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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

Implementation of the United Nations Convention against Transnational Organized Crime

Analytical report of the Secretariat

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I. Introduction

A. Legislative background

1. By its resolution 55/25 of 15 November 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime (annex I) and two supplementary protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (annex II), and the Protocol against the Smuggling of Migrants by Land, Sea and Air (annex III).

2. In accordance with article 32, paragraphs 1 and 2, of the Convention, a Conference of the Parties to the Convention was established and the Secretary-General of the United Nations convened the inaugural session of the Conference of the Parties in Vienna from 28 June to 9 July 2004, less than one year following the entry into force of the Convention on 29 September 2003 pursuant to its article 38, paragraph 1.

3. In accordance with article 32, paragraphs 1 and 3, of the Convention, the Conference of the Parties is to agree upon mechanisms for achieving the objectives of improving the capacity of States parties to combat transnational organized crime and of promoting and reviewing the implementation of the Convention, focusing in particular on periodically reviewing the implementation of the Convention and making recommendations to improve the implementation of the Convention (art. 32, para. 3 (d) and (e)).

4. For the purpose of achieving those specific objectives, the Conference of the Parties is to 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 (art. 32, para. 4). Furthermore, the Convention requires States parties to provide the Conference with information on their programmes, plans and practices, as well as legislative and administrative measures to implement the Convention (art. 32, para. 5).

B. Mandate of the Conference of the Parties

5. At its first session, by decision 1/2, the Conference of the Parties decided to carry out the functions assigned to it in article 32 of the Convention by, inter alia, establishing a programme of work for reviewing periodically the implementation of the Convention (see CTOC/COP/2004/6, chap. I). In the same decision, the Conference of the Parties also decided that, for its second session, the programme of work would cover the following areas:

(a) Consideration of the basic adaptation of national legislation in accordance with the Convention;

(b) Starting with examination of criminalization legislation and difficulties encountered in implementation in accordance with article 34, paragraph 2, of the Convention;

(c) Enhancing international cooperation and developing technical assistance to overcome difficulties identified in the implementation of the Convention.

6. In the same decision, the Conference of the Parties requested the Secretariat to collect information from States parties and signatories to the Convention, in the context of the above programme of work, using for that purpose a questionnaire to be developed in accordance with guidance provided by the Conference at its first session; requested States parties to respond promptly to the questionnaire circulated by the Secretariat; invited signatories to provide the information requested; and requested the Secretariat to submit an analytical report based on the responses received to the Conference at its second session.

C. Reporting process

7. A draft questionnaire was brought to the attention of the Conference at its first session for review and comments (CTOC/COP/2004/L.1/Add.2). The final text of the questionnaire, as approved by the Conference, was disseminated to States parties and signatories to the Convention with a view to obtaining the required information in accordance with decision 1/2.

8. By means of information circulars, the Secretariat reminded States parties to the Convention of their obligation to provide information and invited signatories to do likewise by 29 July 2005.

9. As at 29 July 2005, the Secretariat had received responses from 64 Member States, of which 50 were parties to the Convention and 14 signatories.[1] As at the same date, the Convention had received 147 signatures and 107 ratifications, which means that 47 per cent of States parties to the Convention had responded to the questionnaire, many of them also providing copies of their relevant legislation.

10. Among the States parties to the Convention that responded to the questionnaire, the breakdown by regional group of States Members of the United Nations was as follows: Group of African States: 9; Group of Asian States: 7; Group of Eastern European States: 14; Group of Latin American and Caribbean States: 8; and Group of Western European and Other States: 12. Of the signatories that responded to the questionnaire, 4 belong to the Group of African States, 1 to the Group of Asian States, 2 to the Group of Eastern European States, 1 to the Group of Latin American and Caribbean States and 6 to the Group of Western European and Other States.

D. Scope and structure of the report

11. The present analytical report contains a summary and a first analysis of the relevant replies, which highlight the progress made towards meeting the requirements set out in the Convention and, at times, the difficulties that States are facing in implementing the provisions in question.

12. The structure of the report follows the guidance given by the Conference of the Parties in its decision 1/2. The report thus contains information on the basic adaptation of national legislation in relation to the requirements of the Convention and also addresses the following aspects: (a) examination of criminalization legislation and the difficulties encountered in implementation in accordance with article 34, paragraph 2, of the Convention; and (b) the enhancement of international

cooperation and the development of technical assistance to overcome those difficulties or other problems generally related to the implementation of the Convention.

13. The present report does not purport to be comprehensive or complete, as it reflects the situation in less than half of the States parties to the Convention.

II. Analysis of national legislation and measures reported in relation to the relevant provisions of the United Nations Convention against Transnational Organized Crime

A. Criminalization requirements

1. Criminalization of participation in an organized criminal group (art. 5)

14. Under article 5, States parties are required to criminalize participation in an organized criminal group. They may do so by establishing as a crime either the agreement between two or more persons to commit a crime (para. 1 (a) (i)) or the conduct of a person who takes part in the criminal activities of an organized criminal group or in activities that support the group in its criminal objectives (para. 1 (a) (ii)), or both of the above.

15. All reporting States confirmed that participation in an organized criminal group was criminalized in their domestic legislation, except for Iceland (not yet a party to the Convention) and Myanmar, which reported that new legislation in line with the Convention was under consideration.[2]

16. Ecuador indicated that its domestic legislation referred to the concept of "illicit association" defined as "an association constituted with the aim of harming property or persons". The constitution of such an association was by itself an offence, irrespective of the number of persons involved or the type of benefit sought.[3]

17. On the question of whether they criminalized the agreement to commit a serious offence (art. 5, para. 1 (a) (i)) or the conduct of taking an active part in criminal activities (art. 5, para. 1 (a) (ii)), most States (43) reported that both offences were established as crimes under their law. This seems to indicate that the offence of agreeing to commit a serious crime, inspired from the common law conspiracy model, has in fact been widely incorporated into national legislation across the board of legal traditions. Seven States (Azerbaijan, Belgium, Morocco, the Netherlands, New Zealand, Nigeria and Switzerland (signatory)) indicated that they had established the second type of offence (taking an active part in criminal activities of an organized criminal group), to the exclusion of the agreement offence. Five States (El Salvador, France, Mauritius, the Philippines and the United Kingdom of Great Britain and Northern Ireland (signatory)) reported that only the agreement to commit a serious crime for a material benefit was established as a crime, to the exclusion of the second offence.

18. Among those States which criminalized the agreement to commit a serious crime, 26[4] reported that the definition of that offence included, as allowed by article 5, the additional element of an act committed by one of the participants in

furtherance of the agreement or the involvement in an organized criminal group, while 23 States indicated that no additional element was required.

19. On the question of whether their legislation established as a crime the offence of organizing, directing, aiding, abetting, facilitating or counselling the commission of a serious crime involving an organized criminal group, most States confirmed that they complied with this requirement of the Convention, which is a crucial means of ensuring the prosecution of leaders of an organized criminal group. El Salvador, Iceland (signatory) and Myanmar indicated that they had not established such an offence. Ecuador noted that the provision of weapons and of premises to the criminal group were targeted under its legislation as specific offences.

2. Criminalization of the laundering of proceeds of crime (art. 6)

20. All reporting States, with the exception of Azerbaijan and Morocco, indicated that they had criminalized the laundering of proceeds of crime in accordance with article 6 of the Convention. Azerbaijan reported that a draft law on money-laundering was being developed. Morocco reported that its Penal Code was in the process of being revised and would include money-laundering among other new offences.

21. Article 6 requires that money-laundering offences be applicable to the "widest range of predicate offences", including offences provided for under articles 5 (participation in an organized criminal group), 8 (corruption) and 23 (obstruction of justice), offences provided for under the Protocols to which States are parties or are considering becoming parties, as well as all "serious crimes".

22. Most reporting States indicated that all the offences covered by the Convention were under their law predicate offences to money-laundering. The Czech Republic (not yet a party to the Convention) reported that predicate offences were all offences subject to a defined penalty threshold and that obstruction of justice did not meet the threshold requirement, thus not qualifying as a predicate offence to money-laundering. Ecuador indicated that money-laundering offences applied only to trafficking in drugs and that an upgrading of the legislation to combat money-laundering was currently under way. The legislation envisaged would take an "all-offences" approach to predicate offences for money-laundering. Iceland (signatory), Tunisia and Ukraine also reported that not all offences covered by the Convention were predicate offences in their national legislation.

23. Concerning offences covered by the two Protocols in force at the time of dissemination of the questionnaire, a number of States not yet parties to the Protocols (the Czech Republic, Iceland, Kuwait, Malaysia and Switzerland) indicated that these were not predicate offences to money-laundering. Some others (Belarus, Brazil, Ecuador, Mauritius, New Zealand, South Africa, Tunisia and Ukraine), although parties to the Protocols, indicated that the offences under the Protocols were not predicate offences to money-laundering, either because such offences had not yet been criminalized in their domestic law (Mauritius and South Africa) or for other unspecified reasons, such as possibly the fact that the list of predicate offences included in the money-laundering legislation had not yet been updated to include new offences established pursuant to the Protocols or that those offences did not meet a penalty threshold requirement. In this respect it should be noted that a generic definition of predicate offences as including all crimes would

have the advantage of ensuring that as soon as an offence was established under national legislation in compliance with the Convention and its Protocols, it would also be covered as a predicate offence to money-laundering. A large predicate basis removes difficulties in proving that particular proceeds are attributable to specific criminal activities when the person in question is involved in a broad range of criminal activities.

