



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

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Report on the meeting of experts on possible mechanisms to review implementation of the United Nations Convention against Transnational Organized Crime held in Vienna on 30 September 2009

I. Introduction

1. In its decision 4/1, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime recalled article 32 of the Convention,¹ pursuant to which the Conference has the responsibility to promote and review implementation of the Convention and is to agree upon mechanisms for achieving its objectives. Also in its decision 4/1, the Conference expressed concern at persisting gaps in the implementation of the Convention and its Protocols;² and, taking into account that the review of implementation of the Convention was an ongoing and gradual process, the Conference considered that it was necessary to explore options regarding an appropriate and effective mechanism to assist the Conference in the review of implementation of the Convention and the Protocols thereto.

2. In decision 4/1, the Conference requested the United Nations Office on Drugs and Crime to convene at least one open-ended intergovernmental meeting of experts in Vienna by September 2009, such meeting to present a report to the Conference at its fifth session on mechanisms, as appropriate, for reviewing implementation of the Convention and its Protocols.

3. Also in its decision 4/1, the Conference requested Member States to submit to the Secretariat their comments and views for the purpose of the deliberations of the above-mentioned meeting and requested the Secretariat to organize the views and comments received so as to facilitate such deliberations.

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

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



II. Organization of the meeting

A. Adoption of the agenda and organization of work

4. On 30 September 2009, the meeting adopted its provisional agenda, including the proposed organization of work (CTOC/COP/WG.1/2009/1), which read as follows:

1. Organizational matters:
 - (a) Opening of the meeting;
 - (b) Adoption of the agenda and organization of work.
2. Consideration of possible mechanisms to review implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.
3. Adoption of the report of the meeting.

B. Opening of the meeting

5. In her opening statement, the Chairperson explained the decision of the extended Bureau to shorten the duration of the meeting to one day, instead of the three days initially planned.

6. As the meeting would last only one day, it was agreed that the Chairperson would present at the end of the day an oral summary of the deliberations, which would be included as a summary of the Chair in a report to be prepared subsequently by the Secretariat reflecting procedural aspects of the meeting.

7. Referring to the compilation prepared by the Secretariat of the comments and views received from States in response to a note verbale sent in July 2009 (CTOC/COP/WG.1/2009/2), the Chairperson noted that a large proportion of the responding States agreed that a strong, vigorous review mechanism should be established. Recalling that many responses had indicated that the deliberations on such a mechanism should be informed by the discussions held in the context of the United Nations Convention against Corruption,³ the Chairperson drew attention to the specific features of the Organized Crime Convention, which provides in particular for a unique cooperation framework among its 150 States parties.

C. Attendance

8. The following States parties to the Convention were represented at the meeting: Afghanistan, Argentina, Australia, Austria, Belarus, Belgium, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Costa Rica, Croatia, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Guatemala, Hungary, Indonesia, Iraq, Israel, Italy, Jordan, Kazakhstan, Kenya, Kuwait, Lebanon, Malaysia, Mexico, Monaco, Montenegro, Namibia, Netherlands,

³ Ibid., vol. 2349, No. 42146.

Norway, Oman, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Saudi Arabia, Slovakia, South Africa, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Venezuela (Bolivarian Republic of) and Zimbabwe.

9. The European Community, a regional economic integration organization that is a party to the Convention, was represented at the meeting.

10. The following States signatories to the Convention were represented by observers: Andorra, Angola, Czech Republic, Iran (Islamic Republic of), Ireland, Japan, Pakistan, Republic of Korea and Yemen.

11. Palestine, an entity maintaining a permanent observer mission, was also represented by an observer.

12. The following United Nations bodies were represented by observers: United Nations Commission on International Trade Law and Office of the United Nations High Commissioner for Refugees.

13. The United Nations Interregional Crime and Justice Research Institute, an institute of the United Nations Crime Prevention and Criminal Justice Programme network, was represented by an observer.

14. The Sovereign Military Order of Malta, an entity maintaining a permanent observer office at Headquarters, was represented by an observer.

15. The following intergovernmental organizations were represented by observers: Asian-African Legal Consultative Organization, Council of Europe, Eurojust, International Centre for Migration Policy Development, International Organization for Migration, Organization for Security and Cooperation in Europe and Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

III. Summary of the Chair

A. Organization of the meeting

16. The meeting supported the decision taken by the extended Bureau to shorten the meeting to one day and took note of the dates of the subsequent meeting, which would be held in Vienna on 25 and 26 January 2010.

17. This arrangement would allow the experts to benefit from the lessons learned in the parallel negotiation process concerning a review mechanism for the Convention against Corruption, as the meeting in January would take place after the third session of the Conference of the States Parties to the United Nations Convention against Corruption, which would be held in Doha from 9 to 13 November 2009.

