



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

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Report on the meeting of the Working Group of Government Experts on Technical Assistance held in Vienna on 6 and 7 October 2014

I. Introduction

1. The Working Group of Government Experts on Technical Assistance was established pursuant to decision 2/6 of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime. In its decision 4/3, the Conference decided that the Working Group should be a constant element of the Conference. The Working Group held its eighth meeting on 6 and 7 October 2014, during the seventh session of the Conference.
2. In its resolution 6/1, entitled “Ensuring effective implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”, the Conference requested the United Nations Office on Drugs and Crime (UNODC), inter alia, to continue providing technical assistance in order to support and complement national, regional and thematic programmes and activities based on the needs and priorities of Member States in combating transnational organized crime.
3. Furthermore, in its resolution 6/4, entitled “Implementation of the provisions on technical assistance of the United Nations Convention against Transnational Organized Crime”, the Conference noted that technical assistance was a fundamental part of the work carried out by UNODC to assist Member States in the effective implementation of the Convention and the Protocols thereto.

II. Recommendations

4. At its meeting held on 7 October 2014, the Working Group adopted the following recommendations, which were also adopted by the Conference in its resolution 7/3.



A. Criminalization of participation in an organized criminal group

5. States are encouraged to adopt a comprehensive approach to investigating and prosecuting participation in an organized criminal group, taking into consideration, as appropriate, information from all relevant stakeholders, including with regard to new forms and dimensions of organized crime.
6. States shall make participation in an organized criminal group liable to sanctions that take into account the gravity of that offence and should consider providing for higher penalties for more high-ranking members of organized criminal groups and for those who organize and direct the criminal activities.
7. States should consider requesting or providing training or assistance, as appropriate, to improve the capacity of law enforcement efforts to focus on those who direct and organize the commission of serious crimes, in order to dismantle organized criminal groups.
8. States should consider requesting or providing training or assistance, as appropriate, to improve the capacity of law enforcement authorities to use special investigative techniques.

B. Liability of legal persons

9. States should consider requesting or providing training or assistance, as appropriate, to ensure that legislation creating liability of legal persons does not preclude the criminal liability of natural persons who have committed the offences.
10. States should consider requesting or providing training or assistance, as appropriate, with regard to spontaneously and proactively sharing information with one another to facilitate holding legal persons liable, when relevant.
11. States should consider requesting or providing training or assistance, as appropriate, to define the concept of legal persons within their legal systems.
12. States parties and signatories are encouraged to provide to UNODC information on the liability of legal persons so that the Office may report to the Working Group at its next meeting, subject to the availability of extrabudgetary resources.
13. States should consider requesting or providing technical assistance, as appropriate, to review the types of sanctions imposed on legal persons, which are to be effective, proportionate and dissuasive.

C. Information-gathering under article 32, paragraph 5, of the United Nations Convention against Transnational Organized Crime

14. The Working Group of Government Experts on Technical Assistance reiterates article 32, paragraph 5, of the United Nations Convention against Transnational Organized Crime, which requires each State party to provide the Conference of the

Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement the Convention.

15. The Office should continue to develop a knowledge base for assessing challenges in identifying good practices and needs for technical assistance in implementing the Organized Crime Convention and the Protocols thereto, through analytical reports and updates to previous reports provided to the Conference, based on information provided by States parties and signatories.

16. The Working Group may wish to include in future a standing item on its agenda to consider the status of responses by States parties and signatories on implementation of the Convention and the Protocols thereto.

17. To support a systematic information-gathering effort in order to advance implementation of the Convention and the provision of technical assistance, the Working Group may wish to develop a multi-year workplan focused on considering the status of responses to requests for information by the Conference and the identification of technical assistance needs and good practices relating to the following articles:

- (a) Article 5, on criminalization of participation in an organized criminal group;
- (b) Article 6, on criminalization of the laundering of proceeds of crime;
- (c) Article 7, on measures to combat money-laundering;
- (d) Article 10, on liability of legal persons;
- (e) Article 23, on criminalization of obstruction of justice.