24. Article 6 further requires that predicate offences include offences committed both within and outside the jurisdiction of the State party in question. Among the reporting States, 25 confirmed that money-laundering offences were applicable to predicate offences committed abroad, under the requirement of dual criminality, that is, that the predicate offence should constitute a criminal offence in both the country in which it was committed and in the country exercising its jurisdiction over the money-laundering offence.

25. Forty-nine States[5] reported their compliance with the requirement to criminalize the acquisition, possession and use of property, knowing that such property is the proceeds of crime, which under article 6 is "subject to the basic concepts of [each State Party's] legal system". Mexico indicated that acquisition of proceeds was established as a crime, with the mental element of knowledge as provided for under article 6 and an additional element of purpose (purpose of concealing the origin, localization and destination of property). Possession and use of proceeds of crime, however, were not yet criminalized. Mexico indicated that criminalization of possession and use, with the same mental elements as acquisition, was being addressed in a project of law. Portugal reported that the offence of acquisition, possession and use of proceeds of crime had been incorporated in domestic law in 1993 but had been deleted from it in 2004.

26. Regarding criminalization of ancillary offences to money-laundering—participation in, association with and conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of a money-laundering offence—which is also under article 6 "subject to the basic concepts of [each State Party's] legal system", all reporting States, with the exception of Azerbaijan, confirmed that these activities were established as criminal offences under their domestic law. Germany (signatory) indicated in relation to conspiracy that the agreement to commit a crime was only punishable if the crime agreed upon was a serious offence liable to at least one year's imprisonment. Mexico noted that incitement, attempt and complicity were covered under its general criminal law provisions. Participation in, association with, aiding, abetting, facilitating and counselling of money-laundering offences were specifically criminalized in the money-laundering legislation when carried out with fraudulent intent by employees of financial institutions. Penalties provided for were the same as for money-laundering.

27. Article 6, paragraph 2 (e), allows States parties, when required by the fundamental principles of their domestic law, to provide that an offender may not be prosecuted and punished for both the predicate offence and the laundering of proceeds from that offence. Four States (Austria, the Czech Republic (signatory), Germany (signatory) and Sweden) reported that they had availed themselves of that possibility. All four indicated, however, that they would not refuse extradition, mutual legal assistance or cooperation for the purposes of confiscation solely on the

ground that the relevant request was based on a money-laundering offence and not on the predicate offence committed by the same person.

3. Criminalization of corruption (art. 8)

28. All reporting States, with the exception of Azerbaijan, indicated that their domestic legislation criminalized active and passive bribery of a public official, as well as participation as an accomplice in bribery offences, as required by article 8.

29. El Salvador and Peru noted that their legislation had introduced a distinction—not made by article 8—between bribery aiming at the commission of an act that was due as opposed to bribery aiming at the commission of an act in violation of the public official's duties (e.g. facilitation of trafficking in human beings) indicating that the penalty provided for was increased in the second case. Involvement of members of the judiciary in bribery offences also constituted an aggravating circumstance attracting more severe penalties.

30. As regards criminalization of participation as an accomplice in bribery offences, several States indicated that this was achieved through provisions in their criminal code of general application establishing liability for aiding, abetting or participating as an accomplice in offences.

31. Although not specifically addressed by the questionnaire, one point may be worth mentioning as it has been identified as a recurrent weakness in legislation implementing other anti-corruption provisions:[6] article 8 requires States parties to cover under their active bribery offences not only the actual giving of an undue advantage to a public official, but also the promise or offering of such advantage, therefore covering situations where the bribe has not actually been transferred to the public official.

32. It should also be noted that the United Nations Convention against Corruption (General Assembly resolution 58/4, annex) includes in its article 15 provisions identical to those of article 8 of the Organized Crime Convention on active and passive bribery of public officials, but also extends the range of mandatory corruption offences to active bribery of foreign public officials and officials of public international organizations, as well as to the embezzlement, misappropriation and other diversion of property by a public official. States reviewing their legislation for compliance with article 8 should therefore consider taking into account the more comprehensive provisions of the Convention against Corruption.

4. Criminalization of obstruction of justice (art. 23)

33. Article 23 requires States parties to establish as a criminal offence the use both of corrupt means, such as bribery, and of coercive means, such as threats of violence, to induce false testimony or to interfere with the giving of testimony or the production of evidence, as well as the use of coercive means to interfere with the exercise of official duties by a justice or law enforcement official.

34. Most responding States reported that obstruction of justice was at least to some extent established as a criminal offence under their domestic legislation. The Czech Republic (signatory), Ecuador and the United Republic of Tanzania (signatory) indicated that their provisions covered the requirements of the Convention only in part as the use of force to induce false testimony or otherwise

interfere with justice was not provided for. In Portugal, the use of threats, physical violence and intimidation to obtain false testimony was criminalized but not the use of bribery for the same purpose.

35. While under article 23 the offence is constituted whether or not false testimony was actually given or whether or not there was an actual interference with the course of justice, legislation in Peru and South Africa seems to require effective concealment of evidence or obstruction of justice as an element of the offence.

36. Croatia, El Salvador and Iceland (signatory) reported that their domestic legislation did not comply with the requirements of article 23 without providing further details.

37. States parties are required to apply the offence of obstruction of justice to all proceedings related to offences covered by the Convention, including offences established pursuant to the supplementary Protocols. Most responding States indicated that under their law article 23 was applicable in the context of proceedings relating to the commission of any offence, as the purpose of obstructing justice in relation to a specific offence was not a required element of the offence of obstruction of justice.

5. Jurisdiction (art. 15)

38. States parties are required by article 15 to establish their jurisdiction where the offence involved was committed in their territory or aboard vessels flying their flag or aircraft registered under their laws.

39. All reporting States confirmed their capacity to assert such jurisdiction, which is mandatory under the Convention and in practice virtually universally established. The only exceptions mentioned concerned diplomatic and other immunities granted under generally accepted rules of international law as well as special arrangements applying to foreign troops stationed in a State's territory.

40. While the establishment of territorial jurisdiction is not expected to be problematic, States should ensure that such territorial jurisdiction encompasses both subjective and objective principles of territoriality, thus covering situations where the act was commenced in the territory (and completed elsewhere) as well as situations where it was completed in the territory. This is particularly relevant in relation to transnational offences where the constituent elements of the crime are frequently committed in more than one jurisdiction.

41. In addition to mandatory territorial jurisdiction, the Convention provides an option to States parties of establishing extraterritorial jurisdiction on a number of grounds.

42. The first ground relates to offences committed extraterritorially against a national of the State party. Thirty-nine States indicated that they were in a position to assert their jurisdiction on such a ground. Thirteen States (Barbados (signatory), Canada, the Czech Republic (signatory), Ecuador, Egypt, Indonesia (signatory), Kuwait (signatory), Malta, Myanmar, the Netherlands, New Zealand, the Philippines and Sweden) indicated that they were not.

43. The second ground relates to offences committed abroad by nationals or stateless persons having their habitual residence in the State party's territory. Of all

the reporting States, only Barbados (signatory), Canada, Malta and the Philippines reported that they had not established jurisdiction on the basis of nationality. A number of States emphasized that dual criminality was required to establish such jurisdiction. France indicated that establishment of jurisdiction on this ground would not apply to stateless residents. In Peru, jurisdiction could be established when the suspected offender entered Peruvian territory after committing the crime abroad. Malaysia indicated that extraterritorial jurisdiction did not apply to all offences under the Convention, but only to corruption and money-laundering offences.

44. The third optional ground for the establishment of extraterritorial jurisdiction is based on the so-called "effects" principle and concerns offences committed outside a State party's territory with a view to the commission of an offence within that territory. Offences to which such jurisdiction may apply are offences of participation in an organized criminal group (established pursuant to art. 5, para. 1) committed abroad with a view to committing a serious crime on the party's territory and money-laundering ancillary offences (established pursuant to art. 6, para. 1 (b) (ii)) with a view to committing a money-laundering offence in the territory.

45. Forty-six States reported that they had established jurisdiction covering offences of participation in an organized criminal group in the described circumstances. Barbados (signatory), Brazil, Canada, the Czech Republic (signatory), Estonia, Indonesia (signatory), Malta, the Netherlands and the Philippines reported that they had not. Concerning ancillary money-laundering offences, 39 States reported that they had established jurisdiction covering such offences in the described circumstances, while Barbados, Canada, Ecuador, Estonia, Indonesia, Malta, the Netherlands, New Zealand, the Philippines, Spain and Sweden reported they had not. France, Myanmar and the Netherlands indicated that assertion of jurisdiction would depend on the offender's nationality. In Peru it was required that the offence intended to be committed on Peruvian territory represent a threat to public security and peace.

46. While, as seen above, establishment of jurisdiction over offences committed abroad by nationals is in principle optional, there is a situation described in article 15, paragraph 3, where such establishment becomes mandatory, namely, when a national has committed an offence abroad and a State party does not extradite him/her solely on the ground that he/she is one of its nationals. Establishment of jurisdiction by the State of nationality is required in such a case to give effect to paragraph 10 of article 16 (extradition), which obliges a State party when it refuses extradition on the ground of nationality to "submit the case without undue delay to its competent authorities for the purpose of prosecution" (the principle of *aut dedere aut judicare*).

47. Fifty States confirmed that they could establish jurisdiction in such a case, some of them noting that they had in any event no bar on the extradition of nationals. The States that had reported in answer to the question on optional establishment of jurisdiction over nationals that they had not established jurisdiction over offences committed abroad by nationals (Barbados (signatory), Canada, Malta and the Philippines) confirmed that position, stating, however, that nationality was in their legal system no obstacle to extradition. Conversely, it appears that all States that do not extradite nationals are able to assert jurisdiction pursuant to article 15,

paragraph 3, in accordance with the requirement of *aut dedere aut judicare* (see paras. 75-77 below).

