



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

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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

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Agenda item 4

**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**

Revised draft terms of reference of the mechanism for the review of implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto

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Preamble

1. Pursuant to article 4, paragraph 1, of the United Nations Convention against Transnational Organized Crime,¹ which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States, with due regard to article 37 of the Convention and article 1, paragraph 2, of each of the Protocols thereto,² the Conference of the Parties to the United Nations Convention against Transnational Organized Crime establishes the following mechanism to review implementation of the Convention and the Protocols thereto.³ (Preliminary acceptance)

I. Introduction

2. The mechanism for the review of implementation of the United Nations Convention against Transnational Organized Crime (hereinafter “the mechanism”) includes a review process that shall be guided by the principles contained in sections II and III below and be carried out in accordance with the provisions contained in section IV. The mechanism shall be supported by a secretariat as set out in sections V and VI and be financed in accordance with section VII. (Preliminary acceptance)

II. Guiding principles and characteristics of the mechanism

3. The mechanism shall: (Preliminary acceptance)
- (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 such an outcome;
 - (h) Identify, at the earliest stage possible, difficulties encountered by States parties in the fulfilment of their obligations under the Convention and its Protocols,

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

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

³ This is understood throughout to mean the Protocols to which a State is party.

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 in order that the Conference may, as appropriate, cooperate with those mechanisms and avoid duplication of effort.

4. The mechanism shall be an intergovernmental process. (Preliminary acceptance)

5. In conformity with article 4 of the Convention, the mechanism shall 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. (Preliminary acceptance)

6. The mechanism shall promote the implementation of the Convention and its Protocols by States parties, as applicable, as well as cooperation among States parties. (Preliminary acceptance)

7. The mechanism shall provide opportunities to exchange views, ideas and good practices, thus contributing to strengthening cooperation among States parties in preventing and fighting transnational organized crime. (Preliminary acceptance)

8. The mechanism shall 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. (Preliminary acceptance)

9. The review of implementation of the Convention is an ongoing and gradual process. Consequently, the mechanism shall endeavour to adopt a progressive and comprehensive approach. (Preliminary acceptance)

III. Relationship of the mechanism with the Conference of the Parties

10. The review of implementation of the Convention and the mechanism shall be under the authority of the Conference, in accordance with article 32 of the Convention. (Preliminary acceptance)

IV. Review process

A. Goals

11. Consistent with the Convention, in particular article 32, the purpose of the review process shall be to assist States parties in their implementation of the Convention and its Protocols, as applicable. In this regard, the review process, *inter alia*, shall: (Preliminary acceptance)

- (a) Promote the purposes of the Convention as set out in its article 1;
- (b) Promote the purposes of the Protocols to the Convention, as set out in article 2 of each of the Protocols;
- (c) Provide the Conference with information on the measures taken by States parties in implementing the Convention and, where applicable, the Protocols thereto, as well as the difficulties encountered by them in doing so;
- (d) Help States parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of technical assistance;
- (e) Promote and facilitate international cooperation in the prevention of and the fight against transnational organized crime;
- (f) Provide the Conference with information on trends, successes, good practices, challenges and technical assistance needs of States parties in implementing and using the Convention and its Protocols;
- (g) Promote and facilitate the exchange of information, practices and experiences gained in the implementation of the Convention and its Protocols.

B. Country review

12. The mechanism shall be applicable to all States parties. It shall progressively cover the implementation of the Convention and its Protocols. (Preliminary acceptance)

13. The review of all States that are parties to the Convention at the start of a review cycle should be completed before a new review cycle begins. In exceptional cases, however, the Conference may decide to launch a new review cycle before the completion of all reviews of the previous cycle. No State party shall undergo a review twice in the same review cycle, without prejudice to the right of a State party to provide new information. In the review cycle, review of a State party's implementation should include that State's implementation of the Convention and all the Protocols thereto to which it is a party. In order to organize the reviews, each review cycle will cover selected issues addressed in the Convention and its Protocols. (Preliminary acceptance)

