



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

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**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**

Possible mechanisms to review implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto

Note by the Secretariat

I. Introduction

1. The Conference of the Parties to the United Nations Convention against Transnational Organized Crime was established pursuant to article 32, paragraph 1, of the United Nations Convention against Transnational Organized Crime¹ in order to improve the capacity of States parties to combat transnational organized crime and to promote and review the implementation of the Convention. Pursuant to article 32, paragraph 3, of the Convention, the Conference is to agree upon mechanisms for achieving its objectives, including reviewing periodically the implementation of the Convention and making recommendations to improve the Convention and its implementation. For that purpose, pursuant to article 32, paragraph 4, of the Convention, the Conference of the Parties must acquire the necessary knowledge of the measures taken by States parties in implementing the Convention and the difficulties encountered by them in doing so, through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

2. The present note describes the status of information-gathering and the review of implementation of the Organized Crime Convention. It provides information on methods and mechanisms used to review implementation of international

* CTOC/COP/2008/1.

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



instruments in areas related to those covered by the Organized Crime Convention. The note also provides a brief account of the efforts to date of the Conference of the States Parties to the United Nations Convention against Corruption towards the establishment of a review mechanism and the work undertaken by its secretariat to support those efforts. The note recommends that the Conference explore ways and means of establishing an effective mechanism to review implementation of the Organized Crime Convention and the Protocols thereto.²

II. Status of information-gathering and review of implementation of the United Nations Convention against Transnational Organized Crime

A. Progress in information-gathering

3. At its first session, held in 2004, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, in its decisions 1/2, 1/5 and 1/6, requested the Secretariat to develop questionnaires to collect information from the then 78 States parties on a limited number of subject areas (first reporting cycle).³ Accordingly, three questionnaires were developed, on the Convention and the two Protocols then in force: the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The three questionnaires were subsequently endorsed by the Conference. When the second session of the Conference was held, in 2005, the number of States parties to the Convention had grown to 107, and the Conference established a further programme of work focusing on a second set of subject areas (second reporting cycle). The secretariat then developed four questionnaires, covering the Convention and its three Protocols (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, entered into force on 3 July 2005).

4. By the third session of the Conference, in 2006, 122 States had become parties to the Convention. Approximately 49 per cent of those 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 compliance with those reporting obligations entailed responding to as many as seven questionnaires, comprising a total of 263 questions, on four instruments, those response rates reflect the considerable effort made by many States parties. However, the Conference expressed concern that a reporting rate of less than half of States parties did not enable it to carry out a comprehensive and reliable review of the implementation of the Convention and the Protocols thereto.

5. At its third session, while emphasizing the fact that the provision of information to the Conference was a legal obligation, the Conference considered

² Ibid., vols. 2225, 2237, 2241 and 2326, No. 39574.

³ Developments summarized in this section are described in detail in CTOC/COP/2008/2.

obstacles to reporting⁴ and ways to improve the information-gathering process. In its decision 3/1, the Conference requested the secretariat to develop a sample format for the voluntary provision of supplementary information, with a view to assisting States parties in undertaking a detailed evaluation of their compliance with specific provisions of the Convention and the Protocols thereto. At its intersessional meeting held in Vienna from 3 to 5 October 2007, the Open-ended Interim Working Group of Government Experts on Technical Assistance established by the Conference recommended that the Secretariat develop an efficient and user-friendly information-gathering tool in the form of an interim computer-based checklist. Taking into account the request to develop a sample format for the voluntary provision of supplementary information and the request to develop an interim checklist, the Secretariat developed a computer-based checklist designed to simplify the reporting obligations under the Convention and the Protocols thereto, while allowing States parties to provide additional information on a voluntary basis. The checklist was sent as a CD-ROM to States parties and signatories to the Convention in May 2008, together with an illustrated user's guide. The checklist was also made available on the website of the United Nations Office on Drugs and Crime.

