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**Open-ended intergovernmental working group  
on the review of the implementation of the  
United Nations Convention against  
Transnational Organized Crime and the  
Protocols thereto**

Vienna, 17-19 May 2011

Item 4 of the provisional agenda\*

**Terms of reference for a review mechanism or  
mechanisms, guidelines for governmental experts and a  
blueprint for the country review reports: proposals and  
initiatives of States parties and signatories**

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**Report of the Secretariat**

**I. Introduction**

1. Pursuant to article 32, paragraph 3, of the United Nations Convention against Transnational Organized Crime (Convention),<sup>1</sup> the Conference of the Parties to the Convention shall agree upon mechanisms for improving the capacity of States parties to combat transnational organized crime as well as promote and periodically review the implementation of the Convention.

2. In its decision 4/1, the Conference expressed concern at persisting gaps in the implementation of the Convention and the Protocols thereto, and considered that it was necessary to explore options regarding an appropriate and effective mechanism to assist the Conference in the review of implementation of the Convention and the Protocols thereto.

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\* CTOC/COP/WG.5/2011/1.

<sup>1</sup> United Nations, *Treaty Series*, vol. 2225, No. 39574.



3. In that decision, the Conference requested the United Nations Office on Drugs and Crime (UNODC) to convene at least one intergovernmental meeting of experts, which would present a report to the Conference on mechanisms, as appropriate, for reviewing implementation of the Convention and its Protocols. Pursuant to that decision, two meetings of experts were held in Vienna on 30 September 2009 and from 25 to 26 January 2010, respectively. The experts recommended, in particular, that the Conference create an open-ended working group with a view to exploring options regarding an appropriate and effective mechanism to assist the Conference in the review of the implementation of the Convention and the Protocols thereto.

4. In its resolution 5/5, the Conference of the Parties decided to establish an open-ended intergovernmental working group to consider and explore options and make proposals for the establishment of a mechanism or mechanisms to assist the Conference in the review of the implementation of the Convention and the Protocols thereto, as well as to prepare terms of reference (TORs) for such proposed review mechanism, guidelines for governmental experts and a blueprint for the country review reports for consideration and possible adoption by the Conference at its sixth session.

5. The Conference also agreed in resolution 5/5 that the open-ended intergovernmental working group may consider, as a basis of its work, proposals and initiatives as may be submitted by States parties and signatories in that regard in advance of the meetings of the working group, including the proposal attached to resolution 5/5.

6. On 31 December 2010, the Secretariat circulated a note verbale which invited governments to submit any proposal and/or initiative on the TORs, guidelines and blueprint attached to resolution 5/5 by 1 February 2011. At its sixth meeting held on 7 March 2011, the Extended Bureau decided that the deadline for the submission of proposals should be extended until 8 April 2011. At the request of a State, the deadline was subsequently extended again and a second note verbale was sent to governments, inviting them to continue submitting additional proposals by 20 April 2011.

7. The present report was prepared on the basis of information provided to the Secretariat by Governments in reply to the two notes verbales referred to above. As of 2 May 2011, replies had been received from Argentina, Canada, Chile, Finland, Germany, Morocco, Myanmar, Panama, Peru, Tunisia and Uruguay.

## **II. Proposals and initiatives submitted by States parties**

### *General opinions*

8. States expressed their support for a review mechanism for the Convention and the Protocols and emphasized their commitment to working closely with all States parties to establish an effective and appropriate review mechanism. Most countries noted that their opinions were reflected in Conference of the Parties resolution 5/5 and referred in particular to operative paragraph 5 of the resolution, which set out various qualities and goals of a future review mechanism or

mechanisms.<sup>2</sup> It was stressed by several countries that an effective mechanism for the review of implementation would create new opportunities for cooperation and technical assistance, in accordance with article 30 of the Convention.

