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The United Nations Convention against Corruption –

Methodology of the Review Mechanism

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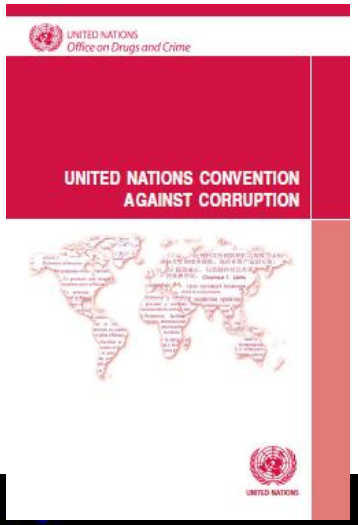

Part I:

UNCAC Overview

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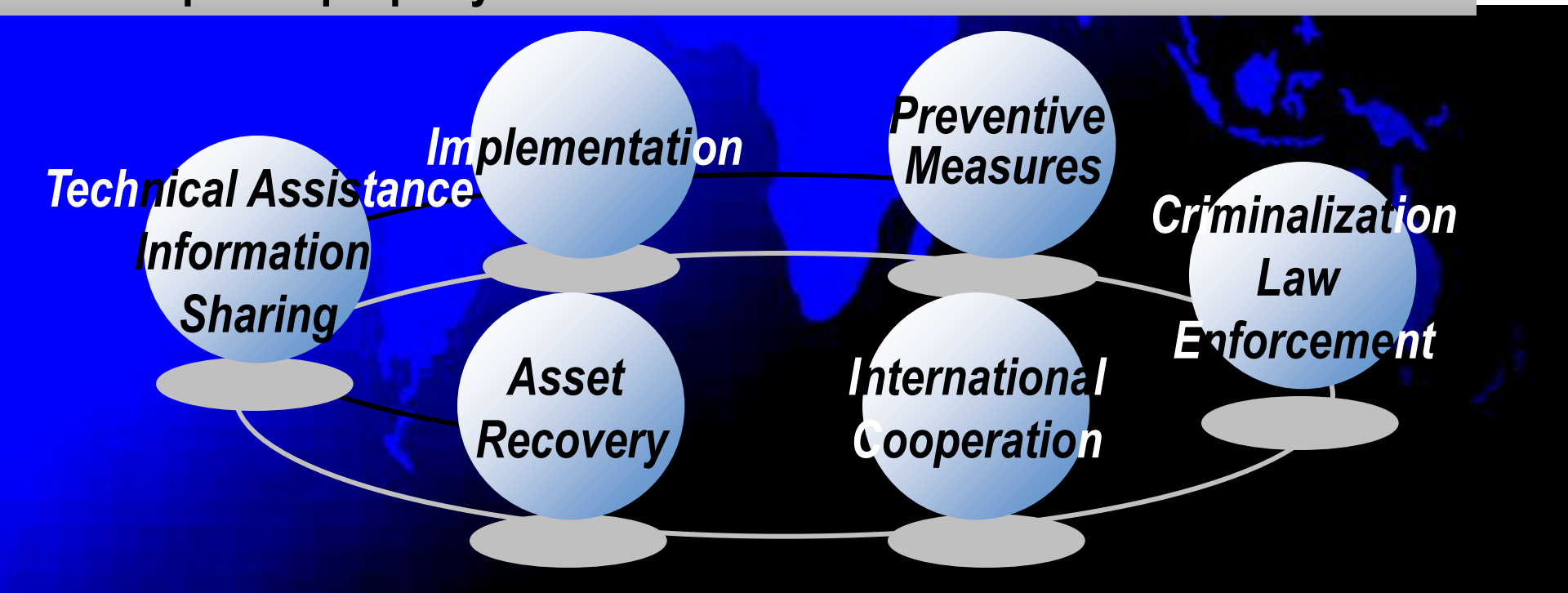
- Prevent and combat corruption more efficiently and effectively
- International cooperation and technical assistance, including asset recovery
- Integrity, accountability and proper management of public affairs and public property



