



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

Distr.: General
25 July 2008

Original: English

[Start]

Fourth session

Vienna, 8-17 October 2008

Item 2 (a) of the provisional agenda*

**Review of the implementation of the United Nations
Convention against Transnational Organized Crime and
the Protocols thereto: information-gathering and possible
mechanisms to review implementation**

Development of tools to gather information from States on the implementation of the United Nations Convention against Transnational Organized Crime and each of the Protocols thereto

Report of the Secretariat

I. Introduction

1. As set forth in article 32, paragraph 1, of the United Nations Convention against Transnational Organized Crime,¹ the Conference of the Parties to the United Nations Convention against Transnational Organized Crime was established to improve the capacity of States parties to combat transnational organized crime and to promote and review the implementation of the Convention. To that end, the Conference should acquire knowledge both of the measures taken by States parties in implementing the Convention and of the difficulties encountered by them in doing so (art. 32, para. 4). The Convention therefore stipulates that States parties are to provide the Conference with information on their programmes, plans and practices and on their legislative and administrative measures to implement the Convention (art. 32, para. 5).

2. At its first session, the Conference, in its decision 1/2, decided to establish a programme of work focusing on a limited number of topics (see annex), in order to carry out the functions assigned to it in article 32 of the Convention. In the same decision, it requested the Secretariat to develop a questionnaire to collect

* CTOC/COP/2008/1.

¹ United Nations, *Treaty Series*, vol. 2225, No. 39574.



information on those topics from States parties and signatories to the Convention. Ultimately, three questionnaires were developed: one on the Convention and one on each of the two protocols then in force (the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime² and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.³ At its second session, the Conference broadened, in its decision 2/1, its programme of work to include a second set of topics (see annex). For this second reporting cycle, the Secretariat developed four questionnaires covering the same three instruments as in the first reporting cycle plus the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.⁴

3. By the third session of the Conference, approximately 49 per cent of States parties had complied with their reporting obligations for the first reporting cycle and 33 per cent had done so for the second reporting cycle. Taking into account the fact that such compliance meant responding to up to seven questionnaires comprising a total of 263 questions on four instruments, those response rates reflect the considerable effort made not only by many States parties but also by a number of signatories, whose responses are not reflected in the indicated rates. However, the Conference expressed concern that a reporting level of less than half of the States parties did not enable it to carry out a comprehensive and reliable review of the implementation of the Convention and the Protocols thereto. The challenges identified in this regard included: reporting fatigue caused by multiple reporting commitments and the scope of reporting required by the Conference; the difficulties associated with inter-agency cooperation, as many different agencies were responsible for different areas of the questionnaires; and obstacles stemming from a general lack of capacity to report owing to lack of personnel and of information.

II. Interim assessment checklist

4. In view of the aforementioned reporting difficulties and drawing on experience with gathering information under the United Nations Convention against Corruption,⁵ the Open-ended Interim Working Group of Government Experts on Technical Assistance established pursuant to Conference decision 2/6 requested the Secretariat to develop immediately an efficient and user-friendly information-gathering tool in the form of an interim computer-based checklist (CTOC/COP/2008/7, para. 2 (a)). It also requested that the checklist should not depart from the substantive content of the questionnaires instituted by the Conference in order to avoid duplication of effort for States that had already reported through the questionnaires (CTOC/COP/2008/7, para. 2 (b)).

² Ibid., vol. 2237, No. 39574.

³ Ibid., vol. 2241, No. 39574.

⁴ Ibid., vol. 2326, No. 39574.

⁵ Ibid., vol. 2349, No. 42146.

5. No extrabudgetary resources having been made available to carry out that additional task, the Secretariat undertook the development of the interim computer-based checklist within existing resources and was able to finalize the checklist in three languages (English, French and Spanish) on 20 May 2008. An early version of the checklist had been demonstrated individually to more than 70 interested delegations at a side event of the seventeenth session of the Commission on Crime Prevention and Criminal Justice, held in Vienna from 14 to 18 April 2008. A CD-ROM containing the final version of the checklist was sent to the States parties and signatories to the Convention on 21 May 2008, together with an illustrated user guide. That version can also be downloaded from the website of the United Nations Office on Drugs and Crime (UNODC) (www.unodc.org/unodc/en/treaties/CTOC/index.html#Checklist).

6. The checklist was conceived as a simple and interactive tool that would simplify reporting obligations under the Convention and its Protocols. Designed in the form of a survey software package, the checklist, as requested, does not depart from the substantive content of the questionnaires, even though the overall number of questions is fewer. That was a result of the interactivity offered by the computer-based format and the elimination of questions that had not elicited useful information through the questionnaires. The checklist offers the possibility of submitting the required information and also any supplementary information and updates. The checklist thus constitutes as well a response to the request made by the Conference, in its decision 3/1, for its secretariat to develop a sample format for the voluntary provision of supplementary information to assist States parties in undertaking a detailed evaluation of their compliance with specific provisions of the Convention and its Protocols.