18. Consistent with article 29 of the Convention, States should consider measures to engage with and provide assistance to responding States, as requested, including through the Office, subject to the availability of extrabudgetary resources.

III. Summary of the deliberations

A. Criminalization of participation in an organized criminal group

19. At its first meeting, on 6 October 2014, the Working Group considered agenda item 2, on criminalization of participation in an organized criminal group. With the Chair presiding, the discussion under item 2 was led by the following panellists: Andreas Schloenhardt (Australia), Susanne Reindl-Krauskopf (Austria), Sorin Tanase (Romania) and Caroline Johnson (United Kingdom of Great Britain and Northern Ireland).

20. Several speakers emphasized the preventive effects of article 5 when used to hold accountable those who agree to commit a serious crime or who actively support the criminal activities of an organized crime group. Similarly, several speakers noted the importance of focusing law enforcement and prosecution efforts on those who organize or direct the commission of serious crime.

21. Speakers noted that the two offences that criminalize involvement in an organized criminal group, i.e., conspiracy and criminal association in article 5 of the

Organized Crime Convention, are not mutually exclusive alternatives. Examples were given from jurisdictions where one model, or both models in a dual approach, had been adopted. In that context, several speakers underscored the need to uphold the principle of legality, particularly where the dual approach was adopted.

22. Several speakers emphasized the need for enhanced international cooperation measures in order to strengthen the States' abilities to enforce provisions criminalizing participation in an organized criminal group.

23. Several speakers noted difficulties in identifying which jurisdiction would be best placed to lead investigations and prosecutions of participation in an organized criminal group when the commission of the offence or its effects were transnational in nature.

24. Several speakers shared examples of how serious crime, as defined in the Organized Crime Convention, was treated within their domestic law; it could be observed that some States criminalized participation in an organized criminal group for all crimes, while others incorporated the element of seriousness in the criminal offence.

25. Many speakers noted the specificity afforded by the Organized Crime Convention, which established the element of financial or other material benefit as the main motivator of organized criminal groups, removing from the scope of application of article 5 the participation in a group with purely political or social aims.

B. Liability of legal persons

26. At its second meeting, on 7 October 2014, the Working Group considered agenda item 3, on liability of legal persons. With the Chair presiding, the discussion under item 3 was led by the following panellists: Jonathan Clough (Australia), Radu Geamanu (Romania) and Jorge Manuel Pando Vilchez (Peru).

27. Several speakers noted the importance of holding legal persons liable without prejudice to the criminal liability of the natural persons who have committed the offences, as was required by article 10, paragraph 3, of the Convention.

28. It was highlighted that civil and common law jurisdictions often differ as to the form of liability of legal persons and that all forms of liability, criminal, civil or administrative, may have advantages and disadvantages in terms of procedures and burden of proof. In that context, it was noted that regardless of the form of liability, sanctions on legal persons were to take into account the gravity of the offence, in accordance with article 11 of the Convention.

29. Many speakers discussed the different forms of liability of legal persons, including nominalist or derivative liability and the organizational fault model. Several speakers emphasized the importance of clearly defining legal persons within domestic legislation in order to ensure the principle of legality. Some speakers also noted the usefulness of the defence of due diligence by which a legal person demonstrates to the satisfaction of the court that it exercised due diligence to prevent the commission of an offence.

30. Many speakers discussed the challenges associated with holding multinational and offshore corporations liable, particularly when a parent company and its subsidiaries were located in different jurisdictions. Examples were noted of international cooperation in establishing the liability of both parent and subsidiary companies. In that context, the requirement of the Convention, in article 18, paragraph 2, to afford mutual legal assistance to the fullest extent possible in relation to liability of legal persons was underscored.

31. Many speakers discussed the range of possible sanctions and, in particular, the possibility of sanctioning those legal persons explicitly created for illegal purposes with dissolution. In that context, the possibility of ensuring that such dissolved legal persons were also disqualified from the creation of another legal person was noted.