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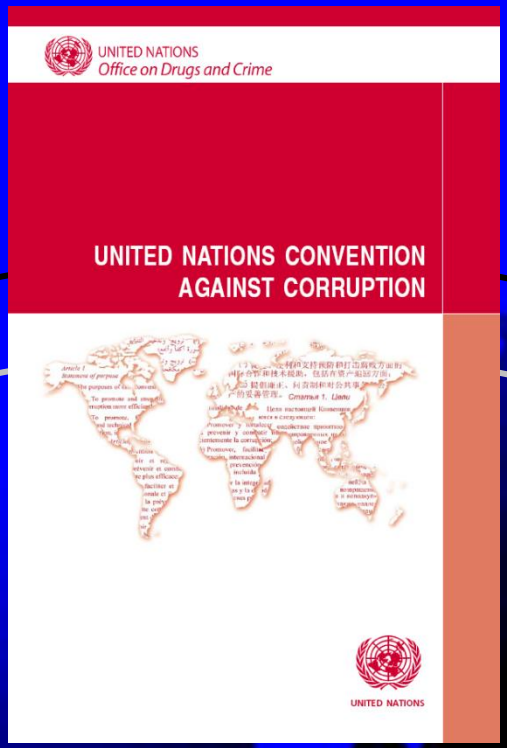
Conference of the State Parties (Art.63)

Session V
Panama
2013

Session IV
Morocco
2011



Summary of main UNCAC requirements



Mandatory requirements

Optional requirements

Optional measures

Language for Main UNCAC Requirements

- **Mandatory requirements** (obligation to take legislative or other measures) – "each State party shall adopt"

- **Optional requirements** (obligation to consider) – "each State party shall consider adopting" or "shall endeavour to" → States parties are urged to consider adopting a certain measure and to make a genuine effort to check its compatibility with domestic legal system

- **Optional measures** (measures that States parties may wish to consider) – "each State party may adopt/consider"

Chapter III: Criminalization and Law Enforcement

- Covers
  - Mandatory criminalization (arts. 15, 16.1, 17, 23, 25)
  - Non-mandatory offences (arts. 16.2, 18, 22, 24)
  - Liability of legal persons (art. 26)
  - Participation and attempt (art. 27)
  - Knowledge, intent and purpose (art. 28)
  - Jurisdiction (art. 42)

- Draws attention to
  - Use of terms, e.g. “public official” (art. 2)

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Chapter III: Criminalization and Law Enforcement

Mandatory Offences

- Bribery of National Public Officials (Art. 15)
- Active Bribery of Foreign Public Officials (Art.16, para.1)
- Embezzlement, Misappropriation or Other Diversion of Property (Art. 17)
- Laundering of proceeds of crime (Art. 23)
- Obstruction of Justice (Art. 25)
- Participation in such offences (Art. 27, para. 1)



Optional Offences

- Passive Bribery of Foreign Public Official (Art.16)
- Trading in Influence (Art. 18)
- Abuse of Functions (Art. 19)
- Illicit Enrichment (Art. 20)
- Bribery in Private Sector (Art. 21)
- Embezzlement of Property in Private Sector (Art. 22)
- Concealment (Art. 24)
- Attempt / preparation of UNCAC offences (Art.27, paras. 2-3)

Chapter IV: International Cooperation

- Covers
  - International cooperation in investigations and proceedings; dual criminality (art. 43)
  - Extradition (art. 44)
  - Mutual legal assistance (art. 46)
  - Mandatory requirements (e.g., art. 48)
  - Optional requirements (e.g., art. 49)
  - Optional measures (e.g., art. 45)

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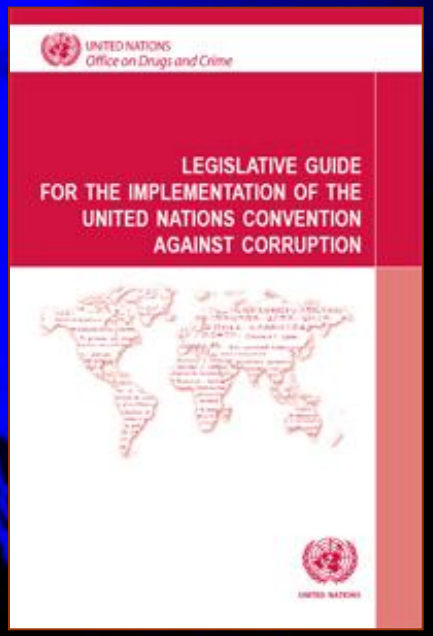
The Legislative Guide and The Technical Guide:

Effective Implementation Tools



Purposes of the Legislative Guide (2006)

- Assist States parties in ratifying and implementing UNCAC
- Identify legislative requirements and options for States drafting legislation
- Accommodate different legal traditions and levels of development
- Promote flexibility in implementing UNCAC while ensuring consistency