7. The checklist is structured in several screen frames. A top screen frame contains the text of the relevant provision of the Convention and its Protocols. Respondents are then asked a set of questions on each of the provisions. The first question reads: "Has your country adopted the measures above?" Four answers are possible: yes, yes in part, no and not applicable. Depending on their answers, respondents are guided to different questions.

8. In cases where laws or measures adopted by States only partially cover the scope of the provision under consideration or where no relevant law or measure has been adopted, the checklist allows respondents to explain the difficulties encountered and invites them to indicate the steps they plan to take and the time frames involved. Respondents are also able to specify Government needs for legal and technical assistance in those matters, choosing from among 10 areas of technical assistance activity that cover the main challenges to implementation identified by the Open-ended Interim Working Group of Government Experts on Technical Assistance.⁶

9. The checklist will therefore enable the Conference to receive information on implementation gaps and the relevant technical assistance needs. It will also assist

⁶ The 10 areas are: (a) no assistance required; (b) advocacy; (c) assistance in defining a national strategy; (d) assessment of national legislation and operational capacities; (e) model legislation; (f) advice and assistance in drafting legislation; (g) advisory support during legislative approval and ratification; (h) assistance in solving specific implementation issues; (i) training in implementing the new legislation; and (j) casework best practice guidelines.

requesting States and technical assistance providers in optimally identifying specific needs for technical assistance.

10. In cases where laws or measures have been adopted in relation to the provision under consideration, respondents are given the opportunity to provide relevant information, including citing parts of their legislation. A specific question has been included to elicit information on examples of successful implementation of the Convention and its Protocols. Respondents can easily modify and save the information entered. Addressing the fact that in some States different agencies are competent to provide information on the issues covered, the checklist allows for various persons to work on different parts and for the result of their work to be merged at a later stage. The report produced through the checklist can be saved as a file and sent via e-mail.

11. At the time of writing of the present report, which is to say two months after the CD-ROM containing the checklist was sent out, 83 new questionnaires from 34 parties and signatories and 123 updates from 26 parties and signatories had been received.⁷ In the long term, the checklist will allow the secretariat to update more easily the information received from each State and to present a statistical analysis of the replies on each provision, including graphical representations.

III. Comprehensive software

12. Given the convergence of the information-gathering mandates emanating from 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, UNODC decided to explore the development of comprehensive software to cover both conventions. That approach took into consideration the close similarity between a number of provisions of the two instruments and the fact that information furnished on the implementation of such provisions lends itself to being used in a cross-cutting way.⁸

13. Two meetings of experts held in Vancouver, Canada, one from 9 to 11 March 2007 and the other from 15 to 18 March 2008 in cooperation with the International Centre for Criminal Law Reform and Criminal Justice Policy, provided guidance for the development of such a comprehensive information-gathering tool in consultation with the States parties and signatories to the conventions. The envisaged tool will introduce new features, such as pop-up windows containing summaries of the requirements under the respective provisions and clickable links.

14. The comprehensive software will also distinguish between technical assistance providers and recipients in order to generate knowledge on both the demand and

⁷ A document summarizing the updated status of responses will be issued closer to the opening of the Conference.

⁸ Such provisions include: criminalization of money-laundering; criminalization of obstruction of justice; criminalization of corruption; prosecution, adjudication and sanctions; liability of legal persons; tracing, freezing, seizure and confiscation of assets; protection of witnesses and victims; mutual legal assistance; extradition; transfer of sentenced persons; transfer of criminal proceedings; law enforcement cooperation; joint investigations; use of special investigative techniques; and mechanisms for recovery and international cooperation.

supply sides of technical assistance, thus creating a platform for donor coordination. It will be accompanied by a detailed user guide.

15. The comprehensive software is expected to be finalized in late 2009 and subsequently tested in a number of volunteer States. It will be presented to the Conference of the States Parties to the United Nations Convention against Corruption at its third session and, if so decided by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime at its current session, it could be presented to that Conference at its fifth session.

IV. Conclusions and recommendations

16. The Conference may wish to review the usefulness of the interim assessment checklist developed by the secretariat at the request of the Open-ended Interim Working Group of Government Experts on Technical Assistance and consider needs for enhancement of that tool.

17. In its report (CTOC/COP/2008/7), the Working Group requested that the secretariat, in addition to immediately developing an interim computer-based checklist, begin to develop comprehensive software-based information-gathering tools for the Convention and each of its Protocols. In this respect, the Conference may wish to consider areas of convergence between its information-gathering needs and those identified by the Conference of the States Parties to the United Nations Convention against Corruption in its resolution 2/1. It may wish in particular to confirm the validity of the approach currently being explored by UNODC to develop a common comprehensive information-gathering tool, covering both the Organized Crime Convention and its Protocols and the Convention against Corruption.

18. The Conference may also wish to consider areas of synergy between reporting requirements under the Organized Crime Convention and its Protocols and other reporting exercises in related areas. For instance, parts of the biennial reports questionnaire through which States have been reporting on the action plans and measures adopted by the General Assembly at its twentieth special session (www.unodc.org/unodc/en/commissions/CND/10-GlobalData.html) cover matters that also lie within the ambit of the Convention. The scope and impact of measures to promote judicial cooperation or measures to counter money-laundering extend beyond the drug-related context of the biennial reports questionnaire, and information provided on such measures is equally relevant to the Conference for the purposes of reviewing implementation of the Convention. Similarly, reporting by Member States on action taken to follow up on declarations and plans of action adopted by the United Nations congresses on crime prevention and criminal justice might be of relevance to the work of the Conference. The Conference may therefore wish to recommend ways of avoiding duplication in reporting requirements and of making optimal use of the information reported.