48. If extradition is refused on grounds other than nationality, there is no obligation to establish jurisdiction. Such a case constitutes an optional ground for the establishment of extraterritorial jurisdiction. Most responding States reported that jurisdiction could be asserted when an offender was not extradited, in cases such as lack of guarantee of due process, fear of discrimination or penalty contrary to the public order of the requested State. Some States reported that jurisdiction could be established only to cover serious crimes: crimes liable to more than five years' imprisonment (France), the crime of genocide, war crimes, treason (South Africa), terrorism (Mexico under a draft law) and crimes against state security (Morocco).

49. On the question of whether article 15 would also apply to offences covered by the two supplementary Protocols in force at the time of distribution of the questionnaire, most responding States reported that rules of jurisdiction were of a general nature, thus applying to all offences established under domestic legislation, including those established pursuant to the Protocols. Barbados, the Czech Republic and the United Republic of Tanzania (not yet parties to the Protocols or to the Convention) reported that article 15 was not yet applicable to offences under the Protocols. Referring to its reply to the question on predicate offences to money-laundering (see para. 23 above) Mauritius reiterated that some of the offences established under the Protocols had not yet been criminalized under its domestic law.

6. Liability of legal persons (art. 10)

50. Article 10 requires that States parties adopt such measures as may be necessary to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences under articles 5 (participation in an organized criminal group), 6 (money-laundering), 8 (corruption) and 23 (obstruction of justice), as well as for the offences established pursuant to the supplementary protocols. The obligation to provide for the liability of legal entities is mandatory, to the extent that this is consistent with each State's legal principles. There is no obligation however to establish criminal liability. Civil or administrative forms of liability are sufficient to meet the requirement. States parties have an obligation to provide for effective, proportionate and dissuasive sanctions.

51. Of the responding States, four parties (Belarus, Latvia, Myanmar and Poland) and one signatory (the Czech Republic) reported that liability of legal persons was not established under their domestic law. The Czech Republic and Latvia indicated that adequate legislation had not yet been adopted on the matter. Myanmar reported that legislation addressing liability of legal persons for corruption offences was contemplated. It should be noted that Belarus had addressed the issue of liability of legal persons in a reservation formulated when becoming a party to the Convention, to the effect that it would implement article 10 to the extent that this did not contravene national legislation. Poland indicated that although its legislation did not establish liability of legal persons, a legal person could be ordered by a court to return a financial benefit obtained by an offender acting on behalf of the legal person. In addition to those five States, Mexico reported that, while liability of legal

persons was established under its domestic law, it was in fact inoperative for lack of procedures to give effect to it.

52. Seven States parties (Austria, Azerbaijan, Brazil, Ecuador, Peru, the Russian Federation and Uzbekistan) and three signatories (Cambodia, Germany and Greece) indicated that they had not established criminal liability of legal persons. However, either civil (Uzbekistan) or administrative (Germany) or both civil and administrative (Austria, Azerbaijan, Brazil, Cambodia, Ecuador, Greece, Peru and the Russian Federation) forms of liability had been established. It should be noted that upon becoming a party to the Convention Ecuador had entered a reservation to the effect that criminal liability of legal persons was not embodied in Ecuadorian legislation and that the reservation would be withdrawn when legislation progressed in that area. Uzbekistan had also declared that its legislation did not provide for criminal or administrative liability in respect of legal persons.

53. Thirty-seven States[7] reported having established criminal liability of legal persons, either as the only form of liability (nine States) or together with civil or administrative forms of liability (or both).

54. As regards sanctions, fines were most frequently reported either as criminal sanctions (e.g. Afghanistan, Cyprus, Spain, Sweden and Switzerland (signatory) or as civil or administrative sanctions (e.g. Greece and Germany (both signatories)). A number of States reported that in the framework of their civil liability legal persons could be sentenced to the payment of damages and compensation for losses (China (Mainland Region), Estonia, Greece, Mauritius and South Africa). Other sanctions reported included confiscation of assets and of instruments used in the commission of the offence (Estonia and France), dissolution of the legal person (Croatia, France, Mexico, Peru, Portugal and Spain), prohibition to carry out certain activities on a temporary or definitive basis (France, Mauritius, Peru and Spain), withdrawal of licences (Greece and Tunisia), closure of premises used in the commission of the offence (France and Peru), prohibition to conclude contracts with the State and barring from public procurement (France and South Africa), barring from using cheques (France), placement under judicial scrutiny for a period of five years (France) and publication of the sanction imposed in the media (France and Portugal). Three States (China, Cyprus and Mauritius) indicated among the sanctions available the deprivation of liberty for officers of the legal person, which could be understood in the context of paragraph 3 of article 10, which indicates that liability of legal persons shall be without prejudice to the criminal liability of natural persons who have committed the offences.

55. Regarding the scope of application of article 10, responses seem to indicate that some States contemplated application of the liability of legal persons mainly or exclusively in the context of bribery and money-laundering offences (implied in replies from El Salvador, Estonia, the Macao Special Administrative Region of China and Turkey). Responding to a question on application of article 10 in the context of offences established under the Protocols, most responding States indicated that legal persons could be liable to any offence established under national legislation.

7. Confiscation and seizure (art. 12)

56. Most responding States reported that their domestic legislation enabled, as required by article 12, the confiscation of proceeds of crime derived from offences covered by the Convention (para. 1 (a)), property, equipment or other instrumentalities used in or destined for use in such offences (para. 1 (b)), proceeds of crime transformed or converted into other property (para. 3), proceeds of crime intermingled with legitimately obtained property (para. 4), as well as income or other benefits derived from any of the above-mentioned proceeds or property (para. 5).

57. Ecuador indicated that confiscation was only available in relation to proceeds derived from drug trafficking offences and acknowledged the need for upgrading of its legislation to cover the broad range of crimes provided for under the Convention. It should be mentioned at this point that, on the question of whether confiscation was also available for proceeds derived from offences established under the Protocols, responding States generally reported that rules on confiscation were general rules applicable with respect to the proceeds of any criminal offence.[8] It should be noted in this respect that an "all-crimes" approach facilitates the provision of international cooperation as regards search, seizure and confiscation as well as the establishment of evidence.

58. Barbados (signatory) and New Zealand reported that their legislation did not enable the confiscation of property, equipment or other instrumentalities used in or destined for use in offences.

59. Brazil and Mexico indicated that proceeds of crime intermingled with legitimately obtained property could not be confiscated. Mexico explained in this connection that its confiscation system did not allow for value-based confiscation. A reform of the code of penal procedure was in process, however, and would remedy the situation. Value-based confiscation allows the confiscation of property that represents the assessed value of gains derived from the offence. It is provided for under paragraph 1 (a) as an alternative to the confiscation of proceeds of crime ("or property the value of which corresponds to that of such proceeds"). This may prove useful in various circumstances as for instance when the tainted proceeds to be confiscated cannot be located, have been removed from the jurisdiction or have been rendered worthless. A form of value-based confiscation must in any event be made available to deal with proceeds intermingled with property acquired from legitimate sources.

60. Azerbaijan, the Czech Republic (signatory) and the Russian Federation stated that income or other benefits could not be confiscated in the same manner as the proceeds or property from which they derived. It should be noted in this regard that proceeds and property liable to confiscation will frequently be deployed so as to produce income and other benefits (e.g. illicit profits placed on deposit or invested in shares on which dividends are paid). While it may be argued that these benefits derive from lawful transactions, paragraph 5 of article 12 aims at ensuring that offenders do not keep the benefit of their use of illicit proceeds.

61. On the question of whether their domestic legislation enabled, for the purpose of eventual confiscation, the identification, tracing, freezing or seizure of items liable to confiscation, all responding States reported that their legislation was in compliance with this requirement, except for Ecuador and Mexico, which reiterated, mutatis mutandis, the position indicated on the question of confiscation (see

paras. 57 and 59 above). The Czech Republic (signatory) provided a detailed description of the involvement of police and judicial authorities in the detection, tracing and freezing of proceeds of crime.

62. All responding States confirmed that their domestic legislation permitted access by their competent authorities to bank, financial or commercial records for the investigation and prosecution of offences covered by the Convention, as well as for securing confiscation. The power for courts and other competent authorities to secure production or to order the seizure of bank, financial or commercial records must, under article 12, be available not only in the context of domestic confiscation but also in the context of confiscation pursuant to a request under article 13, on international confiscation. Such power implies that appropriate exceptions are made to the principle of bank secrecy. It should be noted that, responding to a question on bank secrecy in the context of article 18 (mutual legal assistance), a few States indicated that bank secrecy could be a ground for declining the granting of mutual legal assistance (see paras. 91 and 92 below). That position is likely also to have an impact on compliance with obligations under article 12 as far as they extend to international confiscation.

63. Paragraph 7 of article 12 draws the attention of States parties to the reversal of the burden of proof in respect of the lawful origin of proceeds, an approach that eases the difficulty for law enforcement authorities to prove that assets are derived from crime by establishing a presumption to that effect and leaving it to the offender to rebut the presumption. Paragraph 7 imposes no obligation on parties and emphasizes that any application of this measure must be consistent with the principles of each State party's domestic law and with the nature of its judicial and other proceedings. Of the responding States, 29[9] reported that their legislation permitted such shifting of the burden of proof, while 22[10] reported that this was not permitted under their domestic law.

64. It should be mentioned finally that a few States referred in their replies to the punitive nature of confiscation. France indicated that confiscation was available as a complementary penalty for certain offences established under the Convention and the Protocols, such as the offence of trafficking in persons. Latvia noted that under its domestic law confiscation was a penalty irrespective of the licit or illicit origin of property. On the contrary, Uzbekistan, in a declaration formulated when becoming a party to the Convention, had stated that confiscation of property as a form of punishment had been removed from its Criminal Code.

