



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

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Draft report

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I. Introduction

1. In its resolution 55/25 of 15 November 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime and two supplementary protocols thereto, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air. In its resolution 55/255 of 31 May 2001, the Assembly adopted a third protocol to the Convention, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition. The Convention entered into force on 29 September 2003, the Trafficking in Persons Protocol on 25 December 2003, the Migrants Protocol on 28 January 2004 and the Firearms Protocol on 3 July 2005.

2. Pursuant to article 32 of the Convention, a Conference of the Parties to the Convention was established to improve the capacity of States parties to combat transnational organized crime and to promote and review the implementation of the Convention.

II. Organization of the session

A. Opening of the session

3. The Conference of the Parties to the United Nations Convention against Transnational Organized Crime held its second session in Vienna from 10 to 21 October 2005, during which it held [...] meetings.

4. The Conference was opened on 10 October 2005 by the President of the Conference of the Parties at its first session, followed by a moment of silence in memory of the victims of the natural disasters in Central America and South Asia.



5. All the speakers who took the floor during the first meeting expressed their sincere condolences and deepest sympathy to the victims and their families in the areas affected by those disasters.

6. The outgoing President of the Conference expressed his appreciation to the members of the bureau of the Conference at its first session for their invaluable support. He highlighted the achievements of the Conference at that session, in particular the approval of the programme of work, which had set the future direction of the Conference to discharge its mandates, and he underscored the importance of the second session in fulfilling the critical tasks set in the programme.

7. The newly elected President of the Conference encouraged the Conference at its second session to continue to explore ways and mechanisms to promote implementation of the Convention and its Protocols, including by devoting attention to issues related to technical assistance. In that connection, he emphasized that, while implementation of the instruments was the responsibility of Governments, the international community should rally to the assistance of developing countries and countries with economies in transition in order to fill gaps in capacity that hampered implementation. The President urged the Conference to be creative and innovative, as well as to keep an open mind.

8. The representative of India (speaking on behalf of the States Members of the United Nations that are members of the Group of 77 and China) welcomed the entry into force of the Firearms Protocol as well as the increase in States parties to all the instruments. Emphasizing the important role that the Conference should play in enhancing the implementation of the instruments through the establishment of mechanisms to that end, he indicated that his Group attached great importance to the agenda item on technical assistance. Recalling the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (General Assembly resolution 55/59, annex), in which the need to address the root causes of crime was recognized, he called upon the international community to assist developing countries in that endeavour, as well as in implementing the Convention and its Protocols. In that connection, he underscored that the mechanisms for periodical review of the implementation of the instruments must include technical assistance to assist States parties in more effectively implementing them. Thus, the follow-up evaluation of technical assistance would be in effect a review of the implementation of the instruments. The process leading to the adoption of those mechanisms, however, must be open to all Member States, with a view to promoting universal ratification. Finally, he expressed his appreciation to the United Nations Office on Drugs and Crime (UNODC) for organizing the Round Table for Africa with the theme "Crime and drugs as impediments to security and development in Africa: strengthening the rule of law", held in Abuja on 5 and 6 September 2005, and called upon UNODC to take similar initiatives for other regions in accordance with their requirements and at their request.

9. The representative of Ethiopia (speaking on behalf of the States Members of the United Nations that are members of the Group of African States) welcomed the entry into force of the Firearms Protocol and called upon all Member States that had not done yet so to consider either ratifying or acceding to it. The representative also expressed appreciation to UNODC for organizing the Round Table for Africa and to the Government of Nigeria for hosting the meeting. She reiterated that African countries were committed to the implementation of the Programme of Action for

