from the expertise available at the regional or international level in the form of existing guides, manuals, training courses, survey and assessment instruments, e-learning programmes and other tools.

39. At the same time, some of the existing initiatives at the international level – such as the International Group for Anti-Corruption Coordination (IGAC),¹³ the Network on Governance (GOVNET) of the Development Assistance Committee of the Organization for Economic Cooperation and Development, the Nordic+ Group¹⁴ and the U4 group¹⁵ – have certain limitations, while others are restricted to a number of bilateral donors. The secretariat functions of those coordination mechanisms are often under-resourced, and the commitment to coordinate is largely limited to information exchange. In many cases, the agencies participating in such mechanisms are not prepared to extend significant cooperation beyond participation at regular meetings. Both the U4 and the IGAC databases of technical cooperation projects suffer from the reluctance of their members to provide updates on ongoing and planned programmes, projects and activities. Many donors and providers of technical assistance participating in such coordination groups have yet to fully appreciate the value of cooperation and coordination. In some cases, that reluctance may be fuelled by concern about losing discretionary authority or investing the time and resources that effective coordination and cooperation require. That being said, some recipients of technical assistance do not seem to mind certain shortcomings in coordination among donors.

40. While there are clearly some limitations to effective coordination, it is vitally important to have regular exchanges among professionals who belong to different organizations but work in the same thematic area. Such exchanges form the very basis of joint projects and initiatives that can forge a mutual understanding of focus areas, comparative advantages, specialized expertise, tools and other resources, which, if combined, can lead to improved delivery.

¹³ Further information on the mandate and composition of IGAC is available on the group's website (<http://www.igac.net>).

¹⁴ The Nordic+ Group is a group of donors, namely Denmark, Finland, Ireland, the Netherlands, Norway, Sweden and the United Kingdom of Great Britain and Northern Ireland, that focuses on aid effectiveness through harmonization.

¹⁵ U4 is a grouping of bilateral development agencies established to strengthen their efforts against corruption (<http://www.u4.no>). The partner agencies are from Canada, Germany, the Netherlands, Norway, Sweden and the United Kingdom.

B. Improving coordination on technical assistance

41. While efforts to coordinate bilateral donors, international organizations and multilateral development banks at both the country and international levels have increased the overall consistency and coherence of technical assistance in support of anti-corruption efforts, there is still significant room for improvement. Innovative approaches are required if limited resources are to yield maximum results.

42. In particular, much may be gained from better coordination of assessments of technical assistance needs. The joint development of approaches, methodologies and instruments could ensure that findings are co-owned and utilized as a basis for policy development and the design of technical assistance initiatives. Where assessments have been conducted, the findings should be shared widely among donors and assistance providers to ensure consistency, coherence and coordination in follow-up action. It is also crucial that country strategic planning exercises, including the development of national or sectoral action plans, be jointly supported by all international partners interested in assisting in their further implementation.

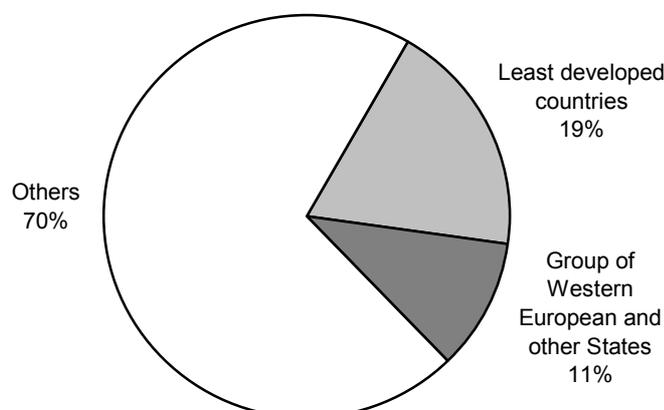
43. Development partners should also seek to coordinate their work by conducting joint project appraisal and formulation missions. While a large variety of factors, such as requests by partner States and the availability of staff and resources to develop programmes and projects, will pose challenges to effective coordination, a greater effort must be made to create inter-agency task teams to engage in the joint identification of technical assistance needs and the development of programmes, projects and activities to effectively address them.

44. As far as existing coordination and cooperation mechanisms are concerned, participating actors need to assume a greater commitment to enhancing the effectiveness of such mechanisms, thus ensuring consistency and coherence in technical assistance. More broadly, there is a need for bilateral donors, international organizations, multilateral development banks and recipient States to recognize the benefits of coordination and cooperation. The Working Group may therefore wish to recommend ways and means of encouraging all such actors to enhance their cooperative efforts with a view to maximizing the impact of resources invested in technical assistance in support of implementation of the Convention.

V. Mobilization of resources

45. The participants at the Montevideo workshop agreed that it was almost impossible to quantify the technical assistance and resources provided at present and needed in the future to support implementation of the Convention against Corruption. Obtaining even an approximate picture would be a complicated endeavour. A large part of the assistance currently provided in support of such broader areas as good governance, the rule of law and access to justice might in fact, and sometimes unintentionally, contribute to the implementation of various aspects of the Convention. However, from the limited analysis conducted, it is evident that what is being provided is largely insufficient. Recognizing the comprehensive nature of the Convention and the rapidly growing number of ratifications and accessions, predominantly by developing countries (see figure), the overall investment in anti-corruption needs to be increased significantly.

**United Nations Convention against Corruption: accessions and ratifications
(Status as at 24 July 2007)**



46. That will also require that States parties – recipients and donors alike – start to regard resources dedicated to supporting the implementation of the Convention as an investment rather than a cost. As was observed at the Montevideo workshop, the potential of the Convention to support the development agenda through improved management of public resources and aid effectiveness is yet to be fully appreciated. Only once such an appreciation exists will the Convention manifest the full extent of its ability to safeguard sustainable development and the rule of law for the benefit of all.

47. Furthermore, while States parties (including donor countries) and multilateral development banks increasingly are recognizing the crucial importance of good governance and anti-corruption work to development, there are other actors that have yet to bring that potential to bear. In particular, institutional donors and the private sector are contributing only in a limited manner to implementation of the Convention. The same is true for those able to advance the fight against corruption through in-kind support, such as professional associations, trade unions, faith-based organizations, non-governmental organizations and individual citizens.

48. Finally, the fund-raising instruments for implementation of the Convention need to be aligned with those utilized in other areas of development cooperation. In particular, the use of special resource mobilization vehicles such as ad hoc appeals or dedicated events may capture the attention of a broader audience and help to mobilize higher levels of funding. The cross-cutting nature of corruption as an obstacle to all development efforts warrants the mainstreaming of implementation of the Convention into all ongoing and future development efforts.