B. International cooperation requirements

1. Extradition (art. 16)

65. Article 16 recognizes the existence of distinct traditions in the field of extradition law and practice. States parties may make extradition conditional on the existence of a treaty relationship between the requesting and requested States or may make provision in their domestic law to permit extradition even in the absence of an applicable treaty. Paragraph 4 of article 16 provides that parties that do make extradition conditional on the existence of a treaty have an option to consider the Convention as the legal basis for extradition with other parties to the Convention.

66. Of the responding States, 16[11] indicated that they required a treaty basis to grant extradition. Five of them (Angola (signatory), Jamaica, Malaysia,[12] Namibia and Spain) indicated that they would not consider the Convention the legal basis for extradition, while all the others reported that they would consider the Convention as meeting their requirement for a treaty basis when responding to extradition requests from other States parties.[13]

67. Sixteen States[14] indicated that they did not make the provision of extradition conditional on the existence of a treaty.[15] Twenty-five States that either reported that they did not make extradition conditional on the existence of a treaty relationship or did not clearly state whether they required a treaty basis indicated nonetheless that they would take the Convention as a legal basis to grant extradition. Thus a total of 36 responding States declared that they would consider the Convention a basis to grant extradition. It should be noted that those States which require a treaty basis and do not take the Convention as the legal basis for extradition have an obligation under paragraph 5 to seek to conclude with other parties treaties on extradition in order to strengthen international cooperation in criminal matters as a stated purpose of the Convention.

68. Among the parties to the Convention that responded to the questionnaire, Honduras and Myanmar reported extensive restrictions on the provision of extradition: Honduras indicated that extradition was not provided for under its legal system, while Myanmar[16] reported that extradition was not granted on the basis of extradition treaties nor on the basis of a domestic extradition law, but was afforded on the basis of reciprocity on a case-by-case basis.

69. Paragraph 3 of article 16 establishes an obligation for States parties to consider the offences to which article 16 applies extraditable offences under any treaty already existing between them and to include them in every treaty to be concluded in the future. An obligation to the same effect—to ensure that offences under article 16 are treated as extraditable offences between parties—also applies under paragraph 6 to parties whose legislation permits extradition without a treaty.

70. A number of reporting States indicated in that regard that extradition treaties concluded by them or domestic extradition law (or both, in cases where both define extraditable offences) did not adopt the approach of specifically listing offences that were considered extraditable but defined them in terms of severity of punishment. This is the approach recommended in article 2 of the Model Treaty on Extradition adopted by the General Assembly in its resolution 45/116 of 14 December 1990. Given the nature of the offences covered by the Convention and taking into account various provisions[17] designed to ensure that they attract appropriately severe sanctions, it can be assumed that the offences required to be considered extraditable offences under article 16 will be covered under the “threshold-of-penalty” approach.

71. On a related matter, paragraph 7 of article 16 provides that extradition shall be subject to the conditions provided for by the domestic law of the requested State party or by applicable extradition treaties, including, inter alia, conditions related to the minimum penalty requirement. Many responding States[18] indicated that extradition could be granted for offences punishable by imprisonment or other deprivation of liberty of not less than 12 months or a more severe penalty. Other thresholds of punishment were also reported by Tunisia (two months) and Romania (two years). A period of at least four months to be served was further identified as

the relevant threshold where extradition was requested for the enforcement of a sentence (Austria, Estonia, Latvia, Sweden and the United Kingdom (signatory)). Other options in the latter case were reported by China (Mainland Region), Egypt, Namibia (six months) and Romania (one year). A number of States made reference to provisions of their domestic legislation enabling accessory extradition and surrender of a person sought for lesser offences (China (Mainland Region), Egypt, Latvia and Sweden).

72. Article 16, when defining in paragraph 1 its scope of application with respect to offences covered under the Convention, makes provision for the principle of dual criminality, that is, the requirement that the offence for which extradition is sought be punishable under the domestic law of both the requesting and the requested parties.[19] All responding States, with the exception of Ecuador, confirmed that they required dual criminality for the granting of an extradition request. A number of member States of the European Union referred to exceptions to the dual criminality requirement in the area of application of the European arrest warrant. Romania indicated that new domestic legislation had introduced some amount of flexibility, as it provided that dual criminality would not be required to grant extradition if so stipulated under an international treaty to which Romania was a party.

73. Besides refusal on the ground of absence of dual criminality, article 16 provides that grounds upon which the requested State party may refuse extradition are defined by the domestic law of that party or by applicable extradition treaties. Responses received provided an overview of such grounds for refusal, which may be either mandatory or optional, under the relevant legislation or treaties. They included reference to political offences;[20] crimes against security, public order or other essential interest;[21] conflict with general principles of the law of the requested State;[22] a discrimination clause;[23] military offences;[24] *ne bis in idem*/double jeopardy;[25] amnesty, statute of limitation or other immunity from prosecution;[26] jurisdiction of the requested State;[27] extraterritoriality;[28] pending prosecution or proceedings (at least until completion of such proceedings) in the requested State;[29] serving a sentence at least until after expiration of the sentence;[30] humanitarian considerations;[31] anticipated torture or inhuman or degrading treatment or punishment in the requesting State;[32] death penalty, especially in case of lack of assurances of non-execution;[33] political asylum for the person sought;[34] lack of fair trial assurances in the requesting State;[35] and jurisdiction immunity in accordance with applicable international agreements.[36] Some countries mentioned that grounds for refusing extradition were specified in applicable bilateral or multilateral extradition treaties (Belarus, the Czech Republic (signatory), Ukraine and the United States of America (signatory)) or regional instruments, such as the European Convention on Extradition[37] (the Netherlands and Turkey) or European Union framework decision 2002/584/JHA of 13 June 2002 on the European arrest warrant (Estonia and Malta).

74. Paragraph 15 of article 16 addresses the issue of the fiscal offence as a ground for refusal by providing that States parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters. Thirty-three responding States reported that their domestic legal framework permitted extradition for offences involving fiscal matters, while six States[38] indicated that extradition was not permitted in such cases.

75. The issue of the refusal of extradition on the ground of nationality is addressed in paragraph 10 of article 16, which reflects the principle of *aut dedere aut judicare*, as well as in paragraphs 11 and 12, on, respectively, conditional surrender of nationals and enforcement of sentences imposed on nationals by a requesting State.

76. Twenty-two[39] responding States reported that their domestic legal framework did not permit the extradition of nationals, some of them emphasizing that the prohibition of extradition of nationals was enshrined in their constitution. Fifteen States[40] indicated that they were able to extradite their nationals. Some other States provided that the extradition of nationals was restricted to certain circumstances: a number of European States[41] indicated that their nationals could only be extradited to other European Union member States under the European arrest warrant mechanism. Latvia and Romania referred to the requirement for adequate human rights safeguards from the requesting State as well as to the existence of a treaty relationship under which the extradition of nationals was required.

77. Paragraph 10 of article 16 requires a State party that has denied extradition of a person on the ground of nationality to submit the case to its competent authorities for the purpose of prosecution. All of the responding States that do not extradite their nationals or that set restrictive conditions to the extradition of nationals reported that they were able to establish their jurisdiction on offences committed by their nationals abroad, pursuant to paragraph 3 of article 15 (see also comments in para. 47 above) and to paragraph 10 of article 16, in accordance with the principle of *aut dedere aut judicare*.

78. Under paragraph 10, the obligation for a State that has denied extradition of a person on the ground of nationality to submit the case to its competent authorities is triggered by a request to that effect from the party seeking extradition. A number of States provided information on the procedure they would use to effect such a request: Switzerland (signatory), for instance, indicated that it proceeded through a delegation of penal prosecution to the State that had refused extradition. France and Morocco would under their respective law on penal procedure formulate an official denunciation. Belgium indicated that its domestic law did not provide for any specific procedure but that there was no obstacle to the formulation of such a request, which indeed was provided for under various treaties to which Belgium was a party. Many reporting States also confirmed that they would afford assistance to a State that had refused extradition in order to ensure that effective prosecutorial action could be carried out. Such assistance would follow the procedural regime of mutual legal assistance applying in particular to the provision of evidence or would take the form of a transfer of criminal proceedings. It should be noted in this respect that article 21 encourages States parties to consider transferring to one another proceedings for the prosecution of an offence in cases where such transfer is considered to be in the interests of the proper administration of justice.

79. Paragraph 11 of article 16 provides States that cannot extradite their nationals with another alternative: they may temporarily surrender their national to the State requesting extradition for the sole purpose of conducting the trial. The person would thereafter be returned to his/her State of nationality to serve the sentence imposed as a result of the trial or proceedings for which extradition was sought. Nineteen responding States reported that conditional surrender was available in their country, a number of them indicating that the mechanism was provided for under various bilateral treaties to which they were parties. Some European States indicated

that the provisional surrender of nationals was only possible in the framework of the European arrest warrant. Sixteen States indicated that conditional surrender was not available in their country.

80. Paragraph 12 further addresses the situation where a State party has denied the extradition of one of its nationals. When extradition is sought for the purpose of enforcing a sentence, a State party that denies extradition is required, to the extent permitted by its domestic law and upon application of the requesting State party, to consider enforcing the sentence imposed by the requesting party. Of the responding States, 24 indicated that provisions of their code of criminal procedure or bilateral or international treaties to which they were parties enabled them to recognize and enforce foreign criminal judgements. Fourteen States indicated that they were not able to enforce on their nationals sentences imposed abroad.

