

Meeting for the purpose of defining the specific procedures and rules for the functioning of the review mechanism for the United Nations Convention against Transnational Organized Crime and the Protocols thereto

Vienna, 21-23 March 2018

Rolling text of the draft procedures and rules for the review mechanism (*Status: 22 March 2018, 6 P.M.*)

Non-paper*

Explanatory notes:

1. Indication to table 1 and table 2 in paragraph 1 refers to these tables in the Annex of Resolution 8/2.
2. The blueprint format referred to in the text may be a simplified version of the Appendix II of Resolution 5/5.

Preamble

3. Pursuant to article 4, paragraph 1, and article 32, paragraph 3, of the United Nations Convention against Transnational Organized Crime, together with articles 2 and 37 of the Convention and common article 1 of each Protocol thereto and recalling its resolution 8/2, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime establishes the following mechanism to review implementation of the Convention and the Protocols thereto (hereinafter referred to as “the Mechanism”).

I. Introduction

4. The Mechanism embodies a review process that shall be guided by the principles and characteristics contained in section II below and be carried out in accordance with the provisions contained in section IV. The Mechanism shall be facilitated by a secretariat as set out in section V.

II. Guiding principles and characteristics of the Mechanism

5. The Mechanism shall:
 - (a) Be transparent, efficient, non-intrusive, inclusive and impartial;
 - (b) Not produce any form of ranking;
 - (c) Provide opportunities to share good practices and challenges;
 - (d) Assist States parties in the effective implementation of the Convention and, where applicable, the Protocols thereto;
 - (e) Take into account a balanced geographical approach;

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(f) Be non-adversarial and non-punitive and promote universal adherence to the Convention and its Protocols;

(g) Base its work on clear, established guidelines for the compilation, production and dissemination of information, including addressing issues of confidentiality and the submission of the outcome to the Conference, which is the competent body to take action on such an outcome;

(h) Identify, at the earliest possible stage, difficulties encountered by States parties in the fulfillment of their obligations under the Convention and its Protocols, as applicable, and good practices adopted in efforts by States parties to implement the Convention and, where applicable, the Protocols thereto;

(i) Be of a technical nature and promote constructive collaboration, inter alia, on issues concerning international cooperation, prevention, protection of witnesses and assistance and protection for victims;

(j) Complement existing relevant international and regional review mechanisms so that the Conference may, as appropriate, cooperate with those mechanisms and avoid duplication of efforts;

(k) Be an intergovernmental process;

(l) Be conducted in conformity with article 4 of the Convention, not serve as an instrument for interfering in the domestic affairs of States parties and be conducted in a non-political and non-selective manner and respect the principle of equality and sovereignty of States parties;

(m) Promote the implementation of the Convention and its Protocols by States parties, as applicable, as well as cooperation among States parties;

(n) Provide opportunities to exchange views, ideas and good practices, thus contributing to strengthening cooperation among States parties in preventing and fighting transnational organized crime;

(o) Take into account the levels of development of States parties, as well as the diversity of judicial, legal, political, economic and social systems and differences in legal traditions;

(p) Endeavour to adopt a progressive and comprehensive approach, given that the review of implementation of the Convention is an ongoing and gradual process;

[(q) Be cost-effective, concise and user-friendly; and make optimal and efficient use of existing information, tools, resources and technology so that it would not impose undue burdens upon States parties, their central authorities and experts involved in the review process.] LOCATION PENDING FURTHER DISCUSSION

III. Relationship of the Mechanism with the Conference of the Parties

6. The review of implementation of the Convention and the Protocols thereto and the Mechanism shall be under the authority of the Conference, in accordance with article 32 of the Convention.

7. The Conference may conduct, when appropriate and upon recommendation of its working groups, an evaluation of the organization, functioning, funding, and performance of the review process, so as to amend and improve the existing Mechanism.