Africa 2006-2010, that had emanated from the Round Table and called upon development partners to assist in its implementation, especially in the area of technical assistance for the effective implementation of the provisions of the Convention and its Protocols. She underlined that the second session of the Conference should agree upon mechanisms for achieving the objectives of the Convention, especially by facilitating training and technical assistance, implementation of the Convention through economic development and crime prevention and encouraging mobilization of voluntary contribution for those purposes. The representative of Ethiopia stated that Africa could attest to the linkage between insecurity and the activities of transnational organized criminal groups engaged in arms trafficking, which had prolonged conflicts and perpetuated humanitarian crises, in particular in countries emerging from conflict, and aggravated insecurity on the continent. She also stressed that organized crime, including trafficking in persons, kidnapping, extortion and financial crimes and corruption, jeopardized efforts to promote social and economic development. It was also important to define the relations between the Conference of the Parties and the Commission on Crime Prevention and Criminal Justice in order to avoid any duplication of responsibilities.

10. The representative of the Philippines (speaking on behalf of the States Members of the United Nations that are members of the Group of Asian States) emphasized that the Conference had achieved a great deal at its first session, in particular the adoption of the programme of work, which provided valuable guidance for the Conference, as well as individual States parties, in reviewing the progress made by States parties in aligning their legislative regimes with the Convention and its Protocols. Stressing that the capacity of States parties to implement the instruments effectively depended to no small extent on the availability of technical assistance, he hoped that the Conference at its second session would define its role with respect to assessing States' technical assistance needs, as well as devise the most effective responses to address such needs. He also emphasized the need to maximize the synergy between the Conference and the Commission on Crime Prevention and Criminal Justice, as well as the future Conference of the States Parties to the United Nations Convention against Corruption, thereby ensuring that well-coordinated and operational responses could be taken against transnational crime. Welcoming the recent entry into force of the Firearms Protocol, he expressed his hope that the Conference would devote appropriate attention to the review of the implementation of that Protocol.

11. The representative of the United Kingdom of Great Britain and Northern Ireland spoke on behalf of the States Members of the United Nations that are members of the European Union. The acceding countries Bulgaria and Romania, the candidate countries Croatia and Turkey, as well as the countries of the Stabilization and Association Process and potential candidates Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia and Montenegro and European Free Trade Association countries Iceland and Norway, members of the European Economic Area, as well as the Republic of Moldova and Ukraine, associated themselves with the statement. The representative of the United Kingdom underlined that the European Union had participated actively in the first session of the Conference of the Parties and hoped that the second session would produce clear and focused outcomes that would ensure the successful implementation of the Convention and its Protocols. The European Union took very seriously threats posed

by transnational organized crime at the national, regional and international levels and stressed its commitment to an expeditious completion of the ratification process by its members. He underlined the importance for the session to discuss implementation and organization of common tasks. Expressing the support of the Union for the idea of developing a multi-year programme of work to cover the different subject areas of the Convention and the Protocols, he noted that it was important to continue a constructive dialogue leading to firm proposals to refine the work plan for future sessions. The representative stressed that the gathering, exchange and analysis of information had a significant role to play in the effective implementation of the Convention and, therefore, it was important to establish a clear picture of trends and developments in transnational organized crime as well as the steps being taken to combat it by Member States. In order to avoid, where possible, any duplication of work, it was essential to create conditions in which organizations could benefit from each other's knowledge. He reiterated that the Convention should be effective and have a significant impact on the problem of transnational organized crime as well as offer solutions for cooperation to ensure that resources were targeted and utilized in a way that would promote maximum impact and benefit to all.