Legislative Guide to be used during the country review process

- Paragraph 10.b, Guidelines for governmental experts and the secretariat in the conduct of country reviews:

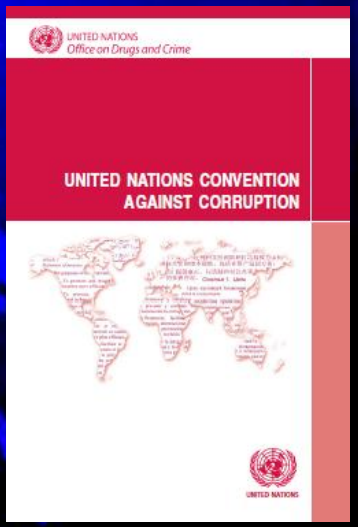
"The governmental experts shall prepare themselves by …familiarizing themselves with the *Legislative Guide for the implementation of the UNCAC* and with the *travaux préparatoires* of the negotiation of the Convention"

Each Chapter Contains

- Introduction to the relevant UNCAC articles
- Summary of main requirements
- Level of legal obligation
  - *Mandatory requirement*
  - *Optional requirement (obligation to consider)*
  - *Optional measure*
- Related provisions and instruments
- Examples

Purposes of the Technical Guide (2009)

- Promote the implementation of the Convention by States parties
- Provide anti-corruption practitioners and authorities with relevant technical advice, tools and examples of good practices to make the Convention operational
- Highlight policy issues, institutional aspects and operational frameworks related to the full and effective implementation of the provisions of the Convention.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Questions?

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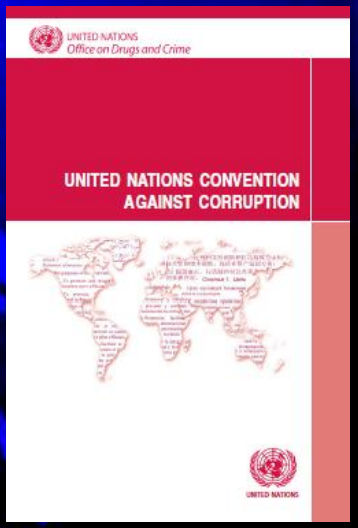


Part II:

The UNCAC Review Mechanism

The Review Mechanism (Doha) – Documents

- UNCAC
- COSP resolutions
- Terms of Reference of the Review Mechanism
- Guidelines for governmental experts and the secretariat, adopted at CoSP III and finalized by the Implementation Review Group (IRG)
- Blueprint for country review reports