81. Paragraph 8 of article 16 provides the obligation for parties, subject to their domestic law, to endeavour to expedite extradition procedures. On the question of whether they were able in certain cases to expedite extradition, 34 States indicated that a summary or simplified procedure was available when the individual concerned did not intend to contest the extradition. Some provided information on guarantees of the rights of the defendant provided for under their law: the individual had to be fully informed of his/her rights and aware of the consequences and to express consent in writing. Some European States reported that a simplified procedure was available between the member States of the European Union. Eleven States[42] indicated that no simplified extradition procedure was available in their country.

82. As regards simplification of evidentiary requirements also required under paragraph 8, subject to (each State party's) domestic law, while 19 States indicated that their domestic legislative framework did not provide for specific evidentiary requirements, 27 reported that the granting of an extradition request was subject to evidentiary requirements. A number of them[43] referred specifically to the need for prima facie evidence to support the request. The requirement to provide the courts of the requested State with adequate evidence of the guilt of the accused before extradition can take place has proved burdensome, in particular to countries with a civil law tradition seeking assistance from common law countries. The Convention therefore encourages States parties to simplify such requirements.

83. On the question of whether they were able to apply article 16 of the Convention in the case of offences covered by the two Protocols in force at the time of dissemination of the questionnaire, a number of States not yet parties to the Convention and/or to the Protocols (Afghanistan, Barbados (signatory), the Czech Republic (signatory) and Indonesia (signatory)) but also some States parties to the Convention as well as to the Protocols (Mauritius, Namibia, South Africa and Tunisia) indicated that offences established under the Protocols were not yet criminalized in their domestic law and therefore that the dual criminality required for extradition to be granted would not be met. The same comments were made, mutatis mutandis, with respect to the granting of mutual legal assistance requests.

2. Mutual legal assistance (art. 18)

84. Article 18 requires States parties to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offences covered by the Convention.

85. Most of the responding States (34) reported having in place domestic legislation on mutual legal assistance.[44] All of the responding States indicated that they were parties to bilateral or in some cases multilateral treaties and arrangements on mutual legal assistance. Many also reported that reciprocity or comity was a basis on which mutual legal assistance could be granted.

86. Paragraph 7 of article 18 provides that a set of detailed provisions included in paragraphs 9-29 apply in the absence of another treaty relationship between the parties concerned. Those provisions may also apply between parties bound by a treaty of mutual legal assistance in lieu thereof, if they so decide and in particular if such application facilitates cooperation. These provisions deal with matters such as grounds for refusal of assistance, modalities for the transfer of detainees to provide evidence, channels of communication of requests, form and contents of requests and limitations on the use of information provided.

87. Most of the responding States confirmed that they would be able to apply the provisions of article 18 of the Convention, including paragraphs 9-29, in order to provide mutual legal assistance to parties to the Convention with which they were not bound by a mutual legal assistance treaty. Seven States[45] indicated that they would not be able to do so, however. Those Parties which are not in a position to afford mutual legal assistance to other parties with which they have not concluded a mutual legal assistance treaty will need to ensure that the gap is remedied, as the Convention is mandatory on this point. If their legal system does not permit direct application of the Convention's provisions, they may need to adopt enabling legislation to ensure that, in the absence of a mutual legal assistance treaty, paragraphs 9-29 apply to requests made under the Convention.

88. Article 18, paragraph 3, lists the purposes for which mutual legal assistance may be requested. It constitutes a basic minimum list and does not exclude other types of assistance that are not contrary to the domestic law of the requested State. Most of the responding States reported being able to provide all types of assistance listed in paragraph 3. Namibia, however, indicated that it was not in a position to provide information, evidentiary items and expert evaluations (para. 3 (e)) nor to provide originals or certified copies of relevant documents and records, including government, bank, financial, corporate and business records (para. 3 (f)).[46] Azerbaijan and China (both the Mainland Region and the Macao Special Administrative Region) indicated that they would not be able to facilitate the voluntary appearance of persons in a requesting State party (para. 3 (h)). This type of assistance may indeed involve complex situations where a person serving a sentence in the requested State is required as a witness in the requesting State. Parties should nevertheless ensure that provision is made under their domestic law and practice to enable them to afford all the types of assistance enumerated in paragraph 3.

89. An additional and less traditional type of assistance is dealt with under paragraph 18 of article 18. States parties are required, subject to the fundamental principles of their domestic law, to permit the hearing of individuals present in their

territory and whose testimony or expert evaluation is required in the requesting State to take place by video conference. While 22 of the responding States reported that they could permit hearing by video conference in accordance with paragraph 18, 11[47] indicated that they were not in a position to do so.

90. Responding States further provided an overview of the kind of information that their legal framework (domestic legislation and/or applicable bilateral or multilateral treaties) required for inclusion in mutual legal assistance requests. Most States reported that, in accordance with paragraph 15 of article 18, the minimum information requirements included the identification of the authority requesting assistance, the type and nature of the assistance requested, the description and legal classification of the relevant facts, as well as the purpose of the assistance sought in conjunction with the subject and nature of the proceedings in the requesting State to which the request related. References to confidentiality assurances, where necessary, and time limits for the provision of assistance were also reported. Moreover, many States pointed out that the specification of any additional information to be included in a mutual legal assistance request was subject to the type of assistance sought.

91. Paragraph 8 of article 18 deals with the refusal of mutual legal assistance on the ground of bank secrecy. This is of particular relevance to the provision of bank and financial records and to the identification and tracing of proceeds of crime for evidentiary purposes under article 18, paragraphs 3 (f) and 3 (g), respectively. It is also crucial for the provision of assistance pursuant to article 13, on international cooperation for purposes of confiscation, to which the provisions of article 18 are applicable mutatis mutandis.[48]

92. Of the responding States, most reported that bank secrecy could not be raised to oppose a request by judicial or other competent authorities and was not by itself an obstacle to the provision of assistance. Algeria, Belarus and El Salvador, however, indicated that bank secrecy was a ground for refusal of assistance under their domestic legal framework. As paragraph 8 includes an unqualified prohibition on denial of mutual legal assistance on the ground of bank secrecy, States parties whose domestic legislation currently permits such ground for refusal should enact amending legislation to remedy this. Mutual legal assistance treaties that provide for refusal on the ground of bank secrecy will normally be automatically invalidated between parties to the Convention. Parties that do not provide for the direct application of treaties should make sure to adopt appropriate domestic legislation to that effect.

93. Paragraph 9 of article 18 provides that the absence of dual criminality may be a ground for refusing the provision of mutual legal assistance. It emphasizes, however, that States parties may at their discretion provide mutual legal assistance in the absence of dual criminality. This paragraph provides for a flexibility in the application of the dual criminality requirement and thus differs from the formulation of article 16 on extradition. This is justified by the fact that provision of mutual legal assistance does not in most cases involve the direct deprivation of a person's liberty that extradition involves. While most responding States had reported that they required dual criminality for the granting of an extradition request (see para. 72 above), 18 States[49] reported that dual criminality was not a requirement in granting mutual legal assistance. In addition, seven States[50] indicated that dual criminality was only required when coercive measures, such as seizures and confiscations, were

involved.[51] The other responding States (17) reported that dual criminality was required under their domestic legal framework for the application of article 18.

94. Besides absence of dual criminality, there are a number of grounds enumerated in paragraph 21 on which assistance may be refused. Responding States, reporting on grounds for refusal, either mandatory or optional, provided for in their domestic legal framework, referred inter alia to prejudice of sovereignty, security, *ordre public* or other essential interests;[52] contradiction of the basic principles of the law of the requested State;[53] political offences;[54] military offences;[55] discrimination clause;[56] *ne bis in idem*/double jeopardy;[57] death penalty (Belgium); incompatibility of foreign procedure with international standards (Switzerland); violation of human rights obligations (United Kingdom (signatory)); humanitarian considerations (Romania); ad hoc or extraordinary court or tribunal (Ecuador); failure to request assistance on the basis of the applicable treaty (the Czech Republic (signatory), Malaysia and the Philippines); insufficiency of information (Latvia); relevant criminal proceedings in the requested State (Romania and Uzbekistan), especially in cases of seizure and transfer of assets or property necessary for conducting such proceedings (Czech Republic); and violation of confidentiality (Austria).

95. A number of the above grounds for refusal are not referred to in paragraph 21 of article 18. They appear to have been carried over from extradition treaties, legislation and practice. In view of the fact that some of the conditions and limits set to extradition may not be applicable in the context of mutual legal assistance, States parties may wish to consider reviewing existing grounds for refusal in order to achieve the appropriate balance between the protection of national interests and fundamental principles and ensuring that the widest measure of assistance can be granted. In particular they may wish to direct their attention to the possibility of reducing the number of mandatory grounds for refusal.

96. Article 24 of the Convention, on the protection of witnesses, requires States parties to consider entering into agreements or arrangements with other States for the relocation of witnesses in criminal proceedings who give testimony concerning offences covered by the Convention. Thirty-seven of the responding States reported not having concluded such agreements with other parties. Nine States[58] reported being parties mostly within a regional framework to agreements on witness protection, including witness relocation. Some of them indicated that ad hoc bilateral arrangements needed to be concluded in each specific case.

3. International cooperation for purposes of confiscation (art. 13) and disposal of confiscated proceeds of crime or property (art. 14)

97. Article 13 requires States parties to give effect to requests for confiscation received from another party, to the greatest extent possible within their domestic legal system. All responding States indicated that they were able to confiscate proceeds of crime at the request of another party, with the exception of Ecuador, which reported that such cooperation was not provided for under its legal system.[59] The Czech Republic (signatory), which had indicated that income and other benefits derived from proceeds of crime could not be confiscated at the domestic level (see para. 60 above), indicated that the same limitation applied in the context of foreign requests for confiscation.