14. The number of States parties from each regional group participating in the review process in a given year shall be proportionate to the size of that regional group and the number of its members that are States parties to the Convention. The selection of States parties participating in the review process in a given year of a

review cycle shall be carried out by the drawing of lots at the beginning of each review cycle. A State party selected for review in a given year may, with a reasonable justification, defer participation to the following year of the review cycle. States parties not yet due to be under review for a given year may volunteer to be reviewed. (Preliminary acceptance)

15. Each State party shall provide to the secretariat the information required by the Conference on its compliance with and implementation of the Convention and its Protocols, as applicable, using the comprehensive self-assessment checklist adopted by the Conference as an initial step for that purpose. States parties shall provide complete, up-to-date, accurate and timely responses.

16. Assistance in the preparation of the responses to the questions on the checklist shall be provided by the secretariat to States parties requesting such assistance.

17. Each State party shall appoint a focal point to coordinate all aspects of its participation in the review. Each State party shall endeavour to appoint, as a focal point, a person or persons with substantive expertise on the provisions of the Convention and the Protocols thereto to which the State under review is party. (Preliminary acceptance)

1. Conduct of the country review

18. Each State party to the Convention shall be reviewed by two other States parties to the Convention. Each State party to a Protocol shall be reviewed by two other States parties to the same Protocol. The review process shall actively involve the State party under review. (Preliminary acceptance)

19. Reviewing States parties may be parties to more Protocols to the Convention than is the State under review. (Preliminary acceptance)

20. One of the two reviewing States parties shall be from the same geographical region as the State party under review and shall, if possible, be a State with a legal system similar to that of the State party under review. The selection of the reviewing States parties shall be carried out by the drawing of lots at the beginning of each year of the cycle, with the understanding that States parties shall not undertake mutual reviews. The State party under review may request, a maximum of two times, that the drawing of lots be repeated. In exceptional circumstances, the drawing of lots may be repeated more than twice. (Preliminary acceptance)

21. A State party under review may defer serving as a reviewing State party that same year. That same principle, *mutatis mutandis*, shall apply to the reviewing States parties. In exceptional circumstances, for instance, in a case in which a country is called upon to undertake more than one review, that country may request to be exempted from a review provided that it adequately justifies such a request and that another State party assumes voluntarily this responsibility in place of the exempted State. A State may exercise this option only once during a review cycle. By the end of a review cycle, each State party must have undergone its own review and, as a reviewing State party, performed a minimum of one review and a maximum of three reviews.⁴ (Preliminary acceptance)

⁴ To be revisited.

22. Each State party shall appoint up to [...] governmental experts for the purpose of the review process. Such experts should have expertise in relevant areas to be covered in the review cycle, including on issues pertaining to the Protocols to which that State is a party.⁵ (Preliminary acceptance)

23. The secretariat shall, prior to the drawing of lots to select the reviewing States parties, compile and circulate a list of such governmental experts, which shall include information on their professional background, their current positions, relevant offices held and activities carried out and their areas of expertise as required for the respective review cycle. States parties shall endeavour to provide information necessary for the secretariat to compile that list and keep it up to date. (Preliminary acceptance)

24. The reviewing States parties shall carry out, in accordance with the guidelines for governmental experts and the secretariat in the conduct of country reviews, (hereinafter “the guidelines”)⁶ a desk review of the responses to the questions on the comprehensive self-assessment checklist by the State party under review. The desk review shall entail an analysis of the response focused on measures taken to implement the Convention and the Protocols thereto and on successes in and challenges of implementation. (Preliminary acceptance)

25. In accordance with the guiding principles set out in section II and in conformity with the guidelines, the reviewing States parties, supported by the secretariat, may request the State party under review to provide clarifications or additional information or to address supplementary questions related to the review. The ensuing constructive dialogue may be carried out, inter alia, by way of conference calls, videoconferences or e-mail exchanges, as appropriate. (Preliminary acceptance)