6. Moreover, the Secretariat is working on the development of a comprehensive software-based information-gathering tool, to be finalized in late 2009, covering the Convention and its Protocols, as well as the United Nations Convention against Corruption (General Assembly resolution 58/4, annex).

B. From information-gathering to review of implementation

7. The interim checklist appears to have facilitated the provision of the information requested by the Conference, and the comprehensive software is expected to further facilitate that task. However, for the information-gathering process to be fully meaningful, the wealth of information provided by parties needs to be systematically used in the review of implementation and the preparation of recommendations for the improvement of the Convention and its implementation, which, in article 32 of the Convention are established as essential objectives of the Conference.

8. In considering the analytical reports on implementation of the Convention and the Protocols thereto reflecting information received through the questionnaires, the Conference, as reflected in its decisions 2/1, 2/2, 2/3 and 2/4, noted that certain parties had provided replies indicating that they were not in compliance with mandatory provisions of the Convention or the Protocols thereto. The Conference requested the secretariat to seek from those States parties clarification or indication of action taken or that they intended to take to remedy the situation of non-compliance. The secretariat sent individual letters to 31 States parties, referring to one or more specific issues on which national legislation or practices had been

⁴ The challenges identified in this regard included reporting fatigue caused by the scope of reporting required by the Conference and the various intergovernmental bodies in the field of crime prevention and criminal justice; 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 information.

reported not to meet the requirements of the Convention or the Protocols thereto.⁵ Ten States of the 31 States requested provided responses to those letters.⁶

9. In addition to the low rate of responses elicited by the letters, a number of limitations of the approach of sending such individual letters may be noted. With 146 States parties and a scope of four instruments, the task of identifying gaps in the implementation of individual provisions and addressing States individually with respect to each of those gaps may become extremely time-consuming. Assuming that the approach is practicable and elicits adequate feedback from States, it is still limited by its focus on isolated provisions and its inability to encompass the full picture of implementation. By focusing on lapses in compliance, that approach reviews implementation from a negative angle, while exclusively targeting those States that have complied with their reporting obligations. It is therefore suggested that the practice of compliance letters does not constitute an adequate response to the need for a structured and comprehensive review of implementation.

10. The Conference has made significant progress in determining technical assistance needs. Based on information provided by States parties through the questionnaires and the checklist on technical assistance needs, the Conference has established priority areas of technical assistance, as identified in Conference decision 3/4. The Open-ended Interim Working Group of Government Experts on Technical Assistance, at its meeting in October 2007, defined, within the framework of those priority areas, five areas for the delivery of specific types of technical assistance.⁷ In that context, a systematic and comprehensive review of implementation of the Convention is essential in order for the Conference to establish a baseline for measuring future impact of technical assistance provided under its guidance and to assess trends in the fight against organized crime over a longer period of time.

III. Examples of review mechanisms under instruments relevant to the United Nations Convention against Transnational Organized Crime

A. Money-laundering and terrorist financing

11. With a view to encouraging States to establish sound and effective national anti-money-laundering systems, the international community has launched several multilateral initiatives to determine how States comply with international standards for countering money-laundering and to recommend action to address any possible deficiencies.

⁵ Letters were sent to the following States: Algeria, Argentina, Azerbaijan, Belarus, Brazil, Bulgaria, Chile, Costa Rica, Ecuador, Egypt, El Salvador, Estonia, France, Honduras, Jamaica, Latvia, Mauritius, Mexico, Moldova, Morocco, Myanmar, Namibia, New Zealand, Nigeria, Peru, Philippines, Portugal, Romania, South Africa, Tunisia and Turkey.

⁶ For more information, see the analytical report of the Secretariat on this issue (CTOC/COP/2006/3).

⁷ See CTOC/COP/2008/7 and CTOC/COP/2008/16.

