



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

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**Consideration of mechanisms for achieving the objectives
of the Conference of the Parties in accordance with
article 32, paragraphs 3-5, of the Convention**

Relaunching the Conference of the Parties

Note by the Executive Director

I. Expectations not to be disappointed

1. One of the time-consuming and delicate issues in the negotiation of the United Nations Convention against Transnational Organized Crime was how to monitor its implementation. Proposals varied considerably, but negotiators shared the view that the Convention was designed to address problems of high priority and, consequently, its implementation could not be left to chance. It was deemed important to make this Convention different than others, as it was crafted to mark the beginning of a new era in international cooperation and criminal law. These aspirations would not be achieved without a mechanism to review its implementation. At the same time, for several countries monitoring was the cause of concern, not because they did not share the importance of the consistent implementation of the Convention, but because of the association of monitoring with intrusive practices that could pose a threat to such principles as sovereignty and independence of decision-making.

2. Consensus was achieved in the establishment of the Conference of the Parties, with a mandate to reflect the following principles:

- (a) Ensuring that implementation and its review were in the hands of States;
- (b) Maintaining the spirit of mutual respect and inclusiveness that permeated and guided the creation of the Convention and ensured its quality;
- (c) Establishing as a high priority the support to Governments in their efforts to implement the Convention.

* CTOC/COP/2006/1.



3. The mandate of the Conference is comprehensive: it ranges from reviewing implementation to rallying support and ensuring the availability of resources for the provision of assistance to Governments that need it to implement the Convention. And it has become even more comprehensive considering the competence of the Conference regarding the implementation of the three Protocols supplementing the Convention.

4. A strong link was also established between implementation and technical assistance, because fighting organized crime is a shared objective. The Conference was given the crucial task of ensuring that the link between implementation and technical assistance remains strong.

5. The Conference is expected to acquire the necessary knowledge of measures taken by States parties in implementing the Convention and the difficulties encountered in doing so, in line with the overarching desire mentioned earlier to accentuate the primary role of States in the review process. Accordingly, States parties have assumed a legal obligation to inform the Conference of plans, practices and legislative and administrative measures to comply with the Convention. In this architecture, knowledge and provision of information are placed at the heart of the ability of the Conference to discharge its mandate in a credible and consistent manner.

II. Taking stock

6. The Conference was convened for the first time in June 2004 amid widespread euphoria and a sense of accomplishment: the negotiations had been completed in an unprecedentedly short time; the deadline given for the first time by the General Assembly for such negotiations had been respected; a record number of States had signed the Convention; the entry into force of the Convention had been accomplished in less than three years; and the pace of the ratifications was exceeding expectations. All this was heralded as a reflection of a common determination to join forces against transnational organized crime and a manifestation of the high priority Governments were according the issue.

7. The first session turned to housekeeping matters and resolved to create a body of knowledge as a basis for informed decision-making. In that vein, the Conference decided to begin a “horizontal” review of actions taken by Governments to implement the Convention (and the two of its Protocols that had come into force by that time) by instructing its secretariat to collect information on legislation adopted to comply with the Convention and its Protocols. For that purpose, the Conference asked the secretariat to develop questionnaires, which it reviewed and approved.

8. The information collection exercise after the first session was the first indication of an incipient problem. Less than half of the States parties responded to the questionnaires on time. The secretariat drew attention to this problem and invited the Conference to address it. The secretariat’s call was prompted by two considerations. Firstly, responses showed gaps in compliance. Secondly, the first round addressed relatively easy compliance issues. Future reporting issues would create insurmountable problems.

9. The second session of the Conference took place in October 2005. The Conference reminded States parties of their legal obligation to provide the necessary information and directed the secretariat to approach the States concerned individually, proposing steps to redress the problem. This demonstrated the willingness of the Conference to assert its role and could be understood as an indication of an emerging tendency towards a peer-review approach, which would augur well for the future.

10. Also at the second session, the Conference laid foundations for its future work. It recognized the importance of the participation of experts, to take on specialized issues covered by the Convention and the Protocols. Most importantly, it started paying attention to the question of technical assistance. In line with the spirit of the Convention, the Conference began to create mechanisms for the provision of technical assistance while further consolidating and strengthening the link between technical assistance and implementation. The Conference also approved a fresh set of questionnaires on the implementation of more provisions of the Convention and the Protocols.

11. In spite of the increased ground covered at the second session, a clear sentiment prevailed regarding the search for direction and the difficulty of the Conference articulating a long-term policy.