IV. Review process

A. Goals

8. Consistent with the Convention, in particular article 32, the review process, inter alia, shall assist the Conference to:

(a) Promote the purposes of the Convention and the Protocols thereto, as set out in article 1 of the Convention and article 2 of each of the Protocols;

(b) Improve the capacity of States parties to prevent and combat transnational organized crime and to promote and review the implementation of the Convention and the Protocols thereto;

(c) Help States parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of technical assistance;

(d) Gather information on national legislation, successes, good practices and challenges of States parties in implementing and using the Convention and the Protocols thereto, and to promote and facilitate the exchange of this information;

(e) Promote international cooperation as stipulated in the Convention and the Protocols thereto.

B. Country review

9. The Mechanism shall be applicable to all States parties. It shall progressively address all the articles of the Convention and the Protocols thereto for each of the instruments that States are a party to. It shall be structured on thematic clusters of articles based on their subject matter, as indicated in table 1 to the present procedures and rules. The review shall be a gradual process consisting of one preparatory phase (years 1 and 2) and four subsequent review phases (years 3-~~18~~[10(Norway – ref Res 8/2)][retain 18 (Italy)]). [The Conference shall authorize each subsequent phase of the mechanism, following confirmation of availability of funds consistent with section VII. (United States)(Canada)][delete (Costa Rica)(South Africa)(Italy)]

10. The preparatory phase (years 1 and 2) shall be devoted to the definition of organizational matters and the finalization, in accordance with paragraph 16 of the present procedures and rules, of the self-assessment questionnaire within each of the working groups of the Conference. This preparatory phase shall also include analysis of existing information, tools, resources and technology in order to ensure their optimal and efficient use as part of the review process. The four review phases shall be held from year 3 to year 18. They shall last four years each. The first review phase shall be held from year 3 to year 6, the second review phase shall be held from year 7 to year 10, the third review phase from year 11 to year 14, and the fourth phase from year 15 to year 18. The four review phases shall be conducted and concluded in line with the multi-year workplan contained in table 2 to the present procedures and rules.

11. The working groups may recommend and the Conference may decide to make amendments to the thematic clusters and the multi-year workplan if doing so is deemed appropriate in the light of the efficient functioning of the Mechanism.

12. The reviews of all States that are parties at the start of the review phase should be completed before a new review phase begins. However, the Conference may decide to launch a new review phase when it finds that ~~a significant percentage~~ [80%(China)(United States)(Switzerland)(Canada)] of all reviews foreseen at the beginning of the previous phase have been completed. No State party shall undergo a review twice in the same review phase, without prejudice to the right of a State party to provide new information. If possible, the number of States parties from each regional group participating in the review process in a given year shall be proportionate to the size of that regional group and the number of its members that are States parties to the Convention and the Protocols thereto.

13. The selection of States parties participating in the review process shall be carried out by the drawing of lots at the beginning of each review phase in accordance with paragraphs 24-26 of the present procedures and rules.

14. Each State party shall appoint a focal point to coordinate its participation in the review and it will designate as focal point one or several persons that have the necessary expertise on the provisions of the Convention and the Protocols (Algeria), and make this information available on SHERLOC. In case a State party has not appointed a focal point by the time of the drawing of the lots referred to in paragraph 24, all communications will be submitted to the permanent representative to the United Nations Office in Vienna, permanent representative to the United Nations Office in Geneva, or the permanent representative to the United Nations in New York, in that order, who shall act as temporary focal point.

15. The country reviews shall be conducted within the Conference and its existing working groups, which shall add the matter to their agendas as an item if consistent with their areas of expertise and without prejudice to their respective existing mandates.

C. Information-gathering

16. In order to review each thematic cluster of articles of the Convention or Protocols thereto, the relevant working group shall finalize, with the assistance of the Secretariat, a short, precise and focused self-assessment questionnaire, preferably with closed questions, and, only when necessary, with limited space to provide further information. States parties are invited to provide complete, up-to-date, accurate and timely responses in one of the working languages of the Mechanism, as selected in accordance with paragraph 28. The responses to the questionnaire shall be the basis for the review, without prejudice to information or clarification requested by the reviewing States parties and provided by the State party under review.