*Structure of a review mechanism*

9. Many countries recommended that one mechanism be established for all four instruments for a number of reasons. It was noted that the establishment of separate mechanisms for these interconnected instruments would create excessive bureaucracy and have an adverse financial impact, which, in turn, would be particularly detrimental to States with relatively smaller capacity. Furthermore, the Protocols provide that they shall be interpreted together with the Convention and thus a single mechanism would ensure that the review process would be comprehensive without duplicating work on similar thematic issues. It was also

<sup>2</sup> “*The Conference of the Parties to the United Nations Convention against Transnational Organized Crime...*”

5. *Decides* that any mechanism or mechanisms for assisting the Conference to review the implementation of the Convention and the Protocols thereto deriving from such proposals shall:

- (a) Be transparent, efficient, non-intrusive, inclusive and impartial;
- (b) Not produce any form of ranking;
- (c) Provide opportunities to share good practices and challenges;
- (d) Assist States parties in the effective implementation of the Convention and, where applicable, the Protocols thereto;
- (e) Take into account a balanced geographical approach;
- (f) Be non-adversarial and non-punitive and shall promote universal adherence to the Convention and its Protocols;
- (g) Base its work on clear, established guidelines for the compilation, production and dissemination of information, including addressing issues of confidentiality and the submission of the outcome to the Conference, which is the competent body to take action on that outcome;
- (h) Identify, at the earliest possible stage, difficulties encountered by States parties in the fulfilment of their obligations under the Convention and its Protocols, as applicable, and good practices adopted in efforts by States parties to implement the Convention and, where applicable, the Protocols thereto;
- (i) Be of a technical nature and promote constructive collaboration, inter alia, on issues concerning international cooperation, prevention, protection of witnesses and assistance and protection for victims;
- (j) Complement existing relevant international and regional review mechanisms so that the Conference may, as appropriate, cooperate with those mechanisms and avoid duplication of efforts;
- (k) Be an intergovernmental process;
- (l) In conformity with article 4 of the Convention, not serve as an instrument for interfering in the domestic affairs of States parties but shall respect the principles of equality and sovereignty of States parties, and the review process shall be conducted in a non-political and non-selective manner;
- (m) Promote the implementation of the Convention and its Protocols by States parties, as applicable, as well as cooperation among States parties;
- (n) Provide opportunities to exchange views, ideas and good practices, thus contributing to strengthening cooperation among States parties in preventing and fighting transnational organized crime;
- (o) Take into account the levels of development of States parties, as well as the diversity of judicial, legal, political, economic and social systems and differences in legal traditions;
- (p) Endeavour to adopt a progressive and comprehensive approach, given that the review of implementation of the Convention is an ongoing and gradual process;”

noted that a single mechanism would also best promote coherence and consistency with existing review mechanisms so as to avoid duplication of efforts.

10. Given the large number of States parties and the wide range of issues covered by the Convention and the Protocols, many States expressed the view that a single review cycle would not suffice to address all the relevant issues. For this reason, it was suggested to divide the reviews thematically in order to allow for similar provisions to be reviewed together, e.g. criminalization and police as well as judicial cooperation.

#### *Terms of reference*

11. The importance of developing clear terms of reference (TORs) that would provide for an efficient and inclusive review process in order to assist States parties to effectively implement their respective obligations under the Convention and the Protocols was emphasized. In addition, many States recommended that the terms of reference, guidelines and blueprint attached to Conference of the Parties resolution 5/5 be taken as a basis for any future review mechanism. One State also commented that the experiences of the pilot programme should be taken into account when constructing the TORs for a review mechanism.

12. Some countries suggested that, for reasons of efficiency, TORs similar to those adopted in the context of the UN Convention against Corruption should be sought for the Organized Crime Convention's mechanism. One State noted that, given that the Organized Crime Convention and the Convention against Corruption share many key provisions on prevention, criminalization, law enforcement, international police and judicial cooperation and technical assistance, similar TORs and close information exchange between the secretariats of the two review mechanisms would avoid unnecessary repetition and duplication in the collection and analysis of information. In this regard, it was also recommended that matters that were already subject to review mechanisms in other contexts be excluded from the review procedure in order to focus exclusively on points specific to the Convention and Protocols. This would avoid imposing on the same State several review procedures on the same subject as well as preclude disparities and variations resulting from such assessments, which could lead to fragmentation of efforts, overlapping and differing results.