26. The schedule and requirements of each country review shall be established by the secretariat in consultation with the reviewing States parties and the State party under review and shall address all issues relevant to the review. The reviews should ideally be designed to take no longer than six months. (Preliminary acceptance)

27. The country review shall lead to the elaboration of a country review report based on the blueprint.⁷ (Preliminary acceptance)

28. The country review shall be carried out as follows: (Preliminary acceptance)

(a) The desk review shall be based on the responses to the questions on the comprehensive self-assessment checklist and any supplementary information provided by the State party under review;

(b) In the context of the constructive dialogue between the governmental experts, the State party under review shall facilitate the exchange of information relevant to the implementation of the Convention and the Protocols thereto to which the State party under review is a party;

(c) If the State party under review is a member of a competent international or regional organization whose mandate covers issues relevant to the review, the

⁵ To be revisited.

⁶ Conference resolution 5/1, para. 1 (b), and 5/5, para. 3 (b).

⁷ Ibid.

reviewing States parties may consider information relevant to the implementation of the Convention produced by that organization.

29. The State party under review shall endeavour to prepare its responses to the questions on the comprehensive self-assessment checklist through broad consultations at the national level with all relevant stakeholders, including the private sector, individuals and groups outside the public sector.⁸

30. If agreed by the State party under review, the desk review should be complemented by any further means of direct dialogue, such as a country visit or a joint meeting at the United Nations Office at Vienna, in accordance with the guidelines. (Preliminary acceptance)

31. States parties are encouraged to facilitate engagement with all relevant national stakeholders in the course of a country visit.⁹

32. The reviewing States parties and the secretariat shall maintain the confidentiality of all information obtained in the course of, or used in, the country review process. (Preliminary acceptance)

33. The secretariat shall organize periodic training courses for experts who participate in the review process, in order to familiarize them with the guidelines and increase their capacity to participate in the review process. (Preliminary acceptance)

2. Outcome of the country review process

34. The reviewing States parties shall, in accordance with the guidelines and the blueprint, prepare a country review report, including an executive summary of the report, in close cooperation and coordination with the State party under review and assisted by the secretariat. The report shall identify successes, good practices and challenges and make observations for the implementation of the Convention and its Protocols. Where appropriate, the report shall include the identification of technical assistance needs for the purpose of improving implementation of the Convention and its Protocols. (Preliminary acceptance)

35. The country review report, including the executive summary, shall be finalized upon agreement between the reviewing States parties and the State party under review. (Preliminary acceptance)

36. The secretariat shall compile the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the country review reports and include them, organized by theme, in a thematic implementation report and regional supplementary addenda, for submission to the Palermo Implementation Review Group (Palermo Group). (Preliminary acceptance)

37. The executive summaries of all finalized country review reports shall be translated into the six official languages of the United Nations and be made available as documents of the Palermo Group for information purposes only. (Preliminary acceptance)

⁸ Different opinions were expressed during the discussion of the paragraph.

⁹ Different opinions were expressed during the discussion of this paragraph.

38. The country review reports shall remain confidential. (Preliminary acceptance)
39. The State party under review is encouraged to exercise its sovereign right to publish its country review report or part thereof.¹⁰ (Preliminary acceptance)
40. In order to improve and strengthen cooperation and learning among States parties, States parties shall, upon request, endeavour to make country review reports accessible to any other State party. In situations where the State under review has not exercised its sovereign right to publish its country review report or parts thereof as set forth in paragraph 39, the requesting State party shall fully respect the confidentiality of such reports or parts thereof. (Preliminary acceptance)