17. Each State party under review shall provide the responses to the self-assessment questionnaire to the reviewing States parties through the Secretariat.

18. The self-assessment questionnaire shall be available on the knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC). A new secure module shall be developed as a further component of SHERLOC to host the questionnaires and responses thereto, which shall ensure the full confidentiality of all data submitted by States parties. The module shall include a secure written communications platform for the ensuing dialogue between the State party under review and the reviewing States parties, and archive capabilities.

19. When responding to the self-assessment questionnaire, States parties may also refer to information provided in the context of other relevant review mechanisms to which they are Parties, including the mechanism for the review of the implementation of the United Nations Convention against Corruption. States parties shall bear in mind any update since previous submissions are appropriately reflected in the responses.

20. The State party under review is encouraged to prepare its responses to the self-assessment questionnaire through broad consultations at the national level with all relevant stakeholders, including where appropriate, academia, the private sector, individuals and groups outside the public sector, taking into consideration the specificities of the Convention and the Protocols thereto.

21. The Secretariat shall be responsible for adjusting and maintaining SHERLOC to serve as the user-friendly database for collecting and disseminating information on the review mechanism.

~~21.~~

D. Conduct of the country review

22. The responses to the self-assessment questionnaire and any additional information provided by the State party under Review, including reference to relevant legislation, shall be reviewed by two other States that are parties to the relevant instrument, with the active involvement of the State party under review.

23. Each State party shall, for the purposes of the review, appoint governmental experts for each instrument to which it is a party and make this information available on SHERLOC. The appointed governmental experts shall have expertise relevant to the issues under evaluation.
24. For each State party under review, the relevant working groups shall draw lots to select as reviewing States one State from the regional group of the State party under review and one State from another regional group, with the understanding that States shall not undertake mutual reviews and that reviewing States shall be parties to the respective instruments. If possible, one of the reviewing States parties shall have a legal system similar to that of the State under review. The State party under review and the reviewing States may request a maximum of two times each that the drawing of lots be repeated. In exceptional circumstances, the drawing of lots may be repeated more than twice.
25. A State party under review may defer serving as a reviewing State party that same year. That same principle, *mutatis mutandis*, shall apply to the reviewing States parties. By the end of a review phase, each State party must have undergone its own review and performed a minimum of one review and a maximum of three reviews. On a voluntary basis, States parties may participate as reviewing State party in more than three reviews.
26. The working groups shall hold joint intersessional meetings open to all States parties for the purpose of the drawing of lots referred to in paragraph 24 of the present procedures and rules, without prejudice to the right of State party to request that the drawing of lots be repeated at the group's subsequent session.
27. The country review shall ideally be concluded within 12 months.
28. The State party under review shall undertake consultations with the reviewing States parties, through their focal points, with the assistance of the Secretariat, on the establishment of schedules and the requirements of the country review, including the selection of one working language, in accordance with section VI of the present procedures and rules.
29. Governmental experts from the reviewing States parties shall divide tasks and issues among themselves, taking into account their respective fields of competence.
30. The Secretariat shall provide administrative support to facilitate the establishment of open lines of communication among the governmental experts involved in the review process. The Secretariat shall also issue a step-by-step guide to facilitate the conduct of the review in accordance with the procedures and rules, which may be based, *inter alia*, on the UNODC legislative, technical and assessment guides.
31. Within a reasonable timeframe, to be mutually agreed by the parties involved, the State party under review shall provide the responses to the self-assessment questionnaire to the reviewing States parties.
32. Within a reasonable timeframe of the receipt of the responses to the self-assessment questionnaire from the State party under review, the reviewing States parties shall submit to the State party under review written feedback on the measures taken in the implementation of the Convention or the relevant Protocol, as well as on successes and challenges of such implementation. It may also contain, where necessary, requests for clarification or additional information, or supplementary questions to which the State party under review is encouraged to respond. A constructive dialogue between the State party under review and the reviewing States parties shall be guided by the overarching principles and shall be archived in the designated confidential module in SHERLOC.
33. States parties shall carry out the desk review and fulfill any request for or provision of supplementary information and clarification by making the largest possible use of all the available technological tools. State parties are encouraged to

take advantage of regularly scheduled meetings of the Conference of the Parties and its working groups to further the direct dialogue.