13. It was mentioned as necessary that all the official languages of the United Nations (Arabic, Chinese, English, French, Russian and Spanish) be used at all phases of the review process and that providing documents in all languages in a timely manner was of utmost importance.

#### *Information gathering*

14. Many States supported the Omnibus survey software as the primary source and point of departure for information gathering for the country reviews. It was requested that the Secretariat provide assistance to States in preparing responses to the Omnibus survey software and organize periodic training courses for experts participating in the review process. This was noted as crucial, especially at a preliminary stage, in order to ensure maximum efficiency of the country reviews. It was also noted that translation of the software would be required in order to implement the first stage of the review process.

15. One State suggested that, in order to ensure that the review mechanism remains financially viable, other sources of information should be used where relevant, while still maintaining the Omnibus survey software as the primary source. It was suggested that other useful sources would be the information collected from the first and second reporting cycles on implementation of the Convention and the Protocols and supplemental information provided in this regard. One State mentioned that open source information and information provided by civil society would also be important in order to promote transparency in the review process, a quality this State considered foundational to the review process.

#### *Active dialogue*

16. Several States expressed the view that country visits would allow for greater interaction between the reviewing experts and the experts of the country under review, thus making the process a true learning experience on both sides. It was noted that often such a site visit in itself produces solutions to challenges encountered in implementation. However, there were diverging views on the importance of country visits to the active dialogue phase of any future review mechanism. Many States felt that the process should involve a country visit if the reviewed country was in favour and reviewing States felt it was necessary. One State felt that a country visit should be included unless it was regarded as unnecessary on an exceptional basis. One State did not view country visits as mandatory, but did support having the possibility to visit a country on site to ensure comprehensive and accurate information gathering. However, when the objectives of the review could be accomplished by a desk review and other forms of active dialogue, such as teleconferencing and email correspondence, these options should be preferred so as to reduce the costs of the review mechanism.

#### *Participation of interested parties in the review process*

17. Several countries mentioned that the review process should include the participation of interested parties such as civil society, the research community and the private sector. One State emphasized that the review process should include a mechanism for such parties to provide input. However, in this context, it was mentioned that it would be important for the information to be considered credible and reliable and for the country under review to have the opportunity to respond to the comments or information collected in this way. It was also considered necessary to clarify that the information collected could only be used for the review process.

#### *Outcomes*

18. Overall, States felt that the review process should result in a country review report prepared by the experts of the reviewing countries, together with the Secretariat. One State mentioned that full country reports, or at least executive summaries, as well as regional and thematic reports prepared by the Secretariat, should be submitted for discussion to an Implementation Oversight Group (IOG). It was mentioned that the IOG and the Secretariat be assisted by recognized experts in identifying general trends in implementation, emerging issues as well as regional trends and challenges.

19. One State proposed that the Conference should issue specific recommendations based on the observations made during the review process, with

full respect for national sovereignty. It was also suggested that the TORs should include a non-compliance procedure in case a State party remains passive or takes insufficient action in respect of the recommendations addressed to it. It was suggested that such a procedure could be gradual and, if no concrete measures had been reported by the State concerned, result in a public statement by the Conference.

20. Almost all countries noted the importance of the review process for taking note of technical assistance needs in the country under review and the opportunity to address those needs was noted as a major goal of any future review mechanism.

21. Many States emphasized that the terms of reference for such proposed review mechanism, guidelines for governmental experts and a blueprint for the country review reports should be adopted at the next Conference of the Parties to be held from 15 to 19 October 2012.