12. International and regional organizations, including the World Bank, the International Monetary Fund and the Financial Action Task Force on Money Laundering (FATF), have developed a common methodology of evaluation, covering legal and institutional frameworks and preventive measures for the financial sector, to assess compliance by States with international standards for countering money-laundering and combating the financing of terrorism. FATF monitors the implementation of its Forty Recommendations on Money-Laundering and Nine Special Recommendations on terrorist financing through the mutual evaluation process. The evaluations aim at determining whether the laws, regulations and other measures required under the new standards have been implemented and whether the system in place is effective. The criminalization of money-laundering is evaluated pursuant to article 6 of the Organized Crime Convention. In addition, the signature, ratification of or accession to the Convention is considered an essential criterion of compliance with international standards, including the FATF Recommendations.

13. The evaluations are conducted by a team of peer experts from the financial, legal and law enforcement fields and the FATF secretariat. The assessment requires an on-site visit to the jurisdiction, during which comprehensive meetings with government officials and the private sector are held. The *FATF Handbook for Countries and Assessors* provides a set of instructions and guidance for conducting assessments. The results of assessments are collected in detailed mutual evaluation reports, which FATF members have agreed in principle to make public.

14. FATF member States are strongly committed to the practice of multilateral monitoring and peer review. Thus, the FATF review mechanism enjoys strong global political support to tighten anti-money-laundering systems. When a State is determined to be non-compliant, it is required to submit a progress report to a plenary meeting of FATF. Further steps include the issue of a letter by the President of FATF or the dispatch of a high-level mission to the non-complying member State. FATF can also apply its recommendation 21, under which a statement is issued, calling on financial institutions to give special attention to business relations and transactions with persons, companies and financial institutions domiciled in a non-complying State. As a final measure, the FATF membership of the non-complying State can be suspended.

15. The process is quite successful in ensuring compliance with the FATF Recommendations. However, it consumes considerable time and resources and leaves little room for ownership by Governments or flexibility based on the level of development of countries. The FATF membership is composed mainly of developed countries. Given that the review mechanism is applied to States parties of varying levels of development, such a review process may not be fully successful.

B. Corruption

16. The Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions⁸ entered into force on 15 February 1999. Its treaty body, the

⁸ *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

OECD Working Group on Bribery in International Business Transactions, comprises the 36 parties to the Convention, holding five plenary meetings each year. The Working Group has developed an elaborate sequence of monitoring procedures, which are split into two phases and include elements of self-assessment and mutual evaluation through peer review and on-site visits.

17. The principal objective of the first phase of the process is to evaluate whether the legal texts through which parties implement the OECD Bribery Convention meet the standards set by the Convention. To that end, a detailed questionnaire is sent to Governments, soliciting information on implementation of the Convention. In the second phase, the Working Group looks into implementation issues and, in addition to completing a more specialized follow-up questionnaire, makes a country visit involving the Government, lead examiners and the secretariat. In the process, a draft report is prepared by the secretariat and discussed with lead examiners and the Government. The Government is entitled to present its observations, which, if possible, are included in the final report, which is then presented to the Working Group.

18. The presentation of such reports in a plenary session of the Working Group allows the examiners to make their case, the Government to respond and the other members of the Working Group to give their opinion, ask questions and raise further issues. Each meeting includes not only individual country reviews but also a *tour de table*, during which Government representatives report on the steps taken by their Governments to enforce the Convention.

19. The peer review aspect of the process creates an opportunity for Governments to learn from the experiences and approaches of others. That process, designed for the OECD Convention, consumes considerable time and resources and is suited to reviewing implementation of a convention that is limited in scope and with a limited number of parties. For a broad set of global instruments such as the Organized Crime Convention and its Protocols, a number of modifications to the process would be required.

C. Trafficking in persons

20. The Committee of Ministers of the Council of Europe adopted the Convention on Action against Trafficking in Human Beings on 3 May 2005. The Convention is based on the principle that trafficking in human beings constitutes a violation of human rights and an offence to the dignity and integrity of human beings. It focuses mainly on the protection of victims of trafficking and the safeguarding of their rights but is also aimed at preventing trafficking and prosecuting traffickers.

