

18 May 2011

English only

**Open-ended intergovernmental working group
on the review of the implementation of the
United Nations Convention against
Transnational Organized Crime and the
Protocols thereto**

Vienna, 17-19 May 2011

Item 3 of the amended provisional agenda

**Terms of reference for such proposed review mechanism
or mechanisms, guidelines for governmental experts and a
blueprint for the country review reports**

**Proposal for a mechanism for the review of the
implementation of the UNTOC and Protocols thereto
Draft Terms of Reference**

Non-paper by Mexico

During the 5th session of the COP in October 2010, a draft resolution that aimed to establish a mechanism for reviewing the implementation of UNTOC and its Protocols was presented. The draft included, as annexes, the terms of reference (ToR) of the Mechanism, together with a set of guidelines for governmental experts and the secretariat on country reviews, a draft blueprint for country review reports, and an indicative list of subjects/themes to be covered in the different cycles of the mechanism. While the proposal considered the specificities of the UNTOC and its Protocols, it also drew on the successful start of the first review cycle of the UNCAC review mechanism in 2010, and on the experience of the UNTOC Pilot Project.

In its resolution 5/5, the COP decided to establish an open-ended intergovernmental working group on review of implementation, and provided it with a specific mandate (OP3), as follows:

(a) “To consider and explore options and make proposals for the establishment of a mechanism or mechanisms to assist the Conference in the review of the implementation of the Convention and the Protocols thereto.”



(b) “To prepare terms of reference for such proposed review mechanism or mechanisms, guidelines for governmental experts and a blueprint for the country review reports, for consideration and possible adoption by the Conference at its sixth session.”

In addition, the COP agreed (OP4) “that the open-ended intergovernmental working group may consider, as a basis of its work, proposals and initiatives as may be submitted by States parties and signatories in that regard in advance of the meetings of the working group, including the proposal contained in annexes I and II to the present resolution.”

The present “non-paper” aims to explain the main features of the proposed ToR that appear as the annex to resolution 5/5. The proposed Mechanism would cover the Convention and its three Protocols, striving for their uniform application.

- It shall be guided by the **principles** of transparency, efficiency, non-intrusiveness, inclusiveness and impartiality. It will not produce any form of ranking; it will be non-adversarial, non-punitive and will promote the universal adherence to the Convention and its Protocols. Moreover, it will not serve as an instrument for interfering in the domestic affairs of States parties but shall respect the principles of equality and sovereignty of States parties, and the review process shall be conducted in a non-political and non-selective manner. Furthermore, it will provide opportunities to share good practices and challenges, and will assist States parties in the effective implementation of the Convention and its Protocols, as applicable. Lastly, it will endeavour to adopt a progressive and comprehensive approach.
- In light of such principles and characteristics, the **main goals** of the Mechanism will be to promote the purposes of the Convention (article 1) as well as the “statements of purpose” of the Protocols (articles 2).
- The Mechanism will be an **intergovernmental process** and will be based on a “peer review”, where two States Parties will review one State Party. It would also be complemented by a parallel “expert analysis” that will serve to identify general trends and challenges (including regional approaches to implementation).
- The **country review process** will be applicable to all States Parties and will gradually cover the implementation of the entire Convention and its Protocols. All States Parties will be reviewed in one review cycle that will be organized along thematic lines so as to cover the Convention and the Protocols to which the State Party is a party. For example, the first review cycle may cover issues of criminalization and international cooperation across the board.
- For country reviews to work properly, it would be necessary for the reviewing States Parties to be parties of the same instruments to which the reviewed State Party is a party. That would not mean a full coincidence of membership, as a reviewing State Party may be a party to more instruments than the reviewed State Party (but not inversely). For example, a State Party to the Convention and to the Protocols on Human Trafficking and Smuggling of Migrants could review a State Party to the Convention and to the Human Trafficking Protocol. Obviously, the review will be limited to the instruments to which the State under review is a party.