12. The results of the second reporting cycle were even more disappointing. The rate of responses dropped to roughly one third of States parties and the strong call by the Conference to States to respond to the first set of questionnaires failed to bring the overall rate of responses much above the 50 per cent mark. Figures I and II summarize the situation after the two reporting cycles.¹ To compound the problem, less than half of the countries addressed individually with requests for clarification responded, casting doubt on the effectiveness and authority of the Conference as the review institution under the Convention.

¹ While figures I and II provide a global overview of the underreporting problem, it is worth noting that the quantity and quality of responses vary considerably from one regional group to the other. For instance, while the response rate for the Latin American and Caribbean countries is quite low, the responses are of good quality, with countries including CD-ROMs of legislation, thereby eliminating a paper burden. By contrast, Eastern European countries have a very high response rate, yet their responses are of uneven quality.

Figure I
First reporting cycle

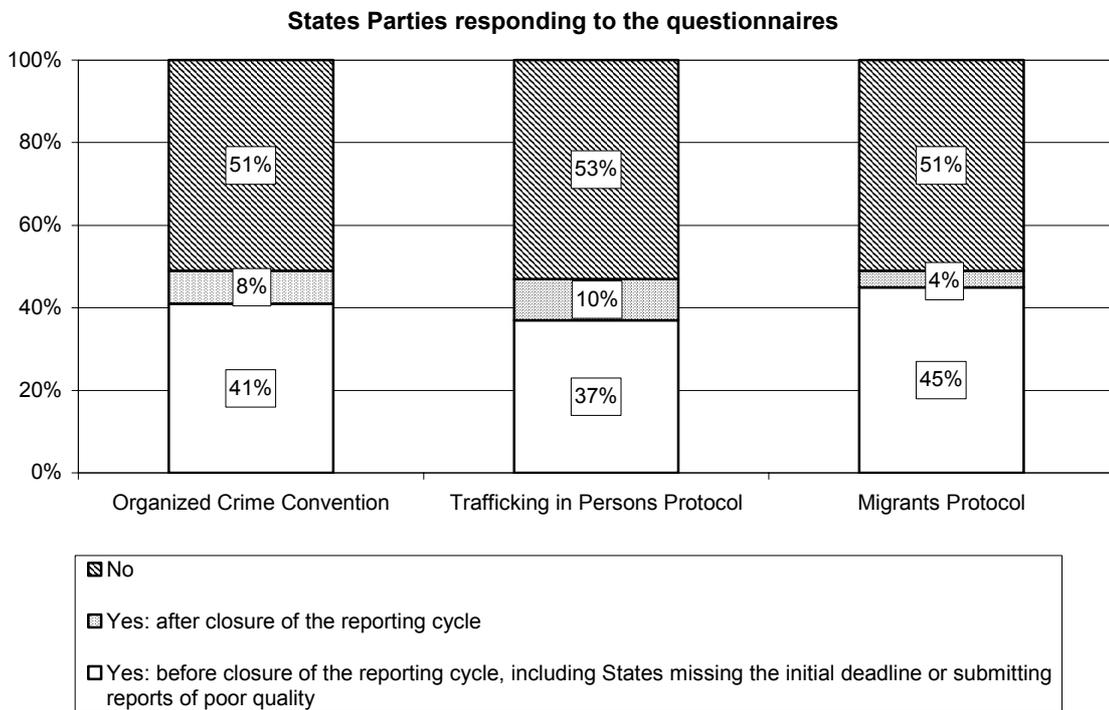
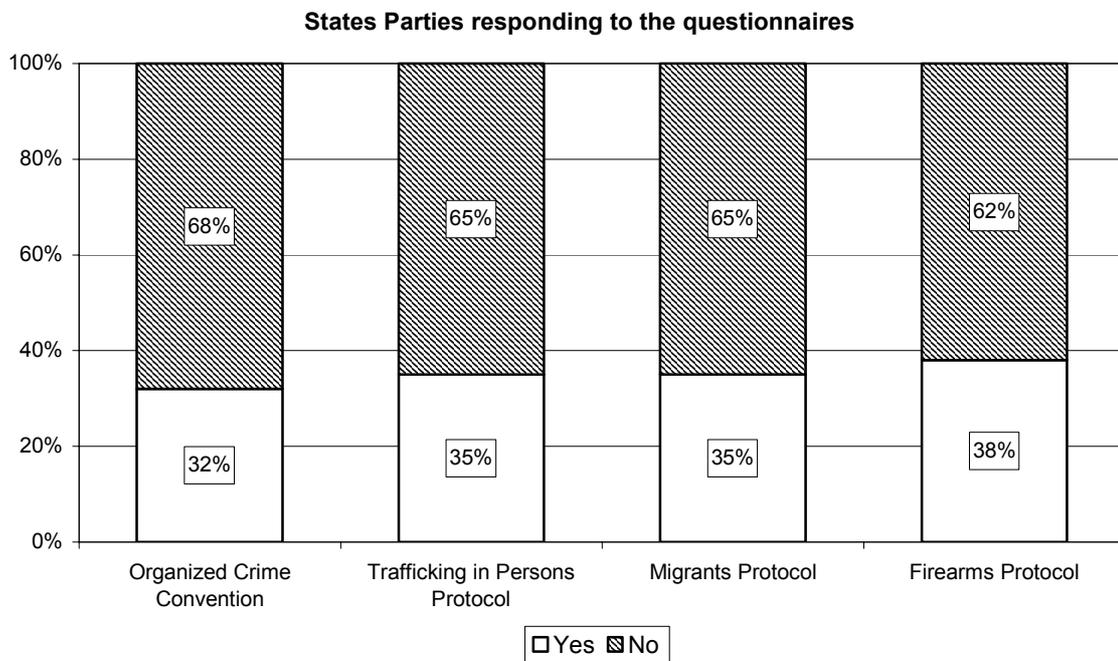