34. The reviewing States parties and the Secretariat shall maintain the confidentiality of all information obtained in the course of, or used in, the country review process.

35. Any additional translations and interpretations required for the conduct of the country review shall be provided by extrabudgetary resources.

E. Outcome of the country review process

36. At the final stage of the country review process, the reviewing States, with the assistance of the Secretariat and in close cooperation and coordination with the State party under review, shall prepare a country review report to summarize the outcome of the process. The final document shall be short –no more than 1000 words -, precise and concise, and based on the blueprint format. The report may include: successes and good practices; challenges in implementation, where applicable; observations on the implementation of the articles under review; and, in particular, technical assistance needs identified to improve implementation of the Conventions and its Protocols.

37. The report shall be finalized upon agreement between the reviewing States Parties and the State Party under review.

38. At the request of the State party under review, reviewing States parties may provide the State party under review with recommendations and explanations about ways to address the challenges identified so as to enable the State party under review to fully and effectively implement the relevant articles of the Convention or the relevant Protocol.

39. The finalized country review report shall be translated into the six official languages of the United Nations and be made available as a joint document of the relevant working groups of the Conference under the agenda item referred to in paragraph 14.

40. In order to improve and strengthen cooperation and learning among States parties, each State party shall make available to other States parties, through the secure module of SHERLOC, the responses to its self-assessment questionnaire, and, upon request of other States parties, may also make available the ensuing dialogue mentioned in paragraph 32 and additional documentation pertaining to its review. States parties shall maintain the confidentiality of all information obtained.

41. A State party may decide to make public the responses to its self-assessment questionnaire, ensuing dialogue and additional documentation, or part thereof, through SHERLOC.

F. Follow-up procedures

42. The working groups of the Conference shall discuss and analyze the good practices and lessons learnt, and the challenges to implementation, identified in the country review reports, and take them into account when proposing generally applicable recommendations to the Conference.

43. The working group of Government Experts on Technical Assistance shall consider the technical assistance needs identified by States parties under review further to their country reviews and make recommendations to the Conference of the Parties on how to assist them in their efforts to implement the Convention and the Protocols. As appropriate, States parties shall also provide information on whether technical assistance needs identified by them in relation to their country review reports have been addressed.

44. As a follow-up to its country review report, State party shall be provided, upon request, technical assistance based on the specific needs identified in the review process with a view to improve the capacity of the State party to effectively implement the Convention and, where applicable, Protocols. The Secretariat shall endeavor to seek voluntary contributions for these purposes, in accordance with the rules and procedures of the United Nations.

45. As a follow-up to its country review each State party is encouraged to share, within a reasonable timeframe, to the relevant working group information on progress achieved in connection with the observations contained in the country review report and on any measures planned or undertaken.

46. [Relevant non-governmental organizations which have been granted observer status for the Conference of the Parties may participate in the meetings of the working groups relating to the agenda item referred to in paragraph 15. Rule 17 of the Rules of Procedures of the Conference of the Parties shall apply, mutatis mutandis.]
PENDING FURTHER DISCUSSION

V. Secretariat

47. The Secretariat of the Conference shall be the Secretariat of the Mechanism and shall perform all tasks required for the efficient functioning of the Mechanism, including providing technical and substantive support, upon request, to States parties in the course of the functioning of the Mechanism.

VI. Languages

48. The working languages of the Mechanism shall be Arabic, Chinese, English, French, Russian and Spanish, subject to the provisions of the present section.

49. The country review process may be conducted in any one of the working languages of the Mechanism that may be decided upon by the State party under review and the reviewing States parties, in accordance with paragraphs 16 and 28.