21. The Committee of the Parties to the Convention on Action against Trafficking in Human Beings (17 parties to date) established the Group of Experts on Action against Trafficking in Human Beings, tasked with monitoring implementation of the Convention. The Group's experts are elected by the Committee of the Parties for a term of four years; the experts serve in their individual capacity and are independent and impartial in the exercise of their functions.

22. Modalities established in 2007 for monitoring implementation of the Convention provide for the evaluation to be divided into rounds, the length of which

is determined by the Group of Experts. At the beginning of each round, the Group selects the specific provisions of the Convention to be targeted by the evaluation procedure and the most appropriate means to carry out the evaluation. The Group may, in particular, adopt a questionnaire, to be addressed to all parties, for each evaluation round. The Group may also conduct country visits in cooperation with the national authorities. During those visits, the Group may be assisted by specialists in specific fields.

23. Subsequently, the Group prepares a draft report containing its analysis of the implementation of the provisions targeted by the evaluation, as well as suggestions and proposals for how parties may deal with any problem that has been identified. Comments by the parties concerned are taken into account by the Group in preparing its report. The final report and conclusions are sent to the parties concerned and the Committee of the Parties and are made public following their adoption, together with any comments submitted by the parties concerned.

24. The evaluation mechanism also recognizes the important role of civil society in the prevention of trafficking and protection of the victims, in accordance with the Convention's recommendation for strengthened cooperation between public authorities, non-governmental organizations and members of civil society.

25. It is too early to evaluate the process, which was instituted in 2007. The process incorporates elements of the approach taken by human rights treaty bodies in that it is directed mainly by independent experts and relies on involvement of Governments in response to the preliminary report. The responsibility for preparing the final report lies with the experts. In the context of the Organized Crime Convention, it would most likely be advantageous to have more active Government ownership of the review process and outcomes.

D. Firearms

26. The Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, adopted by the Member States participating in the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, establishes a global framework for curbing the illicit trade in small arms. It contains substantial agreed norms and programmes on a series of issues, including preventing and combating the illicit production and trafficking of small arms and light weapons; ensuring effective controls of the legal production of those weapons, the holding and transfer of such weapons; the collection and destruction of weapons; and the control of those arms in post-conflict situations.

27. The first five-year review conference to review implementation of the Programme of Action was convened in 2006 and ended without agreement on a formal outcome document, thus failing to provide the General Assembly with either a mandate to conduct a further review or guidance on future implementation. Representatives of 130 States attended the Third Biennial Meeting of States to review progress on the implementation of the Programme of Action, held from 14 to 18 July 2008, at which they unanimously adopted an outcome document containing the conclusions of the meeting (A/CONF.192/BMS/2008/3). The outcome of the Meeting demonstrated the renewed commitment of States to eliminating the illicit

trade in small arms and light weapons. However, it is too early to determine the efficacy of any review mechanism for the Programme of Action, as many related issues remain contentious.

IV. Reviewing implementation of the United Nations Convention against Corruption

28. At its first session, in 2006, the Conference of the States Parties to the Convention against Corruption, in its resolution 1/1, agreed that it was necessary to establish an appropriate mechanism to assist the Conference in the review of implementation of the Convention, pursuant to article 63, paragraph 5, of the Convention, which, mutatis mutandis, is identical to article 32, paragraph 4, of the Organized Crime Convention. In that resolution, the Conference also decided to establish an open-ended intergovernmental expert working group to make recommendations to the Conference, at its second session, on the appropriate mechanisms or bodies for reviewing the implementation of the Convention against Corruption and on the terms of reference of such mechanisms or bodies.

29. The secretariat of the Conference submitted a background paper (CAC/COSP/2006/5 and Corr.1) informing the Conference of methods used to review implementation of existing regional, sectoral and international instruments against corruption. The Conference, in its resolution 1/1, underlined that any such review mechanism should be transparent, efficient, non-intrusive, inclusive and impartial; should not produce any form of ranking; should provide opportunities to share good practices and challenges; and should complement existing international and regional review mechanisms in order for the Conference to cooperate with them as appropriate and avoid duplication of effort.