Figure II
Second reporting cycle



III. Why

13. One of the most important goals of the Conference is to take stock of States' efforts to implement the Convention. Given that the chosen medium, i.e. the questionnaires, appeared not to be producing the desired results, the secretariat made every effort to understand the causes of the problem. The problem was thoroughly discussed at a workshop organized by UNODC and the Organization for Security and Cooperation in Europe (OSCE) in March 2006 (see CTOC/COP/2006/CRP.1). Different views emerged on the underlying causes of the low reporting rate. The most recurrent arguments were:

(a) The questionnaires were too complicated and "questionnaire fatigue" had set in;

(b) Too many national authorities had to be coordinated to complete the questionnaires;

(c) States received too many questionnaires from UNODC (or the United Nations in general);

(d) Some States lacked the capacity to collect and process the required information, in addition to lacking the human and financial resources to fill out the questionnaires.²

14. The quality of many replies to the questionnaire leaves much to be desired. In some cases, the gathered information is of little use. Without adequate data on implementation, the analytical reports are not feasible. This has a crippling effect on the Conference, impairing its ability to formulate evidence-based policy.

15. The underreporting problem is only a symptom of a broader malaise. At the second session, in October 2005, participation in the Conference had taken a downward turn. While, measured in absolute numbers, participation was average and consistent with patterns of meetings of this nature, the overall composition of the delegations was hardly conducive to in-depth discussion. In the analytical reports, for example, the secretariat had highlighted questions of non-compliance with important provisions, such as the way participation in an organized criminal group was criminalized, or the significance attributed to the consent of the victim in the context of criminalization of trafficking in persons under the respective Protocol. In fact, there was regrettably little discussion on these matters to provide guidance on future action for individual States and the Conference as a body. It is not coincidental that there was significant difficulty in filling the positions available on the bureau of the Conference, with the secretariat actively encouraging Chairmen of regional groups well into the session to persuade their members to come forward and fill such positions.

16. All these elements converge and point in one direction. The political priority accorded to the Convention and the Protocols is waning. The reasons for this could be many. A more benign cause may be that other issues that have emerged since the adoption of the Convention are competing for attention.

² It should be noted that each questionnaire begins with the question, "Do you need assistance to fill this questionnaire out?"

17. Whatever the reasons, the indisputable fact remains that organized crime in all its forms and manifestations remains a growing threat to security, stability and development around the world. The Convention and its Protocols constitute the only global framework designed to address that threat. Allowing the political priority of the full and effective implementation of these instruments to slip further will have dire consequences for all countries regardless of their level of development. Viewed from this angle, the ability of the Conference to perform its assigned tasks is no longer a matter that can be dismissed lightly. It is a matter of seriousness of attitude and credibility of political pronouncements.