19. The Conference may wish to consider a programme of work for its fifth session, in 2010, and define its information needs for that programme of work. It may wish in particular to consider requesting that States provide information not only on national legislation and other measures adopted to implement the instruments but also on the actual impact of such legislation or measures, for

instance, the number of investigations, prosecutions or convictions resulting from such legislation or measures, the number of requests for specific forms of assistance and the outcome of such requests.

20. Taking into account the fact that the secretariat has already collected, through the questionnaires, the checklist and other means, a considerable body of legislation adopted to implement the Organized Crime Convention and its Protocols, the Conference may wish to consider ways of making those resources widely accessible to all States. One option could be to expand the scope of the existing UNODC legal library of legislation adopted to give effect to the international drug control conventions (www.unodc.org/enl/index.html) to include legislation adopted to give effect to the Organized Crime Convention and its Protocols. The legal library already covers cross-cutting topics such as money-laundering, confiscation, mutual legal assistance, extradition, controlled delivery and undercover operations, and it is linked to the Anti-Money-Laundering International Database. That database is a compendium of analyses of laws and regulations against money-laundering that can be searched by country, year and keyword and allows for documents to be downloaded and exported.

21. The Conference may wish to call for adequate human and financial resources to be made available to the Secretariat. Such resources would enable the Secretariat to work on technical enhancement of the information-gathering tools and to expand the legal library. Human and financial resources would also be necessary to enable the Secretariat to extend assistance to requesting States in using such tools. This would ensure further progress in compliance by States parties with their reporting obligations and would enable the Conference to establish a more complete knowledge base for its review of the implementation of the Convention and its Protocols.

Annex

Topics covered by reporting cycles on assessment of the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto

As of July 2008, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime had established two reporting cycles, covering the following topics (Conference decisions 1/2, 1/5, 1/6, 2/1, 2/3, 2/4 and 2/5):

- (a) First reporting cycle:
 - (i) United Nations Convention against Transnational Organized Crime:^a
 - a. Basic adaptation of national legislation in accordance with the Convention;
 - b. Examination of criminalization legislation and difficulties encountered in implementation in accordance with article 34, paragraph 2, of the Convention;
 - c. Enhancement of international cooperation and development of technical assistance to overcome difficulties identified in the implementation of the Convention;
 - (ii) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime:^b
 - a. Basic adaptation of national legislation in accordance with the Protocol;
 - b. Examination of criminalization legislation and difficulties encountered in the implementation of article 5 of the Protocol;
 - c. Enhancement of international cooperation and development of technical assistance to overcome difficulties identified in the implementation of the Protocol;
 - d. Views on and experience regarding the protection of victims and preventive measures, gained primarily in the implementation of articles 6 and 9 of the Protocol, including awareness-raising;
 - (iii) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime:^c
 - a. Basic adaptation of national legislation in accordance with the Protocol;

^a United Nations, *Treaty Series*, vol. 2225, No. 39574.

^b *Ibid.*, vol. 2237, No. 39574.

^c *Ibid.*, vol. 2241, No. 39574.

- b. Examination of criminalization legislation and difficulties encountered in the implementation of article 6 of the Protocol;
 - c. Enhancement of international cooperation and development of technical assistance to overcome difficulties identified in the implementation of the Protocol;
 - d. Views on and experience gained in the implementation of articles 15 and 16 of the Protocol;
- (b) Second reporting cycle:
- (i) Organized Crime Convention:
 - a. Measures to combat money-laundering (art. 7 of the Convention);
 - b. Measures related to the investigation of cases of transnational organized crime, with particular attention to articles 19, 20 and 26 of the Convention;
 - c. Matters related to the protection of witnesses and victims (arts. 24 and 25);
 - d. Matters related to international law enforcement cooperation (art. 27);
 - e. Matters related to preventive measures (art. 31);
 - (ii) Trafficking in Persons Protocol:
 - a. Matters related to assistance to and protection of victims of trafficking in persons and the status of such victims in receiving States;
 - b. Matters related to repatriation of victims of trafficking in persons;
 - c. Matters related to border measures, security and control of documents and legitimacy and validity of documents;
 - (iii) Migrants Protocol:
 - a. Matters related to protection and assistance measures for smuggled migrants;
 - b. Matters related to the return of smuggled migrants;
 - c. Matters related to border measures, security and control of documents and legitimacy and validity of documents;
 - (iv) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime:^d
 - a. Basic adaptation of national legislation in accordance with the Protocol;
 - b. Examination of criminalization legislation and difficulties encountered in the implementation of article 5 of the Protocol;

^d Ibid., vol. 2326, No. 39574.

c. Enhancement of international cooperation and development of technical assistance to overcome difficulties identified in the implementation of the Protocol.