VII. Funding [and efficiency (Egypt)]

[49bis The Mechanism shall be cost-effective, concise and user-friendly; and make optimal and efficient use of existing information, tools, resources and technology so that it would not impose undue burdens upon States parties, their central authorities and experts involved in the review process (Egypt).]

[49bis(2). The fundamental requirements of the mechanism and its Secretariat, identified in particular in paragraphs 36 and 39[delete “identified in particular in paragraph 36 and 39” (Russia)], shall be funded from the existing [delete existing (Russia)] regular budget resources of the United Nations[. (Russia)] that are allocated to the Conference of the Parties and its Working Groups. [Italy]

49ter. Where necessary, the regular budget resources shall be complemented by extra-budgetary resources free of conditions and influences [for the requirements identified in paragraphs 35, 41 and 44, in accordance with the rules and procedures of the United Nations. (Russia) – delete the rest], including voluntary contributions to be channelled through a dedicated project to be developed by the Secretariat. (Italy)]

[49bis(2). The Secretariat may request voluntary contributions to provide for the expenses of [additional functions of (Iran)] the review mechanism.](United States)[in line with the rules and procedures of the United Nations](United Kingdom and Japan)

[49bis(3 – replace 1 and 2). The requirements of the mechanism and its Secretariat shall be funded from the regular budget resources of the United Nations that is allocated to the Conference of Parties and its existing Working Groups (Egypt)]

50. The secretariat shall [endeavour to seek voluntary contributions to provide] [the required translations of the working documentation into the working languages(s) of the review. (Italy) delete the rest] be responsible for providing the required translation of the working documentation into the working languages(s) of the review, as necessary for sufficient functioning [to be replaced by para 53 as it is (Iran)]. PENDING FURTHER DISCUSSION

51. The secretariat shall, if requested by the State party under review, endeavour to seek voluntary contributions to provide for translations into languages other than the six working languages of the Mechanism. PENDING FURTHER DISCUSSION [delete (Italy)]

52. The secretariat shall, if requested by the State party under review, endeavour to seek voluntary contributions to provide for translation of the country review reports into languages other than the six working languages of the mechanism. (Italy) delete the rest] and interpretation of the country reports into any of the other working languages of the Mechanism, as well as into languages other than the six working languages of the Mechanism. PENDING FURTHER DISCUSSION

53. [The requirements of the Mechanism and its secretariat shall be funded from the [existing] regular budget [resources] of the United Nations that is allocated to the Conference of the Parties and its working groups. Where necessary, the regular budget resources shall be complemented by extrabudgetary resources, including voluntary contributions free of conditions and influence [and, where appropriate, by the reallocation of existing funding]delete (Italy)]. PENDING FURTHER DISCUSSION

54. The secretariat shall be responsible for preparing a proposed biennial budget for the activities of the Mechanism.

55. [In accordance with Rule 58 of its Rules of Procedure,] [remove before (Italy)] [retain (United States)]the Conference shall consider the budget for the Mechanism biennially. The budget shall ensure the efficient, continued and impartial functioning of the Mechanism. PENDING FURTHER DISCUSSION

56. [merging paras. 54 and 55 into the following text: A biennial draft budget for the Mechanism activities shall be established by the Secretariat, which shall be submitted to the Conference for examination every two years. The budget shall be used to ensure the [sustainable] effective, continuous and impartial functioning of the Mechanism.] PENDING FURTHER DISCUSSION [delete all (Italy)]

57. Adequate financial and human resources [must] [shall [shall (Italy)]] be provided to the secretariat to enable it to perform the functions assigned to it in the present procedures and rules. PENDING FURTHER DISCUSSION

~~57~~58. [Any financial implications related to the review mechanism shall be accompanied by a statement of financial implications prepared by the Secretariat, which shall be made available to the Conference prior to its consideration of and action upon (United Kingdom)].

VIII. SEE CHAIR'S PROPOSAL (contained in document CTOC/COP/WG.9/2017/CRP.3 and entitled "Proposal of the Chair for former sections VIII and IX")