98. Paragraph 1 of article 13 provides parties with an alternative to the method used to give effect to foreign confiscation requests. Parties may enforce such requests indirectly, that is, submit the request to their competent authorities for the purpose of obtaining a domestic order of confiscation, which, if granted, will be enforced (art. 13, para. 1 (a)); or they may directly enforce the foreign request, that is, submit the order of confiscation issued by a court of the requesting State to the competent domestic authorities for enforcement (art. 13, para. 1 (b)).

99. It should be noted that direct enforcement of a foreign request is a much less cumbersome and quicker process than indirect enforcement, as it dispenses with the need to litigate on the merits of the case in a second jurisdiction and overcomes obstacles associated with differences in evidentiary requirements between the requesting and requested States. With the indirect method, there is a danger that, after an order of confiscation has been obtained in the requesting State and before the requested State goes through the process of obtaining a domestic order, considerable delay will occur, thus allowing the proceeds to be placed out of the reach of confiscation.

100. On the question of whether they used the indirect or the direct enforcement method, 16 States reported using both methods of enforcement; 20[60] reported using the indirect enforcement method only; and 5[61] reported use of the direct enforcement method only. Thus, a total of 38 States indicated using indirect enforcement (either exclusively or as an alternative to the direct method) and 21 reported using direct enforcement (either exclusively or as an alternative to the indirect method). It may be assumed that States that report using both methods use direct enforcement selectively, only for requests originating from certain States or fulfilling certain conditions.

101. Paragraph 2 of article 13 requires States parties to take measures to identify, trace and freeze or seize proceeds that may ultimately become liable to confiscation, at the request of another party. All responding States, subject to the exceptions below, confirmed that their competent authorities were able to take such measures in response to a foreign request. Ecuador reported that such cooperation was not available under its legal system. The Czech Republic (signatory) reiterated that no such measure could be applied to income and other benefits derived from proceeds of crime. Namibia indicated that there was no provision under its relevant legislation for the identification and tracing of proceeds of crime. The power to seize such proceeds was provided for, however.

102. On the question of whether foreign requests made pursuant to paragraph 2 were being enforced directly or indirectly in the requested State, responses from States indicated that their approach to this option was the same as that adopted for the enforcement of confiscation requests (see para. 100 above).

103. With regard to the information required for inclusion in a request for assistance for the purposes of confiscation, most responding States confirmed that the information was similar to that needed in other mutual legal assistance requests.[62] Additional information needed in view of the specific nature of this form of international cooperation included a description of the criminal acts concerned; details of the property to be confiscated and its location; and the judicial decision or order for confiscation issued in the requesting State,[63] where such a decision or order was directly submitted to the competent authorities of the requested State for

enforcement (see art. 13, paras. 1 (b) and 3 (b)). It was also reported that, in the case of a request submitted to the competent authorities for the purpose of obtaining a domestic order of confiscation, the information required would be similar to that needed for an internal procedure of confiscation. Responses further implied or highlighted the need for transmission of information on the facts of the case concerned and the type of action required in the case of submission of a request to identify, trace and freeze or seize proceeds of crime or property for the purpose of eventual confiscation.

104. As regards grounds for refusal of cooperation for the purposes of confiscation, paragraph 7 of article 13 provides that cooperation may be refused if the offence to which the request relates is not an offence covered by the Convention. Besides this provision, article 13, contrary to article 18 on mutual legal assistance, does not include a list of possible grounds for refusal. Responding States reporting on grounds for refusal mostly referred to the same grounds as for other mutual legal assistance requests (see para. 94 above). Specific additional grounds for refusal included absence of reciprocity in the granting of assistance for confiscation (France and Tunisia), infringement of the rights of innocent third parties (Indonesia (signatory)), as well as cases where the confiscation order was still subject to review or appeal in the requesting State, where the defendant had not received notice of the proceedings or where the court that issued the order did not have jurisdiction over the matter (Namibia).

105. Article 14, on disposal of confiscated proceeds of crime or property, provides that when acting on the request for confiscation made by another party under article 13, States parties shall, to the extent permitted by their domestic law and if so requested, give priority consideration to returning the confiscated proceeds or property to the requesting State, so that it can give compensation to the victims of crime or return such proceeds or property to their legitimate owners. This provision reinforces provisions of article 25, which requires States parties to establish appropriate procedures for compensation of, and restitution to, victims of offences covered by the Convention.

106. Providing information on whether such return of confiscated proceeds or property was possible under their domestic legal system, 37 States[64] indicated that their national legislation permitted it. Twenty-two States,[65] referring mostly to bilateral agreements but also to multilateral treaties,[66] reported that they were parties to agreements or arrangements with other States dealing with the disposal of proceeds or property confiscated upon request from another State.

107. Sixteen States[67] reported having concluded agreements or arrangements dealing with the sharing of confiscated proceeds of crime in accordance with paragraph 3 (b) of article 14, which requires States parties to give special consideration to concluding agreements on sharing with other parties, on a regular or case-by-case basis, confiscated proceeds of crime or funds derived from such proceeds.[68]

C. Difficulties encountered and assistance required

1. Difficulties reported

108. A number of responding States reported on steps taken to adapt domestic legislation to the requirements of the Convention on the issues dealt with in the questionnaire. Some of them[69] indicated in general terms that the requirements of the Convention and areas where legal reform was needed were being reviewed.

109. In the area of establishing criminal offences as required by the Convention, Algeria, Ecuador and Morocco referred to legislative provisions on corruption that were currently being drafted. Belgium indicated that the definition of criminal organization was in the process of being amended. The Czech Republic (signatory) indicated that draft legislation was addressing the criminalization of smuggling of migrants and more generally strengthening relevant criminalization provisions. An amendment to the penal code, introducing criminal liability of legal persons, was being considered in Latvia.

110. Afghanistan, Brazil, Ecuador, Indonesia (signatory) and Morocco referred to steps taken or contemplated to upgrade their provisions on criminalization of money-laundering. The Czech Republic and the United Republic of Tanzania (both signatories) indicated that legislation was being drafted or had been submitted to parliament on seizure and confiscation of proceeds of crime. Latvia reported on amendments to the Criminal Procedure Law, which, if approved by parliament, would introduce the shifting of the burden of proof in the context of confiscation.

111. Croatia and the Czech Republic (signatory) referred to the possible need to review their respective legislation on mutual legal assistance and international confiscation to adapt it to the requirements of the Convention. Brazil reported that it was in the process of developing its international judicial cooperation regime and Indonesia (signatory) that a draft law on mutual legal assistance in criminal matters was being considered by parliament.

112. A number of States[70] indicated that they were encountering obstacles in the process of adapting their national legislation to the requirements of the Convention. These were related to the adoption of controversial legal provisions, such as that on liability of legal persons,[71] or were of a more general nature, such as the constraints faced by developing countries: scarce resources and lack of adequate staffing of the office in charge of preparing new legislation (Mauritius and Myanmar). In this regard, Myanmar expressed the view that the implementation of the Convention should be approached on a gradual sustainable basis, taking into account the situation of developing countries.

2. Need for technical assistance

113. A number of responding States indicated that they would need assistance in the implementation of the Convention. In the field of legislative assistance and legal advice, Algeria identified the need for assistance in relation to cybercrime and money-laundering legislation. China (Mainland Region) referred to the need to gain knowledge on other States' legislation and practice in areas such as extradition, mutual legal assistance, measures to combat money-laundering, confiscation and asset-sharing. The Czech Republic (signatory) indicated it would need assistance in

reviewing legislation in force relating to mutual legal assistance and international confiscation. Ecuador indicated it would need assistance to develop the required legal reform. Mauritius stated that it would find model laws for the incorporation of the requirements of the Convention and Protocols useful.

114. In the area of training and capacity-building, Ecuador, El Salvador and Indonesia (signatory) indicated that technical assistance would be needed for the training of officials involved in the implementation of the Convention. Romania identified training of magistrates specialized in combating organized crime and provision of equipment to carry out hearings by videoconference as areas where it would require technical assistance. Other countries (Egypt, Namibia and the Philippines) referred in general terms to assistance in implementing the Convention.

115. A number of responding States indicated that they provided technical assistance to other countries for the implementation of the Convention on a bilateral basis[72] or through international organizations.[73]

III. Conclusions and recommendations

116. Replies received to the questionnaire have shown a number of gaps in the compliance of States parties with mandatory provisions of the Convention, which the present report has pointed out. These have been identified in the area of establishing criminal offences as required under the Convention: criminalization of participation in an organized criminal group (see para. 19 for gaps in the establishment of the offence of organizing, directing, aiding, abetting, facilitating or counselling the commission of a serious crime), criminalization of laundering of proceeds of crime (see para. 20 on gaps in establishing the basic criminal offence and paras. 22 and 23 for gaps in the predicate offence coverage), criminalization of corruption (para. 28), criminalization of obstruction of justice (paras. 34-36) and liability of legal persons (para. 51). Replies received on the issue of jurisdiction indicated that mandatory establishment of jurisdiction had been satisfactorily established by all responding States. In the area of confiscation and seizure at the national level, a number of departures of national legislation from the requirements of the Convention have been identified (see paras. 57-60 on restriction on type of proceeds to which confiscation applies and para. 61 on lack of investigative and restraint powers).

117. As regards international cooperation requirements, responses have indicated that a few States parties have not brought the legislative basis to a level that would not hamper the provision of extradition (see para. 68) or else continue to allow refusal of extradition for offences involving fiscal matters (see para. 74). A number of parties are not able to provide mutual legal assistance to other parties in the absence of a treaty (see para. 87), are not able to provide all types of assistance listed under article 18 (para. 88), permit refusal of assistance on the ground of bank secrecy (para. 92) or are not able to provide assistance to other parties in confiscation and related measures pursuant to a foreign request (paras. 97 and 101). It should be noted that a number of parties whose legislation appeared not to be in compliance with mandatory provisions of the Convention have reported having taken steps to upgrade their legislation or have identified difficulties in remedying the situation and have indicated their need for technical assistance.