IV. What to do

18. The Conference is at a critical juncture. With 126 parties, it has achieved a critical mass, with a good balance between developing and developed countries. On the other hand, the Conference is about to begin the biennial cycle of its sessions. At a time when its political priority is in question, the two-year intervals between sessions may prove to be a factor weakening such priority further. At this crucial time, the Conference must pause, take stock of its accomplishments and give a hard look at its future. There is a need for States parties:

- To restore the priority merited by the Convention and its Protocols
- To empower the Conference to discharge fully and efficiently its mandates
- To relaunch the Conference as the full-fledged implementation body it was conceived to be

19. These goals could be achieved by making the Conference a peer-review mechanism and finding ways to enable it to perform this role. It is certain that if States apply their collective wisdom, experience and ingenuity, they devise the right solutions. In doing this, States need to be guided by the attributes that made the Convention and Protocols possible. They have acquired useful experience in seeking and achieving consensus on difficult and often controversial issues, while maintaining mutual respect and sensitivity for the concerns of others and ensuring that consensus is not achieved at the expense of quality. One possible way forward could consist of the three stages described below.

A. Addressing the underreporting problem

20. It is necessary to seek the most efficient way to complete the current two reporting cycles, so that in future a review can be undertaken of the progress made by countries and the impact of actions already taken. At the same time, attention must be paid to the quality, completeness and clarity of the responses. Equally important is to press for responses to individual requests for clarification or additional information on compliance that were or will be mandated by the Conference.

B. A new way of building the knowledge base

21. While the reporting cycles currently under discussion are completed, the Conference must seek new ways to discharge its review of implementation functions. If questionnaires as a medium for the collection of information are not viable, one of the solutions proposed was the simplification of the questionnaires. Such an option may deserve consideration even though it is highly unlikely that it will go beyond addressing the symptoms and offer a cure. Simplification could be conceivable up to the point that the Conference completes its “horizontal” approach and turns towards a more “vertical” one, attempting to acquire knowledge of specific actions and, more importantly, their impact.

22. The issue that the Conference should seriously consider is how to move away from the questionnaire approach while preserving the prerogative of Governments to be the authentic source of information. One way to achieve these goals would be to require parties to undertake a comprehensive self-assessment of their compliance with the Convention and the Protocols. To facilitate this process, the secretariat would produce a checklist of issues to be considered and a set of guidelines. Assistance should be made available to States upon request to help them in undertaking the comprehensive self-assessment. The self-assessment would be accompanied by an action plan that would identify specific actions, set clear time frames for the implementation of such actions, establish priorities and determine which actions could be undertaken using the resources available to the Government and for which actions the Government would require technical assistance. This package could be reviewed from time to time by the Government as it proceeds with its work on implementation. This package approach has been tried with considerable success by bodies such as the European Commission, which uses it effectively, including in the area of organized crime. The self-assessment approach may not be less cumbersome than questionnaires for national authorities, but it has several advantages, principal among them that it requires a front-end investment in time and resources that is subsequently offset by the reduced requirements of reviewing and updating it, as the process is continuous over time. The approach must be considered carefully for another reason. Attention should be devoted to avoid the product of this exercise degenerating into a series of country reports that would be superficial.

C. A mechanism to guide and support these efforts

23. The Conference will need to create a dedicated, agile and efficient mechanism to support parties in undertaking their self-assessment, put together their action plans and advise them on their implementation. This mechanism needs to possess, or have ready access to, the necessary expertise and be invested with legitimacy, objectivity and impartiality. Under the authority of the Conference, this mechanism would advise States on progress in the implementation of the Convention and its Protocols, drawing upon the knowledge base that the Conference would build.

V. Conclusions

24. After three years of its existence, the challenge before the Conference is to open a new chapter. The time has come for swift remedial action to reverse the

current course. The rapid identification of new mechanisms that would restore the ability of the Conference to perform its tasks is urgently needed. The time has come for collective action to give implementation of the Convention and its Protocols the high priority that it deserves.

25. Clearly, the decisions required are complex. The proposed three-stage approach leaves room for concerns. Still, there may be a need for opportunities to allow thinking to mature and hypotheses to be fully tested. Thus, a way to achieve this without losing more precious time would be to put in place a limited voluntary programme that would help fine-tune the new course of action and put to the test the means to realize it. The programme would be limited in terms of the scope and time. Only some of the provisions of the Convention (and perhaps the Protocols) would form its backbone. In terms of time, the programme would be running for two years, i.e. until the fourth session of the Conference, and would be concluding at a time that would allow a comprehensive report on its performance to be submitted to the Conference at that session. This approach would help focus efforts, making it easier to draw useful conclusions about feasibility and effectiveness. And it would turn the apparent disadvantage of the biennial cycle into a re-energizing interval.