12. The representative of Ukraine (speaking on behalf of the GUUAM States, Azerbaijan, Georgia, the Republic of Moldova, Ukraine and Uzbekistan), underscored the importance of strong commitment on the part of the international community to strengthen joint efforts in combating transnational organized crime that represented a great achievement of the United Nations. He emphasized that the Conference should become an effective instrument for further development of international cooperation in the fight against crime. The Conference offered an opportunity to continue consideration of the development of a mechanism to facilitate and coordinate implementation of the Convention. It was noted that such a mechanism should avoid duplication in the work of the Commission on Crime Prevention and Criminal Justice, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime and the Conference of the States Parties to the United Nations Convention against Corruption. He stressed that the Organized Crime Convention and its Protocols provided a solid basis for strengthening the global system of coordinated action to combat organized crime at both the national and the international level. He underlined that the effective implementation of comprehensive crime prevention strategies at the local, national and international levels would be seminal and that the role of regional organizations and UNODC in those endeavours could hardly be overestimated. He emphasized that the group's Yalta Charter had committed it to the fight against international organized crime. That commitment had been reaffirmed at the summit, held in Chisinau in April 2005, and in its declaration entitled "In the name of democracy, stability and development", together with the need to further strengthen cooperation against international terrorism and extremism as well as trafficking in persons, illegal migration, proliferation of weapons of mass destruction, money-laundering and corruption. The GUUAM Virtual Centre on combating terrorism, organized crime, drug trafficking and other dangerous types of crime contained a unified data exchange system for counterterrorist activities and projects on strengthening cooperation and interaction between GUUAM States on border and customs control issues, which would strengthen their capacity to maintain national and regional

security. In that connection, he hoped that the cooperation of GUUAM with UNODC in those activities would be very useful for the group.

13. The representative of Mexico (speaking on behalf of the States Members of the United Nations that are members of the Group of Latin American and Caribbean States) emphasized the great importance the Group attached to the Convention and its Protocols, which promoted cooperation and the coordination of national efforts against transnational organized crime, through mechanisms such as mutual legal assistance, extradition, training and technical assistance. He therefore welcomed the increase in the number of States parties to the instruments, in particular the Firearms Protocol, which had enabled the entry into force of that Protocol, while he underscored the need to further promote the implementation of the instruments. On the basis of the principle of shared responsibility, he underscored the importance of technical assistance in overcoming difficulties in implementing the instruments, as well as the need to link technical assistance with mechanisms, as set forth in articles 30, paragraph 2 (c), and 32 of the Convention.

14. In his opening remarks the Director-General of the United Nations Office at Vienna and Executive Director of UNODC stressed that the Convention and its Protocols had made a Copernican shift in perspective, thereby enabling all States to realize that crime was no longer an evil that could be addressed by any single State but one that required a global response. In that respect, he urged those States which had not yet done so to ratify the Convention and its Protocols, offering the assurance that UNODC stood ready to assist States in that endeavour. Recognizing that crime was both the cause and consequence of poverty, insecurity and underdevelopment, he expressed his hope that UNODC could act as a catalyst and motivate development institutions to work with it in synergy. He also informed the Conference of the Office's recent initiatives to promote a comprehensive, balanced approach that would enable all to work on different fronts with equal force and effectiveness. To begin with, the Office had recently published the report *Crime and Development in Africa* and invited all participants to study that new initiative. In that connection, he underlined the significant roles that the Conference could play, not only in fighting crime and protecting victims, but also in promoting development, peace and security. For the Conference to succeed in that endeavour, he strongly encouraged it to give serious thought to how to ensure that all States parties complied with their obligations to provide it with the requested information in a prompt, accurate and complete manner. The Conference could not make specific recommendations without adequate information on implementation. Attention was also drawn to issues as to which provisions of the instruments the Conference should review next, with a view to broadening the knowledge base, as well as to making steady progress towards completing the first round of reviews on implementation. Finally, he brought to the attention of the Conference critical questions about technical assistance, recalling the linkage between technical assistance and implementation. He underlined that a strategic approach to technical assistance could translate into more efficient, better-targeted, properly tailored use of resources to meet specific requirements and to produce tangible, measurable results.

B. Election of officers

15. At its 1st meeting, on 10 October, the Conference of the Parties elected the following officers by acclamation:

<i>President:</i>	Peter Poptchev (Bulgaria)
<i>Vice-Presidents:</i>	Antenor Pereira Madruga Filho (Brazil)
	Amadou Traore (Burkina Faso)
	Wu Hailong (China)
	Ljiljana Vodopija-Cengic (Croatia)
	Jose Luis Santiago Vasconcelos (Mexico)
	Mandy McDonald (New Zealand)*
	Olawale Idris Maiyegun (Nigeria)
	Aurelio Perez Giralda (Spain)
<i>Rapporteur:</i>	Said Nasser Al-Harthy (Oman)

[16. At its first session, the Conference had decided that the offices of President and Rapporteur should rotate among the regional groups and that such rotation should take place in alphabetical order. Accordingly, at the second session, the President of the Conference was nominated by the Group of Eastern European States and the Group of Asian States was asked to nominate one Vice-President and the Rapporteur.]