32. Some speakers raised the issue of compensation for victims of crimes carried out by legal persons.

C. Information-gathering under article 32, paragraph 5, of the United Nations Convention against Transnational Organized Crime

33. At its third meeting, on 7 October 2014, the Working Group considered agenda item 4, on information-gathering under article 32, paragraph 5, of the Organized Crime Convention. With the Chair presiding, the discussion under item 4 was led by the panellist Matti Joutsen (Finland).

34. Speakers discussed the importance of identifying individual States' needs for technical assistance, utilizing existing tools such as the draft needs assessment tools, and stressed the need to strengthen dialogue between donor and recipient countries to ensure the effectiveness of technical assistance.

35. In that context, several speakers reiterated the requirement of States parties to participate in information-gathering. Reference was made to the various tools already available for such information-gathering purposes, specifically the comprehensive self-assessment software ("omnibus survey software") and the knowledge management portal known as the Sharing Electronic Resources and Laws on Crime (SHERLOC) knowledge management portal.

36. Some speakers noted with concern that, in the interim, since the Conference had last made substantive efforts to support information-gathering, 35 States had become party to the Convention and therefore had not yet provided any information.

D. Other matters

37. At its 3rd meeting, on 7 October 2014, the Working Group considered agenda item 5, on other matters.

38. No issues were raised under the item.

IV. Organization of the meeting

A. Opening and duration of the meeting

39. On 6 and 7 October, the Working Group held three individual meetings. The eighth meeting of the Working Group was chaired by Adelakun Abel Ayoko (Nigeria).

40. Following the opening statement by the Chair, statements were made by representatives of the Secretariat. Introductory statements and an audiovisual presentation were made by representatives of the Secretariat on agenda items 2, 3 and 4.

B. Statements

41. Under agenda items 2-6, statements were made by representatives of the following States parties to the Convention: United States of America, Norway, Canada, Colombia, Algeria, Thailand, Egypt, France, Nigeria, Indonesia, Kenya, Mexico, China, Saudi Arabia, Spain, Switzerland, Finland, Morocco, Pakistan, Romania, Russian Federation and South Africa.

42. Statements were made by the observers for the following signatory States: Japan, the Republic of Korea and Iran (Islamic Republic of).

43. A representative of the Secretariat delivered background presentations under agenda items 2, 3 and 4.

C. Adoption of the agenda and organization of work

44. At the first meeting, on 6 October 2014, the Working Group adopted by consensus the following provisional agenda and organization of work:

1. Organizational matters:
 - (a) Opening of the meeting;
 - (b) Adoption of the agenda and organization of work.
2. Criminalization of participation in an organized criminal group.
3. Liability of legal persons.
4. Information-gathering under article 32, paragraph 5, of the United Nations Convention against Transnational Organized Crime.
5. Other matters.
6. Adoption of the report.

D. Documentation

45. The list of documents before the Working Group at the meeting are contained in the annex to the present report.

V. Adoption of the report

46. On 7 October 2014, the Working Group adopted the report on the meeting (chapters I-II and IV).

Annex**List of documents before the Working Group**

<i>Document number</i>	<i>Agenda item</i>	<i>Title or description</i>
CTOC/COP/WG.2/2014/1	1 (b)	Provisional agenda and annotations
CTOC/COP/WG.2/2014/2	2	Background paper by the Secretariat on criminalization of participation in an organized criminal group
CTOC/COP/WG.2/2014/3	3	Background paper by the Secretariat on liability of legal persons
CTOC/COP/WG.2/2014/CRP.1	4	Information-gathering under article 32, paragraph 5, of the United Nations Convention against Transnational Organized Crime
CTOC/COP/WG.2/2014/CRP.2/Rev.1	4	Draft needs assessment tool on liability of legal persons and jurisdiction
CTOC/COP/WG.2/2014/CRP.3	4	Draft needs assessment tool on law enforcement, prosecution, adjudication and sanctions
CTOC/COP/WG.2/2014/CRP.4	4	Draft needs assessment tool on international law enforcement and judicial cooperation
CTOC/COP/WG.2/2014/CRP.5	4	Draft needs assessment tool on training, research and prevention of organized crime