Terms of Reference – Main Elements

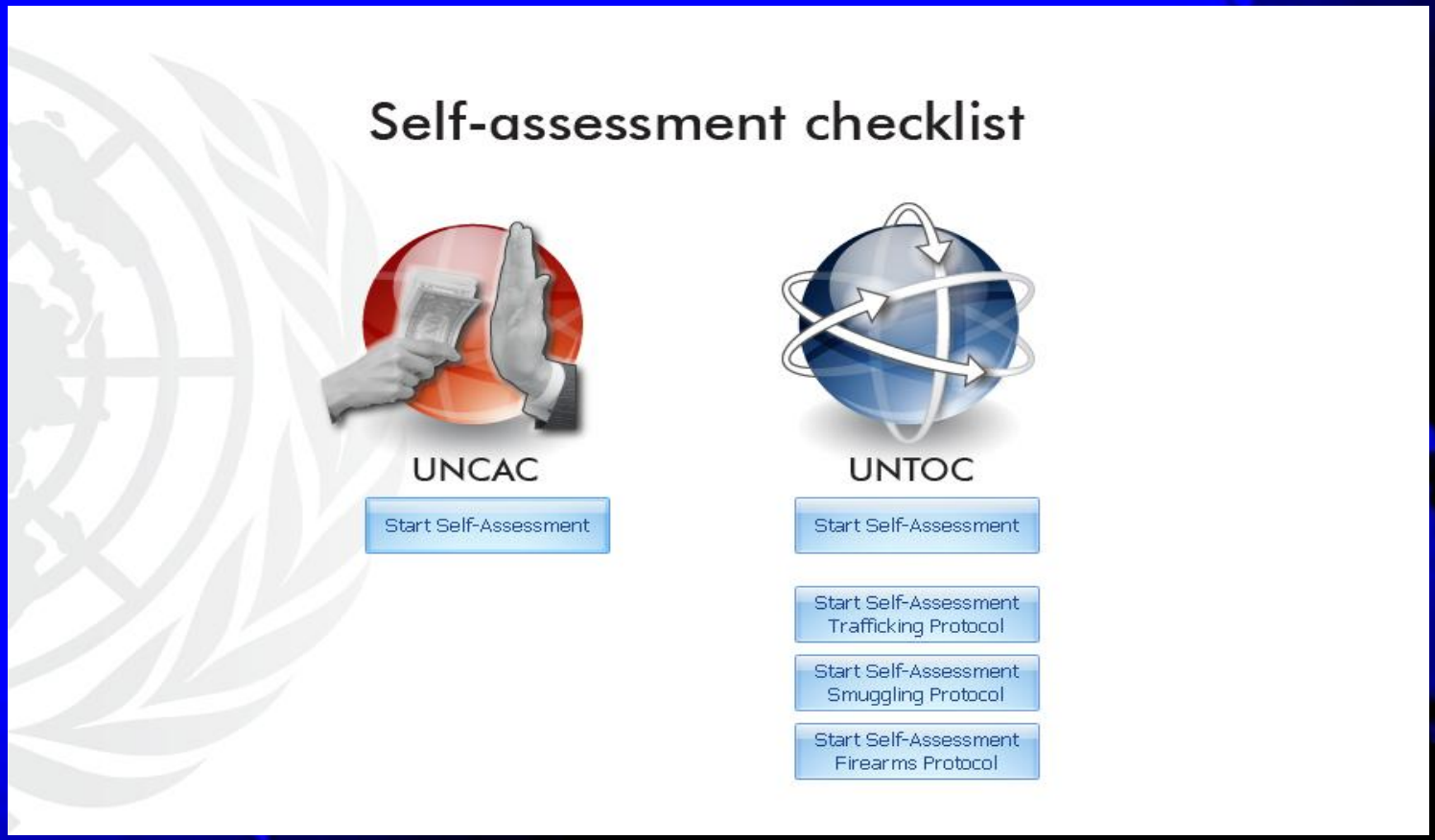
- Peer review process
- Drawing of lots for each year of the review cycle
- One phase = two cycles of five years
  - ✓ During the first cycle: chapter III (Criminalization and law enforcement); and IV (International cooperation)
  - ✓ During the second cycle: chapters II (Preventive measures); and V (Asset recovery)
- Desk review of self-assessment reports
- Sources of information and country visits
- Outcome of review process (report) and executive summaries
- Role of the Secretariat
- Funding

Activities in Support of the Mechanism

- Training for focal points and governmental experts

- Regional workshops organized in cooperation with host countries participating in the first year of reviews and partners (UNDP)
  - ✓Dakar, Senegal (Francophone States from African Group, WEOG and GRULAC)
  - ✓Rabat, Morocco (Arab region, Middle East and the Gulf)
  - ✓Panama City, Panama (GRULAC)
  - ✓Moscow, Russian Federation (CIS States)
  - ✓Vienna, Austria (East European Group, Asian Group and WEOG)
  - ✓Jakarta, Indonesia (Asian Group)
  - ✓Pretoria, South Africa (Anglophone States from African Group)

UNCAC Comprehensive Self-Assessment Checklist



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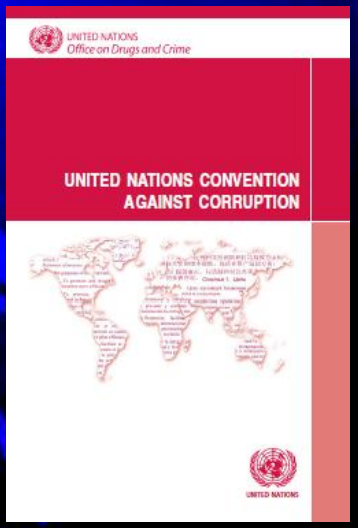

Country reviews: Guidelines for governmental experts and the Secretariat

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Model Country Review

Within three weeks

State party under review nominates focal point

Within one month

Secretariat organizes tele/videoconference to determine:

- Submission date of SA Report
- Language of review
- Division of labour
- Active dialogue

Within two months

State party under review submits response to the comprehensive self-assessment checklist

Within one month

Secretariat circulates response to reviewing experts, after translation where required

Within one month

Reviewing experts submit the outcome of the desk review

Within two months

Secretariat organizes tele/video conference for introduction of the outcome of the desk review

State party under review organizes further means of direct dialogue, facilitated by the secretariat (meeting in Vienna or country visit)