- The conditions regarding the **drawing of lots** would be similar to those of the UNCAC, with the exception that lots would need to be redrawn if the condition referred to before is not met. In this case, the lots would need to be repeated until such conditions are met. A preliminary assessment of the numbers do reflect that risks in this regard are manageable and that matching reviewing and reviewed States Parties is indeed workable: 79 States are parties to the four instruments; 45 States are parties to the Convention and the TIP and Migrants Protocols; 16 State are parties to the Convention and the TIP Protocol; 11 States are Parties only to the Convention; 3 States are Parties to the Convention and the Firearms Protocol; 1 State is Party to the Convention and the TIP and Firearms Protocol.
- As with UNCAC and after the Pilot Project experience, the starting point for the country reviews will be the **self-assessment checklist**. The principle would be that the responses to the checklist shall be prepared “through broad consultations at the national level with all relevant stakeholders.” Regarding the Protocols, that contain specific provisions for the participation of other actors, a State under review would need to specify in its responses the stakeholders that would have been included in such consultations.
- The responses to the checklist will be followed by a desk review, a process of dialogue for clarifications and supplementary information (including through e-mail exchanges, teleconferences, videoconferences, and country visits), and the elaboration of a country review report (on similar basis as in the UNCAC case).
- As to **country visits**, the principle used in UNCAC would be also followed: “If agreed by the State party under review, the desk review should be complemented with any further means of direct dialogue, such as a country visit or a joint meeting at the United Nations Office at Vienna.” The general rule would encourage States parties “to facilitate engagement with all relevant national stakeholders in the course of a country visit.” Again, regarding the Protocols, a State under review would need to propose to the reviewing States Parties the stakeholders that would need to be involved in the visit. As the agreement of the State Party under review would be needed for the visit to take place, there should be no particular difficulties with this.
- Again, as with UNCAC, the information obtained in the course, or used, in the country review process will be kept by the reviewing States Parties and by the Secretariat confidential. The **country review reports** will remain confidential, although States would be encouraged to publish them (or parts of them). The country review report and its executive summary will be finalized upon agreement between the reviewing State Parties and the State Party under review. Executive summaries and a compilation made by the Secretariat on successes, good practices, challenges, observations and technical assistance needs (thematic report and regional addenda) will be made available as documents of the newly created “Implementation Oversight Group” or “Palermo Group” (i.e. the IRG in UNCAC terminology).
- Following the experiences of the Pilot Project, the country review process would be complemented by a parallel **expert analysis** that will strive to have yearly reports for the identification of general trends on implementation,

emerging issues, and regional trends and challenges. As its name proposes it, this part of the mechanism will not be a review per se, but a complementary process for a better assessment of the implementation of the Convention and its Protocols. Thus, it would consist of the following characteristics:

- o It will deal with the same thematic scope of the corresponding cycle.
 - o It will take the shape of an “**open-ended expert group**” that will be tasked with identifying implementation trends, emerging issues and regional trends and challenges (the experts that would take part in the group would be those nominated by the States Parties for the purposes of the country reviews).
 - o It will use, as a basis of its work, the executive summaries and compilation made by the Secretariat that would result from the country reviews in a given year of the cycle.
 - o In addition, the group may consider other relevant information or the views of other stakeholders in light of the particularities of the Protocols (as the mandate of the group will not be country-specific, there should be no difficulties in considering these other views for a comprehensive analysis of trends).
 - o The outcome of this parallel process will be a technical report on the issues within its mandate, which would include appropriate recommendations (for example, the need to organize regional workshops in specific issues).
 - o The technical expert group report, together with the executive summaries of country review reports and the compilation made by the Secretariat on successes, good practices, challenges, observations and technical assistance needs will all go to the “Palermo Group” for the appropriate consideration.
- As mentioned, the Mechanism will have an “**Implementation Oversight Group**” (that could be known as the “**Palermo Group**”) that will meet in Vienna at least once a year. It will be an open-ended intergovernmental group that will be under the authority and report to the Conference. The RoPs of the Conference will apply to the IOG, including regarding the participation of observers. Overall, the functions would be similar to those of the UNCAC IRG.
 - Regarding **follow-up**, the Mechanism will be designed in similar lines that in the UNCAC review (i.e. regarding country reviews, in the following cycle through the self-assessment checklist). However, so as to avoid delays in the provision of technical assistance the Conference will oversee and direct such follow-up from recommendations of the “Palermo Group”. For such purposes, the Conference may decide to convene, each regular session, Working Groups on the Convention and its three Protocols.
 - Other issues, such as the role of the Secretariat, languages and funding would be equivalent to those of the UNCAC Mechanism. Signatories would be allowed to participate on a voluntary basis, but only regarding the Convention.