C. Palermo Implementation Review Group

41. [The Palermo Implementation Review Group (Palermo Group) shall be an open-ended intergovernmental group that shall operate under the authority of and report to the Conference. The rules of procedure of the Conference shall apply to the Palermo Group. The participation of observers in the meetings of the Palermo Group shall be permitted as provided for in the rules of procedure, unless the Palermo Group decides otherwise.]
42. The Palermo Group shall hold meetings at least once a year in Vienna. (Preliminary acceptance)
43. The functions of the Palermo Group shall be to have an overview of the review process in order to identify challenges and good practices and to consider technical assistance requirements in order to ensure effective implementation of the Convention and the Protocols thereto. States parties are encouraged to engage in expert deliberations at meetings of the Palermo Group, including on trends, emerging implementation issues and technical assistance needs. The thematic implementation report shall serve as the basis for the analytical work of the Palermo Group. On the basis of its deliberations and exchanges of views, the Palermo Group shall submit recommendations and conclusions to the Conference for its consideration and approval. (Preliminary acceptance)

D. Follow-up procedures

44. In the following review phase, each State party shall submit information in its responses to the questions on the comprehensive self-assessment checklist on progress achieved in connection with the observations contained in its previous country review reports. As appropriate, States parties shall also provide information on whether technical assistance needs requested by them in relation to their country review reports have been provided. (Preliminary acceptance)

¹⁰ Different views were expressed as to how country reports should be made available.

E. Conference of the Parties

45. The Conference shall be responsible for establishing policies and priorities related to the review process. (Preliminary acceptance)
46. The Conference shall consider the recommendations and conclusions of the Palermo Group. (Preliminary acceptance)
47. The Conference shall establish the phases and cycles of the review process, as well as the scope, thematic sequence and details of the review. The Conference shall determine the duration of each review cycle and decide on the number of States parties that shall participate in each year of the review cycle, taking into account the number of States parties to be reviewed and the scope of the cycle. (Preliminary acceptance)
48. The Conference shall endorse any future amendments to the terms of reference of the mechanism. Following the completion of each review cycle, the Conference shall assess the performance of the mechanism and its terms of reference. (Preliminary acceptance)

V. Secretariat

49. The secretariat of the Conference shall be the secretariat of the mechanism and shall perform relevant tasks required for the efficient functioning of the mechanism, including providing technical and substantive support, upon request, to States parties in the course of the functioning of the mechanism.¹¹

VI. Languages

50. The working languages of the mechanism shall be Arabic, Chinese, English, French, Russian and Spanish, subject to the provisions of this section. (Preliminary acceptance)
51. The country review process may be conducted in any of the working languages of the mechanism. The secretariat shall be responsible for providing the required translation and interpretation into any of the working languages of the mechanism, as necessary for its efficient functioning. (Preliminary acceptance)
52. The secretariat shall, if requested by the State party under review, endeavour to seek voluntary contributions to provide for translation and interpretation into languages other than the six working languages of the mechanism. (Preliminary acceptance)
53. The executive summaries of the country review reports and the thematic implementation report shall, as documents of the Conference, be published in the six working languages of the mechanism. (Preliminary acceptance)

¹¹ Add language along the following lines to the resolution by which the mechanism is adopted:
“The secretariat shall coordinate the conduct of individual country reviews.”

VII. Funding

54. The requirements of the mechanism and its secretariat shall be funded from the regular budget of the United Nations.¹²

55. The requirements set out in paragraphs 30 and 33 relating, inter alia, to the requested country visits, the joint meetings at the United Nations Office at Vienna and the training of experts, shall be funded through voluntary contributions, which shall be free of conditions and influence.¹³

56. Well in advance of the beginning of the budget cycle, the secretariat shall prepare a draft detailed biennial budget for consideration and possible adoption by the Conference. The budget shall ensure the efficient, continued and impartial functioning of the mechanism.¹⁴

57. Adequate financial and human resources must be provided to the secretariat to enable it to perform the functions assigned to it in the present terms of reference. (Preliminary acceptance)

VIII. Participation of signatories to the Convention in the mechanism

58. A State signatory to the Convention may participate in the mechanism as a State under review on a voluntary basis and only regarding the implementation of the Convention. The costs associated with such participation shall be paid from available voluntary contributions.¹⁵

¹² To be revisited, including by exploring all available options.

¹³ To be revisited, including by exploring all available options.

¹⁴ To be revisited.

¹⁵ To be revisited.