Within five months

Reviewing experts prepare draft country report assisted by the secretariat, state party under review agrees to final country report, executive summary is prepared

Within six months

End of review process

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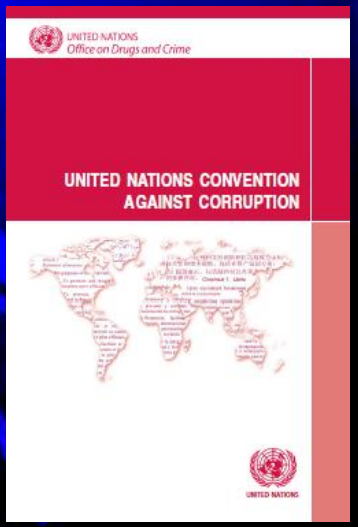
Blueprint of country review reports

- Introduction
- Process
- Executive Summary
- Implementation of the Convention (The Detail)

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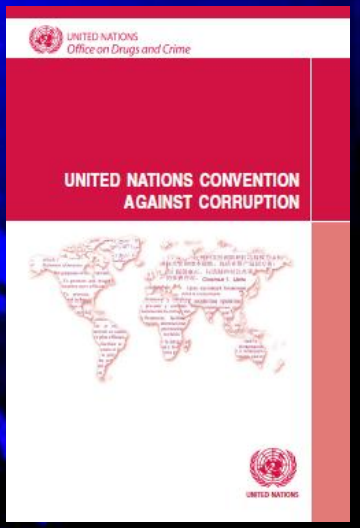

Part III:

Status of the Review Process

Year 1 – Progress of the Reviews

- 28 States parties under review from lots drawn in July 2010
- Two Executive Summaries complete – Spain & Finland
- Several other reports are nearing completion
- All but one review included a country visit
- Year 2 review process has begun
- 41 States parties under review, after deferrals
- Lots drawn last week

Challenges

- Delays in appointing focal points and experts
- Self-assessment checklist and software
- Language and translation
- Different legal systems
- Report drafting process and executive summaries

Guidance for Years 2 to 4

- Appoint focal points and experts early in the process
- Communicate early and often
- Develop a timeline with benchmarks
- Begin the Self-Assessment Checklist early on
- Conduct the desk review within the Blueprint format
- Prepare well for the Country Visit

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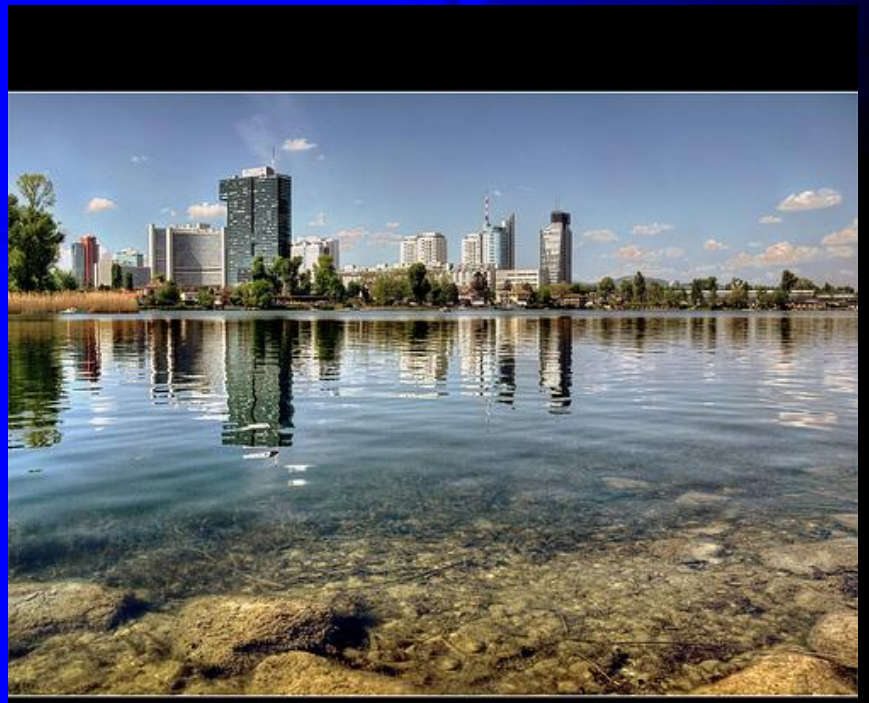

http://www.unodc.org/unodc/en/treaties/CAC/index.html

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