C. Adoption of the agenda and organization of work

17. At its 1st meeting, on 10 October 2005, the Conference of the Parties adopted the following agenda for its second session:

1. Organizational matters:
 - (a) Opening of the second session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime;
 - (b) Election of officers;
 - (c) Adoption of the agenda and organization of work;
 - (d) Participation of observers;
 - (e) Adoption of the report of the bureau on credentials.
2. Review of the implementation of the United Nations Convention against Transnational Organized Crime:

* To be replaced by Gordon Hook (New Zealand) in the second week of the Conference (17-21 October 2005).

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- (a) Consideration of the basic adaptation of national legislation in accordance with the Convention;
 - (b) Commencement of the examination of criminalization legislation and difficulties encountered in the implementation of the relevant provisions of the Convention in accordance with its article 34, paragraph 2;
 - (c) Enhancing international cooperation and developing technical assistance to overcome difficulties identified in the implementation of the Convention.
 3. Review of the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime:
 - (a) Consideration of the basic adaptation of national legislation in accordance with the Trafficking in Persons Protocol;
 - (b) Commencement of the examination of criminalization legislation and difficulties encountered in the implementation of article 5 of the Trafficking in Persons Protocol;
 - (c) Enhancing international cooperation and developing technical assistance to overcome difficulties identified in the implementation of the Trafficking in Persons Protocol;
 - (d) Exchange of views and experience regarding the protection of victims and preventive measures, gained primarily in the implementation of articles 6 and 9 of the Trafficking in Persons Protocol, including awareness-raising.
 4. Review of the implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime:
 - (a) Consideration of the basic adaptation of national legislation in accordance with the Migrants Protocol;
 - (b) Commencement of the examination of criminalization legislation and difficulties encountered in the implementation of article 6 of the Migrants Protocol;
 - (c) Enhancing international cooperation and developing technical assistance to overcome difficulties identified in the implementation of the Migrants Protocol;
 - (d) Exchange of views and experience gained in the implementation of articles 15 and 16 of the Migrants Protocol.
 5. Other matters:
 - (a) Consideration of matters pertaining to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime;

- (b) Relationship of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime with the Commission on Crime Prevention and Criminal Justice and the future Conference of the States Parties to the United Nations Convention against Corruption.
- 6. Technical assistance activities.
- 7. Consideration of mechanisms for achieving the objectives of the Conference of the Parties in accordance with article 32, paragraphs 3-5, of the Convention.
- 8. Consideration of notification requirements in accordance with the relevant articles of the Convention (art. 5, para. 3; art. 6, para. 2 (d); art. 13, para. 5; art. 16, para. 5 (a); art. 18, paras. 13 and 14; and art. 31, para. 6) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (art. 8).
- 9. Provisional agenda for the third session of the Conference of the Parties.
- 10. Adoption of the report of the Conference of the Parties on its second session.

D. Participation

18. The second session of the Conference was attended by representatives of [...] States parties. Also attending the second session were signatory/observer States, other observer States and observers for organizations of the United Nations system, institutes of the United Nations Crime Prevention and Criminal Justice Programme network, intergovernmental organizations and non-governmental organizations.
19. At the second session, the bureau recommended that the Conference of the Parties accord observer status to the non-governmental organizations that appeared on the list of participants, a recommendation made on the understanding that, in future, the secretariat would comply strictly with rule 17 of the rules of procedure.
20. The list of participants is contained in annex I to the present report.