118. The present report has also presented information on the implementation of optional provisions of the Convention or provisions subject to safeguard clauses (e.g. "if permitted by the basic principles of a State party's legal system"). Such provisions when implemented enhance the efficiency of the Convention and the Conference of the Parties may wish to recommend in the light of the responses received that parties endeavour to implement optional provisions more extensively, for instance provisions on criminalization of acquisition, possession and use of proceeds (see para. 25), criminalization of ancillary offences to money-laundering (para. 26), establishment of jurisdiction on the basis of optional grounds (paras. 42-45), use of the full range of variants to prosecution such as conditional surrender or enforcement of sentences imposed abroad on nationals (paras. 78 and 79), simplification of extradition procedures and minimization of evidentiary requirements for extradition (paras. 81 and 82), flexibility in the application of the dual criminality requirement in the case of mutual legal assistance (para. 93), limitation of the grounds for refusal of a mutual legal assistance request (para. 95), enhancement of agreements on disposal of property confiscated upon request by another party (paras. 106 and 107).

119. When considering the present report, the Conference of the Parties will need to keep in mind that only 47 per cent of States parties (50 parties out of 107 as at 29 July 2005) have responded to the questionnaire[74] (see para. 9 above). The questionnaire included a preliminary question on whether a State required assistance in providing the information requested therein, so that States that had constraints in performing the exercise could simply acknowledge the questionnaire and notify the Secretariat that they were not in a position to respond to it without assistance. Only two States, however, indicated that they needed such assistance.[75] In any event, the absence of response from 57 parties (including the European Community) limits the conclusiveness of the present report, especially as it cannot be excluded that lack of compliance may be higher among parties that did not respond to the questionnaire than among parties that did.

120. This situation raises the issue of the need to complement and update the information received in response to this first questionnaire. The Conference may wish to provide guidance to the Secretariat as regards the collection and analysis of information from States parties that did not reply to the first questionnaire as well as from States that subsequently become parties to the Convention. In addition, as compliance with the Convention's requirements evolves, the Conference may wish to consider the need for parties to periodically update the information provided.

121. A number of responding States attached copies of their laws and regulations to their response to the questionnaire. Various obligations to provide the Secretariat with copies of relevant legislation are included under provisions of the Convention and have been complied with by States that responded to the brief questionnaire on basic reporting obligations (see CTOC/COP/2005/7 and Add.1). The Conference may wish to consider the need for systematic collection, dissemination and analysis of legislation adopted pursuant to, or in areas relevant to, the Convention, as a way to enhance its knowledge base of the measures taken by States to implement the Convention. It may find it useful to refer to the experience gained by the United Nations Office on Drugs and Crime in the establishment of online libraries of laws and regulations adopted by States in the fields of drug control and money-laundering.

122. When establishing its programme of work for its second session, the Conference decided that it would as a first step focus its attention on the basic adaptation of national legislation in accordance with the Convention. Responses to the first questionnaire reflect the status of legislation adopted in some of the essential areas covered by the Convention, in particular the criminalization and legal cooperation areas. At its second session, the Conference may wish to discuss and decide on which areas of the Convention it would require collection and analysis of information for its third and subsequent sessions. The Conference may also wish to consider steps to be taken in the future to extend its knowledge of the practical application of the legislative provisions covered by this questionnaire.

123. A number of States have indicated that they need technical assistance, either for upgrading their legislation or for the training and capacity-building of relevant structures and officials, in order to improve their implementation of the Convention. The Conference may wish to provide guidance to the Secretariat on how to give effective support to States in their implementation of the Convention and address requests for technical assistance formulated in connection with this questionnaire or otherwise.

Notes

[1] Responses to the questionnaire on the implementation of the Convention were received from the following Member States:

(a) *States parties*: Afghanistan, Algeria, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Brazil, Canada, China, Costa Rica, Croatia, Cyprus, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Honduras, Jamaica, Latvia, Libyan Arab Jamahiriya, Lithuania, Malaysia, Malta, Mauritius, Mexico, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Nigeria, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, Ukraine and Uzbekistan;

(b) *Signatories*: Angola, Barbados, Cambodia, Czech Republic, Germany, Greece, Iceland, Indonesia, Kuwait, Republic of Moldova, Switzerland, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and United States of America.

[2] Malawi, which did not respond to the questionnaire, indicated in a declaration made upon becoming party to the Convention that offences pursuant to article 5 had not yet been established and that it was in the process of reviewing its domestic legislation with the aim of incorporating obligations assumed on ratification of the Convention (see CTOC/COP/2005/7).

[3] In notifications formulated when becoming parties to the Convention, Burkina Faso and the Bolivarian Republic of Venezuela, which did not respond to the questionnaire, referred to the establishment of similar offences: crime of association of offenders in Burkina Faso's penal code ("any association or agreement of whatever duration or number of members, formed or established for the purpose of committing crimes against persons or property, shall constitute the crime of association of offenders, which exists by the sole fact of the resolution to act decided by mutual consent") and offence of forming an organized criminal group in the Venezuelan criminal code (see CTOC/COP/2005/7).

[4] In addition to those 26 reporting States, a number of States that did not respond to the questionnaire reported such information in notifications formulated upon becoming parties: Australia, Panama and Saudi Arabia indicated that their legislation required an act in furtherance of the agreement, Chile and Norway stated that their legislation required the involvement of an organized criminal group and Lesotho stated that its legislation required both additional elements (see CTOC/COP/2005/7).

[5] It should be noted that Burkina Faso, which did not respond to this questionnaire, had indicated in a declaration made upon becoming a party that "receiving, which is defined as the knowing possession or enjoyment of proceeds of crime or of money laundered from drug trafficking by an individual," was a crime under its Penal Code (see CTOC/COP/2005/7).

[6] Such as provisions of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development.

[7] Burkina Faso, which did not respond to the questionnaire, had however indicated in a declaration made upon becoming party to the Convention that its penal code included the following provision: "any legal person having a civil, commercial, industrial or financial purpose on whose behalf or in whose interest the act of commission or omission that constitutes an offence has been wilfully perpetrated by its organs shall also be considered an accomplice".

[8] With the exceptions of Afghanistan, Estonia, Mauritius, Myanmar and South Africa, which reiterated that they had not yet established all offences provided for under the Protocols.

[9] Afghanistan, Algeria, Azerbaijan, Bahrain, Belarus, Brazil, China (Mainland Region), Ecuador, Greece, Honduras, Indonesia, Malaysia (only in the case of drug offences), Malta, Mauritius, Mexico, Morocco, Myanmar, Namibia, the Philippines, Poland, Portugal, South Africa, Spain, Switzerland (in the case of a criminal group), Tunisia, Turkey, the United Kingdom, the United Republic of Tanzania and Uzbekistan.

[10] Austria, Belgium, Cambodia, Canada, Croatia, Cyprus, the Czech Republic, Egypt, El Salvador, Estonia, France, Germany, Iceland, Kuwait, Latvia (which indicated that such a measure was however provided for under a new draft criminal procedure law), the Netherlands, New Zealand, Nigeria, Peru, the Russian Federation, Sweden and Ukraine.

[11] Angola, Bahrain, Belarus, Cyprus, Egypt, Jamaica, Latvia, Lithuania, Malaysia, Malta, Namibia, the Philippines, Romania, Spain, the former Yugoslav Republic of Macedonia and Ukraine.

[12] Malaysia stated in a notification made upon becoming party to the Convention that it would render extradition on the legal basis provided by its Extradition Act of 1992 (see CTOC/COP/2005/7).

[13] In addition to the States responding to the questionnaire, a number of States have stated their position on this issue in notifications made upon becoming parties to the Convention: Armenia, Belize, Malawi, Panama, Paraguay, Slovenia and Venezuela (Bolivarian Republic of) stated that they would take the Convention as a basis for extradition, while Botswana, the Lao People's Democratic Republic and Lesotho indicated they would not (see CTOC/COP/2005/7).

[14] Austria, Azerbaijan, Brazil, Canada, China, Croatia, Estonia, Kuwait, Mexico, Morocco, Peru, Poland, Portugal, Sweden, Tunisia and Turkey.

[15] In addition to the States responding to the questionnaire, a number of States have formulated the same position—not requiring a treaty basis to grant extradition—in notifications made upon becoming parties (see the notifications from Chile, Costa Rica and Slovakia in CTOC/COP/2005/7).

[16] Upon becoming a party to the Convention, Myanmar had made a reservation to the effect that it did not consider itself bound by article 16.

[17] For instance under articles 10 and 11.

[18] Austria, Brazil, China, Croatia, Egypt, El Salvador, Estonia, Indonesia, Latvia, Malta, Mexico, Namibia, the Netherlands, the Russian Federation, Sweden, Turkey, Ukraine and the United Kingdom.

[19] It should be noted that article 43 (International cooperation) of the United Nations Convention against Corruption provides that, whenever dual criminality is considered a requirement, it should be deemed fulfilled irrespective of whether the offence is placed within the same category or denominated with the same terminology, as long as the conduct underlying the offence is a criminal offence under the laws of both the requested and requesting States. Article 44 (Extradition) of the same Convention provides that "a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law". The flexibility introduced in the Convention against Corruption can be taken to reflect modern international practice with regard to the dual criminality requirement.

[20] Austria, Brazil, China (Mainland Region), El Salvador, Estonia, Indonesia, Latvia, Namibia, Nigeria, the Philippines, Sweden, Tunisia, Turkey and the United Republic of Tanzania.