30. At its second session, the Conference, in its resolution 2/1, reaffirmed the terms of its resolution 1/1 and decided that any such review mechanism should also reflect the following principles:

(a) Its objective should be to assist States parties in the effective implementation of the Convention;

(b) It should take into account a balanced geographical approach;

(c) It should be non-adversarial and non-punitive and should promote universal adherence to the Convention;

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

(e) It should identify, at the earliest stage possible, difficulties encountered by parties in the fulfilment of their obligations under the Convention and good practices adopted in efforts by States parties to implement the Convention;

(f) It should be of a technical nature and promote constructive collaboration, inter alia, in preventive measures, asset recovery and international cooperation.

31. In its resolution 2/1, the Conference also decided that the Open-ended Intergovernmental Working Group on the Review of the Implementation of the United Nations Convention against Corruption should prepare terms of reference for a review mechanism for consideration, action and possible adoption by the Conference at its third session.

32. Following the first session of the Conference, in order to support the Conference in its work, the secretariat developed a pilot programme of technical assistance to enable States participating on a voluntary basis to test possible means of reviewing the implementation of the Convention. Initial meetings were held with the States that had volunteered to participate in the pilot programme in order to establish the pilot review group, discuss its terms of reference and the review methodology. The participating States were Argentina, Austria, Finland, France, Greece, Indonesia, Jordan, the Netherlands, Norway, Peru, Poland, Romania, Sweden, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania and the United States of America.

33. Following the second session of the Conference, pursuant to the request of the Conference, contained in its resolution 2/1, that the United Nations Office on Drugs and Crime continue to assist parties, upon request, in their efforts to collect and provide information requested by the self-assessment checklist, and to analyse and report on the information collected, the secretariat decided to include additional countries in the pilot review programme in order to create a broader base for analysis. The secretariat also decided that the pilot programme should be completed by mid-2009 in order to report to the Conference at its third session.⁹

34. Twelve new States confirmed their willingness to join the expanded pilot process: Bolivia, Burkina Faso, Colombia, Croatia, Dominican Republic, Fiji, Mexico, Mongolia, Pakistan, Panama, Philippines and Serbia. It was agreed that each new participating State would observe one ongoing review and be reviewed by one new member and one original member of the programme. In May 2008, the pilot review group approved the terms of reference and a blueprint for country reports to guide their activities. The terms of reference contained clear timeframes and actions to be taken by States under review, experts and the secretariat for every stage of the review process. An update of the work carried out under the programme, a summary of the lessons learned in its operation to date and the full text of the terms of reference of the expanded programme are contained in document CAC/COSP/WG.1/2008/3.

V. Towards an effective review mechanism for the United Nations Convention against Transnational Organized Crime and the Protocols thereto

35. The broad scope and universal vocation of the Organized Crime Convention and its Protocols create enormous opportunities for impact in the fight against organized crime. In order to fully achieve that impact, it may be necessary to

⁹ A preliminary assessment of the pilot review programme for the Convention against Corruption is contained in a background paper prepared by the Secretariat submitted to the Conference at its second session (CAC/COSP/2008/9).

establish an effective mechanism, under the authority of the Conference, to review the implementation of the instruments, comprehensively assess progress and gaps in the capacity of States and provide information in order to take informed decisions on the provision of technical assistance, drawing upon the knowledge base built so far by the Conference of the Parties.

36. Five years after the entry into force of the Organized Crime Convention, the Conference is at the juncture of considering how to exercise fully its mandated function of reviewing of implementation. The Conference may wish to draw on the experiences of existing review mechanisms in considering the parameters of an efficient review mechanism for the Convention. It may, in particular, wish to draw inspiration from the experience of the Conference of the States Parties to the United Nations Convention against Corruption and consider how that experience could be put to good use in duly advancing the review of implementation of the Organized Crime Convention.