E. Adoption of the report of the bureau on credentials

21. In accordance with rule 18 of the rules of procedure:
- “1. The credentials of representatives of each State Party and the names of the persons constituting the State Party’s delegation shall be submitted to the secretariat if possible not later than twenty-four hours in advance of the opening of the session.
 - “2. Any later change in the composition of the delegation shall also be submitted to the secretariat.
 - “3. The credentials shall be issued either by the Head of State or Government or by the Minister for Foreign Affairs or, in exceptional cases, by a person authorized by either of them, or, in the case of a regional economic integration organization, by the competent authority of that organization.”

22. Rule 19 of the rules of procedure provides that the bureau of any session shall examine the credentials and submit its report to the Conference of the Parties.

23. The bureau informed the Conference that out of the [...] States parties that attended the second session, [...] States complied with the credentials requirements. [...] States parties, namely, [...], did not comply with rule 18 of the rules of procedure of the Conference of the Parties. The bureau emphasized the obligation of each State party to submit the credentials of representatives in accordance with rule 18 of the rules of procedure and called on those States parties that had not yet done so to provide the secretariat with their original credentials as soon as possible but not later than 26 October 2005.

24. The bureau also reported to the Conference that it had examined the credentials submitted and found them to be in order.

25. The Conference of the Parties adopted the report of the bureau on credentials at its [...] meeting, on [...].

F. Documentation

26. At its second session, the Conference of the Parties had before it, in addition to the documents prepared by the secretariat, [...] (CTOC/COP/L.2- [...]). A list of documents is contained in annex II to the present report.

III. Review of the implementation of the United Nations Convention against Transnational Organized Crime

27. At its 1st-5th meetings, on 10 to 12 October, the Conference of the Parties considered agenda item 2, on review of the implementation of the United Nations Convention against Transnational Organized Crime. The Conference had before it an analytical report prepared by the secretariat (CTOC/COP/2005/2) on the basis of information received from a number of States parties and signatories in response to the questionnaire on the implementation of the Convention prepared by the secretariat and endorsed by the Conference at its first session (CTOC/COP/2004/L.1/Add.2).

28. Considering its work under agenda item 2, the Conference decided that it would, on the basis of the analytical report, consider compliance of States with the criminalization and international cooperation requirements of the Convention, as well as difficulties encountered by them in both areas. It decided that that should be done in the form of an interactive debate in plenary and that working groups could be constituted as required to foster more in-depth discussion and prepare draft decisions on specific issues for the consideration of the Conference.

29. An open-ended informal working group was accordingly constituted at the 5th meeting. Led by the Vice-President, [...] (Croatia), it focused on issues related to extradition, mutual legal assistance and international cooperation for purposes of confiscation. The outcome of the work of the working group was brought to the attention of the Conference at its [...] meeting in the form of a draft decision submitted by its chairperson (CTOC/COP/2005/L.[...]). Informal consultations were also held on the issue of updating information collected for the second session of the Conference and on the programme of work for the third session, leading to the

submission of a draft decision by the Vice-President, [...] (New Zealand) (CTOC/COP/2005/L.[...]) at the [...] meeting of the Conference.

30. Noting that only 47 per cent of States parties had responded to the questionnaire on the implementation of the Convention, the Conference considered ways to address that situation, which limited the knowledge base it required to fulfil its mandate to review and make recommendations to improve the implementation of the Convention pursuant to article 32, paragraph 3 (d) and (e). It was emphasized that the provision of the information required by the Conference was a legal obligation for parties under article 32, paragraph 5, of the Convention. Responding to questionnaires prepared by the Secretariat and endorsed by the Conference was also a way for parties to share the experience in implementation of the Convention, thereby facilitating international cooperation and creating opportunities for exchange of knowledge and best practices.

31. Some speakers commented on obstacles and difficulties encountered in fulfilling reporting obligations under the Convention and indicated that their countries needed assistance from the Secretariat in that regard.