[21] Estonia and Turkey.

[22] Estonia.

[23] China (Mainland Region), Estonia, Indonesia, Latvia, Mexico, Namibia, Nigeria, the Russian Federation, Sweden and Turkey. See also article 16, paragraph 14, of the Convention.

[24] China (Mainland Region), Indonesia, Latvia, Mexico, the Philippines, Sweden, Turkey and the United Republic of Tanzania.

[25] China (Mainland Region), El Salvador, Estonia, Indonesia, Latvia, Mexico, the Netherlands, Nigeria, Sweden and Ukraine.

[26] Austria, Brazil, China (Mainland Region), Mexico, El Salvador, Estonia, Latvia, Namibia, the Russian Federation, Sweden, Turkey and Ukraine.

[27] Austria, Brazil, China (Mainland Region), Indonesia, Latvia, Mexico, the Russian Federation and Turkey.

[28] Covering cases where the exercise of the jurisdiction of the requesting State was viewed as being overly broad (Brazil).

[29] Estonia, Indonesia, Latvia, Nigeria, the Russian Federation and Sweden. It should be noted that this ground could lead to postponement of extradition instead of denial until the completion of the relevant proceedings in the requested State.

[30] Indonesia, Nigeria and the United Republic of Tanzania.

[31] Especially in view of the age, health or condition of the person sought (Austria, China, Sweden, Romania and Ukraine).

[32] China (Mainland Region) and Latvia.

[33] Estonia, Indonesia, Latvia and Namibia.

[34] Romania and Ukraine.

[35] China (Mainland Region), Latvia, Sweden and the United Republic of Tanzania.

[36] Romania.

[37] United Nations, *Treaty Series*, vol. 359, No. 5146.

[38] Four parties (Austria, Morocco, New Zealand and the Philippines) and two signatories (Indonesia and Switzerland).

[39] Algeria, Austria, Azerbaijan, Belarus, Belgium, Brazil, China (Mainland Region), Croatia, Ecuador, Egypt, Honduras, Kuwait, Morocco, Myanmar, Namibia, Poland, the Republic of Moldova, Switzerland, Tunisia, Turkey, Ukraine and Uzbekistan.

[40] El Salvador, Estonia, Indonesia, Malaysia, Malta, Mauritius, Mexico, the Netherlands, New Zealand, Nigeria, Peru, the Philippines, the Russian Federation, Tanzania, the United Kingdom and the United Republic of Tanzania.

[41] The Czech Republic, France and Sweden (whose nationals may also be extradited to the Nordic countries). Romania also mentioned extradition to member States of the European Union among the circumstances in which extradition of nationals was allowed.

[42] Azerbaijan, Barbados, Brazil, China, El Salvador, Myanmar, Nigeria, the Russian Federation, Turkey, the United Republic of Tanzania and Uzbekistan.

[43] Malaysia, Malta, Mexico, Namibia and Peru.

[44] Seven States reported that they did not have such legislation: Brazil, Egypt, Indonesia, Kuwait, Mexico, Turkey and Ukraine.

[45] Six parties (Azerbaijan, Ecuador, Honduras, Namibia, Nigeria and Spain) and one signatory (United Republic of Tanzania).

[46] In answer to a further question, Namibia indicated that bank secrecy was not an obstacle to the provision of mutual legal assistance.

[47] Algeria, Azerbaijan, Brazil, China (both the Mainland Region and the Macao Special Administrative Region), the Czech Republic, Myanmar, Namibia, Nigeria, the Russian Federation, Spain and Ukraine.

[48] See paragraph 3 of article 13.

[49] Algeria, Belarus, Belgium, Brazil, Croatia, the Czech Republic, El Salvador, Estonia, France, Honduras, Latvia, Morocco, Namibia, Peru, Poland, Tunisia, Turkey and Ukraine.

[50] Ecuador, Malta, Mexico, the Netherlands, Sweden, Switzerland and the United Kingdom.

[51] This position is similar to that reflected in the United Nations Convention against Corruption, article 46 (Mutual legal assistance), paragraph 9 (b) of which states:

> "States Parties may decline to render assistance (…) on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action."

[52] Belarus, Brazil, China (both the Mainland Region and the Macao Special Administrative Region), the Czech Republic, Ecuador, Egypt, Indonesia, Latvia, Malaysia, Malta, Mauritius, Morocco, the Philippines, the Russian Federation and Sweden.

[53] Belarus, China (both the Mainland Region and the Macao Special Administrative Region), Malaysia, Mauritius and the Russian Federation.

[54] China (both the Mainland Region and the Macao Special Administrative Region), Ecuador, Indonesia, Latvia, Malaysia, Mauritius, the Philippines, Sweden and Ukraine.

[55] China (both the Mainland Region and the Macao Special Administrative Region), Indonesia, Malaysia, Mauritius, the Philippines and Sweden.

[56] China (both the Mainland Region and the Macao Special Administrative Region), Indonesia, Malaysia, Mauritius and Ukraine.

[57] Ecuador, Indonesia, Malaysia, Mauritius, Sweden and Ukraine.

[58] Bahrain, Croatia, the Czech Republic, Indonesia, Latvia, the Philippines, the Republic of Moldova, the United Kingdom and Uzbekistan.

[59] At the domestic level, Ecuador reported that confiscation was only available with regard to proceeds derived from drug trafficking.

[60] Afghanistan, Belarus, China, Croatia, the Czech Republic, Estonia, Honduras, Indonesia, Latvia, the Libyan Arab Jamahiriya, Malaysia, Malta, the Netherlands, Nigeria, Peru, the Philippines, Sweden, Turkey, Ukraine and the United Kingdom.

[61] Austria, Belgium, Brazil, Namibia and Tunisia.

[62] The provisions of article 18 on mutual legal assistance are applicable, mutatis mutandis, to article 13 on international cooperation for purposes of confiscation (art. 13, para. 3).

[63] Conditions and requirements pertaining to the authentication and certification of such a decision or order (original or certified copy) as well as to its enforceability and finality were also reported by some States.

[64] Afghanistan, Algeria, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Brazil, Cambodia, Canada, China (Mainland Region), Croatia, Cyprus, the Czech Republic, Egypt, Estonia, France, Germany, Iceland, Kuwait, Latvia, the Libyan Arab Jamahiriya, Malaysia, Malta, Mauritius, Mexico, Morocco, Namibia, the Philippines, Poland, Romania, South Africa, Spain, Sweden, Tunisia, the United Kingdom and the United Republic of Tanzania.

[65] Algeria, Bahrain, Belarus, Brazil, the Czech Republic, Egypt, Greece, Honduras, Latvia, the Libyan Arab Jamahiriya, Mauritius, Morocco, Myanmar, the Netherlands, Peru, the Philippines, Romania, the Russian Federation, Sweden, Tunisia, Ukraine and the United Kingdom.

[66] Such as the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of the Council of Europe (art. 15 on disposal of confiscated property).

[67] Algeria, Belarus, Brazil, Egypt, France, Honduras, Latvia, Mauritius, Morocco, Peru, the Philippines, Romania, Tunisia, Sweden, Switzerland and the United Kingdom.

[68] See in this respect the recently adopted model bilateral agreement regarding the sharing of confiscated proceeds of crime or property (Economic and Social Council resolution 2005/14).

[69] Azerbaijan, Belarus, Mauritius, Myanmar, Nigeria, the United Kingdom and the United Republic of Tanzania.

[70] Belarus, Brazil, the Czech Republic, Latvia, Mauritius, Mexico and Myanmar.

[71] Latvia (criminal liability) and Mexico (liability in general).

[72] Afghanistan, Ecuador, Egypt (provision of training, exchange of expertise and field visits), the Libyan Arab Jamahiriya (willingness to provide assistance upon request on the basis of a bilateral agreement), Mexico, the Netherlands, New Zealand, the Russian Federation (through workshops and conferences and joint harmonization of legislation), Spain, Sweden, Tunisia (provision of training and exchange of experience) and the United Republic of Tanzania (mutual evaluation missions in countries of the region).

[73] Brazil, the Czech Republic, Ecuador, Egypt (through the African Union, the League of Arab States and the Community of Sahelo-Saharan States), El Salvador (through the Inter-American Drug Abuse Control Commission of the Organization of American States), France (through the Organization for Security and Cooperation in Europe and the United Nations Office on Drugs and Crime), Spain (through the International Criminal Police Organization and the European Police Office), Switzerland (through the Organized Crime Training Network for operational managers in South Eastern Europe), Tunisia (through the United Nations, the African Union, the League of Arab States and the European Union) and the United Republic of Tanzania (through the Eastern and Southern Africa Anti-Money Laundering Group).

[74] The following 57 States parties had not returned the questionnaire by the extended deadline of 29 July 2005: Albania, Antigua and Barbuda, Argentina, Armenia, Australia, Belize, Benin, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Cape Verde, Central African Republic, Chile, Colombia, Comoros, Cook Islands, Denmark, Djibouti, Equatorial Guinea, European Community, Gabon, Gambia, Grenada, Guinea, Guatemala, Guyana, Kenya, Kyrgyzstan, Lao People's Democratic Republic, Lesotho, Liberia, Malawi, Mali, Mauritania,

Micronesia (Federated States of), Monaco, Nicaragua, Niger, Norway, Oman, Panama, Paraguay, Rwanda, Saint Kitts and Nevis, Saudi Arabia, Senegal, Serbia and Montenegro, Seychelles, Sudan, Tajikistan, Togo, Turkmenistan, Uganda, Uruguay, Venezuela (Bolivarian Republic of) and Zambia.

[75] Indonesia, which did complete the questionnaire, however, and Cambodia, both signatory States.