B. Importance and necessity of a review mechanism

18. The meeting generally favoured establishing a review mechanism to promote and strengthen the implementation of the Organized Crime Convention. Some speakers felt that no resources should be diverted from this foremost goal.

19. The meeting discussed the ongoing data collection efforts concerning the implementation of the Organized Crime Convention and its Protocols and recognized the need to have a complete picture of implementation and implementation problems. The comprehensive software provided was a welcome development in that direction, although entering data in a computer was not enough: there was a need to compare and contrast data, produce analytical work and review implementation on that basis.

20. The importance and necessity of a review mechanism in order to foster effective implementation of the instruments, diagnose problems and ensure that technical assistance truly met priority needs was widely acknowledged.

21. It was stated that a review mechanism should be a tool to promote (a) national policies for the implementation of the instrument reviewed; (b) technical assistance adapted to each instrument; and (c) international cooperation initiatives. In that respect, the importance of a regional approach to implementation was underscored. It was suggested that regional meetings could be utilized to study ideas on the review of different instruments.

C. Principles for the review mechanism

22. Several speakers recalled the principles that should underpin a review mechanism, namely that it should be transparent, efficient, non-intrusive, impartial, non-adversarial, non-punitive and flexible. In addition, it should not criticize or rank States or regions but rather contribute to problem-solving. It should furthermore respect the sovereignty of States and reflect the variety of legal systems.

23. Some speakers felt that the information submitted by States should remain confidential, while lessons learned and good practices should be shared with other parties. Some other speakers were in favour of publishing reports, including country reports, if agreed to.

D. Timing and workflow

24. Several speakers felt that decisions on the methodology of a review mechanism should not be taken in a hurry, in view of the complexities of reviewing such a broad set of legal instruments as the Organized Crime Convention and the three Protocols thereto.

25. Several speakers indicated that the outcome of the present meeting and the subsequent meeting to be held in January 2010 should lead to a decision by the Conference, at its fifth session, entrusting a working group with the development of terms of reference for the review mechanism.

E. Methods of review: single or multiple mechanisms

26. Several speakers favoured a gradual approach to the review of the four instruments. Not all provisions should be reviewed from the outset. The review should be organized in different phases, prioritizing which aspects of the Convention and its Protocols should be addressed first. It was suggested that each year a set number of States would be the object of review.

27. It was emphasized that each of the four legal instruments had specificities that might warrant different approaches. For instance, the role of civil society in the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, would differ from its role in the implementation of the Convention itself. It was also underlined that each Protocol was a specific instrument that was relatively autonomous and had its own membership. Not all the Protocols contained provisions falling exclusively within the ambit of criminal law, and specific technical qualifications would thus be required to review their implementation. It was noted that the Protocols were supplementary to the Organized Crime Convention and that the provisions of the Convention would apply *mutatis mutandis* to the Protocols unless specifically provided otherwise therein.

28. Most speakers favoured a single mechanism provided with sub-mechanisms, or sub-chapters, that could include specific components to reflect the specific aspects of each Protocol.

F. Relevance of other implementation processes

29. Many speakers underlined the interconnection and complementarity between possible review mechanisms for the Convention against Corruption and the Organized Crime Convention. One speaker saw no reason to separate the mechanisms under the two conventions and would favour a single mechanism. Several other speakers emphasized that there should be cross-fertilization between the two processes.

30. Many, however, warned against automatically transposing a review mechanism discussed in a corruption context to an organized crime framework, emphasizing the specificities of the Organized Crime Convention and its Protocols. They felt that the review mechanism should be tailored to the specific scope and objectives of the Organized Crime Convention.

31. The specificity of the Organized Crime Convention consisted in its comprehensiveness and its practical value. It was essential to gather information and form an understanding on the actual use of the Convention in investigations, prosecutions and convictions, or the reasons for not using it. Also, the strong focus of the Convention on international cooperation, including on a wide range of forms of serious crime not enumerated in the Convention or its Protocols, was underlined as one of the specific features that needed to be taken into account in a review mechanism.

32. Several speakers requested that experiences gained by other intergovernmental organizations in reviewing implementation of various instruments should be

analysed for the benefit of the Conference. A representative of the United Nations Office on Drugs and Crime mentioned the possibility of updating the note by the Secretariat on possible mechanisms to review implementation of the Organized Crime Convention and the Protocols thereto (CTOC/COP/2008/3). Some speakers stated that the experience of the review process launched by the Inter-American Drug Abuse Control Commission (CICAD) within the framework of the Organization of American States could, for instance, constitute a reference point.

IV. Adoption of the report of the meeting

33. As indicated in section II.B above, it was agreed that the duration of the meeting did not allow for the preparation and adoption of a report. Instead, a summary of the Chair was read out by the Chairperson and it was agreed that the summary would be included in a report to be prepared by the Secretariat reflecting the procedural aspects of the meeting.