32. Considering the issue of how the information provided by States through questionnaires should be compiled and disseminated to the Conference, some speakers expressed the wish to receive such information in a format that would allow identification of the status of compliance of each individual State party, in addition to the condensed and general analysis provided in the form of an analytical report.

33. Many speakers provided the Conference with detailed information on the adaptation of their national legislation to the criminalization requirements of the Convention. Reference was made to provisions of national penal codes and other domestic legislation establishing as criminal offences participation in an organized criminal group, laundering of the proceeds of crime, corruption and obstruction of justice, and explanations were provided of the specific elements of such offences in domestic provisions. Some speakers identified gaps in the domestic legislative coverage of such offences, referring for instance to the insufficient scope of predicate offences to money-laundering or to gaps in the constitutive elements of the offence of obstruction of justice. Information was also provided on the establishment of jurisdiction based on the mandatory and optional grounds provided for under the Convention, as well as on the establishment of liability of legal persons and on provisions enabling the confiscation of proceeds of crime. Confiscation of proceeds was identified by some speakers as an area where their country needed to gain additional knowledge and upgrade domestic legislation in order to reach full compliance with the Convention.

34. Many speakers reported to the Conference on the compliance of their countries with the international cooperation requirements of the Convention. They provided information on the legislative and treaty basis on which extradition and mutual legal assistance could be provided under their domestic legal systems. Some speakers identified inadequacies in their provision of international cooperation, including lack of a comprehensive legislative basis for the provision of mutual legal assistance, absence of domestic provisions for simplified extradition procedures and lack of familiarity with the use of videoconferencing for the provision of witness testimony. With respect to the obligation under the Convention to prosecute offenders who had not been extradited on the ground of nationality, one speaker

noted that compliance with that obligation was hampered by difficulties in obtaining mutual legal assistance from other States for purposes of prosecution.

35. A number of speakers informed the Conference that their legislation was being reviewed and draft laws were being prepared to address shortcomings in implementation of the Convention. Some speakers indicated that new legislation had been enacted after completion of the questionnaire and that they would avail themselves of the opportunity to submit updated information in the subsequent questionnaire.

36. At the 5th meeting, the Minister of Justice of Chile made a statement to the Conference. Prior to presenting his country's legislative provisions adopted in compliance with the Convention, the Minister reported on Chile's efforts to reform its criminal justice system to ensure efficiency, transparency, impartiality and accessibility to all. The reform had included modernization of the penal procedure code, which entrusted to the public prosecutor the role of leading investigations and prosecution, as well as specific responsibilities relevant to the Convention, in the areas of protection of victims and witnesses and the provision of judicial cooperation to foreign States. The reform of the justice system had constituted a crucial preliminary step towards placing Chile in a position to fully meet its obligations under the Convention. The Minister highlighted the importance of a fully functioning, effective and impartial criminal justice system in ensuring appropriate and uniform application of the law, in turn a prerequisite for success in efforts against transnational organized crime. He also emphasized the importance of education campaigns familiarizing the public at large with the functioning of the criminal justice system, as a way to increase the responsiveness, transparency and accountability of that system.

37. In the course of the consideration of the item by the Conference, the secretariat brought to its attention a number of documents that might constitute useful tools for States in their implementation of the Convention. In addition to the *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*,¹ these included the *travaux préparatoires* of the Convention (of which advanced copies were distributed in English at the Conference); the Model Treaty on Extradition (General Assembly resolutions 45/116 and 52/88); the Model Treaty on Mutual Legal Assistance in Criminal Matters (resolutions 45/117 and 53/112); the revised manuals on the respective model treaties, revised and updated by UNODC to include comprehensive references to the Organized Crime Convention and the United Nations Convention against Corruption; and the UNODC Model Law on Extradition (updated in 2004). Commenting on an exchange of views concerning the interpretation of provisions of the Convention on mutual legal assistance, the secretariat noted that such issues were usually dealt with in official commentaries to conventions. The Conference might wish to consider at a future session whether the time was ripe to ask its secretariat to produce such a commentary.

¹ United Nations publication, Sales No. E.05.V.2.