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## **Current activities of international organizations related to the harmonization and unification of public procurement law**

**Note by the Secretariat**

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\* This document was submitted for translation less than 10 weeks before the opening of the Commission session in view of the time necessary consult with the organizations whose activities are reported after the Working Group's session ending on 11 April 2008.



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## I. Introduction

1. This note sets out a non-exhaustive summary of policy-related and rule-formulating work in public procurement undertaken or planned to be undertaken by international organizations that may have implications on the work of UNCITRAL Working Group I (Procurement) (the “Working Group”). It updates the information provided to the Commission in A/CN.9/598/Add.1 at its thirty-ninth session (the “2006 Secretariat Note”), and sets out information by topic and region where there have been further developments since that note was issued. It also refers to complementary work of the Working Group and the UNCITRAL Secretariat where relevant.

2. The Working Group has requested the Secretariat to coordinate and cooperate with relevant international and regional organizations,<sup>1</sup> and to seek expert assistance as regards guidance to be given for the revisions to the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services (the “Model Law”) (A/49/17 and Corr.1, annex I) currently under preparation and review.<sup>2</sup> On the basis of the information provided in the present note, the Commission may wish to consider further appropriate cooperation and coordination strategies between the Working Group (through the Secretariat) and other relevant international and regional organizations regarding the revision of the Model Law and of the Guide to Enactment that accompanies it.

3. The Commission may also wish to guide the Working Group as to the issues that it should consider in addition to those on its agenda in connection with the current project, or separately in due course.

4. The policy activities in the areas of public procurement of the following organizations described in this paper are derived from the participation of the UNCITRAL Secretariat in the activities concerned, from publicly available materials and from information received by the UNCITRAL secretariat from these organizations in response to its inquiries:

APEC	Asia Pacific Economic Cooperation
COMESA	Common Market for Eastern and Southern Africa
EC	European Commission
MDBs	Multilateral Development Banks, including:
ADB	Asian Development Bank
AfDB	African Development Bank
EBRD	European Bank for Reconstruction and Development
IADB	Inter-American Development Bank
World Bank	
OECD	Organization for Economic Cooperation and Development
UNDP	United Nations Development Programme

<sup>1</sup> A/CN.9/575, para. 67 and A/CN.9/615, para. 85.

<sup>2</sup> A/CN.9/615, para. 14.

UNICRI	United Nations Interregional Crime and Justice Research Institute
UNODC	United Nations Office on Drugs and Crime
WTO	World Trade Organization

5. The paper complements a note by the Secretariat on current activities of international organizations related to the harmonization and unification of international trade law, contained in A/CN.9/657, submitted to the forty-first session of the Commission.

## **II. Summary of work of international organizations relating to public procurement**

### **A. Policymaking and legislative work in general and electronic procurement**

#### **1. Background and relevance to the work of the Working Group**

6. Public procurement is regulated through a hierarchy of international, regional and national instruments, some or all of which may apply in individual enacting States. At the international level, the United Nations Convention against Corruption (A/Res/58/4) includes mandatory provisions addressing public procurement. At the regional level, the OECD Convention on Combating Bribery in International Business Transactions (1997) may apply to international procurement in States parties to that Convention. Enacting States parties may also be members of regional trade organizations or other international or regional groupings,<sup>3</sup> which have regulatory texts or agreements that address public procurement, both expressly and through the prohibition of discrimination against foreign suppliers within the grouping or organization. The Working Group has therefore recognized that the Model Law should be consistent, to the extent possible, with the requirements of these other texts and agreements, so that it can be enacted by all States that are parties to them. The Working Group has also taken account of the UNCITRAL mandates both to coordinate and cooperate with relevant institutions and to promote the harmonization of procurement legislation and practice.

7. The majority of the above organizations are regularly represented at the Working Group's sessions, and provide information to the Working Group at its sessions on their activities in policy-making and legislative work in general and electronic procurement. In addition, the UNCITRAL secretariat is actively engaged in the work of the MDBs, the OECD, the UNDP and the UNODC set out in this note, and is in regular communication with the other organizations. The UNCITRAL Secretariat has also cooperated with the WTO secretariat on various issues related to legislative and technical assistance work.

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<sup>3</sup> Such as the Asia-Pacific Economic Cooperation (APEC), the European Union (Procurement Directives 2004/17/EC and 2004/18/EC), the draft Free Trade Area of the Americas Agreement (FTAAA), the North American Free Trade Agreement (NAFTA), the Organization of American States (OAS) and the World Trade Organization (WTO) Agreement on Government Procurement (GPA).

## 2. World Trade Organization

8. The WTO activities in public procurement continue to focus on the renegotiation of the plurilateral Government Procurement Agreement (the "GPA"), as advised in the 2005 and 2006 Secretariat Notes.<sup>4</sup> In December 2006, provisional agreement was reached by the negotiators on the text of a revised GPA. The agreement of the negotiators is provisional as it is subject, first, to a final agreement on the text itself; and, secondly, to a mutually satisfactory outcome to the negotiations on coverage. Final negotiations are ongoing.

## 3. Multilateral development banks (MDBs)

9. In the 2006 Secretariat Note, the Commission's attention was drawn to the activities of a joint working group on Harmonization of Electronic Government Procurement (e-GP) (the "Joint Working Group"),<sup>5</sup> set up at the beginning of 2003 by the ADB, the IADB, and the World Bank, and subsequently joined by the AfDB, EBRD and Nordic Development Fund.<sup>6</sup>

10. Since the issue of the 2006 Note, the Joint Working Group has conducted and published an in-depth survey of electronic government procurement (sponsored by the ADB, the IADB, and the World Bank).<sup>7</sup> The survey addressed electronic government procurement systems from a total of 15 countries, identifying strategic approaches to the adoption of electronic government procurement and the functions of systems implementing the programmes concerned, the issues and costs and benefits arising in the transition to electronic government procurement, the successes achieved, and lessons learned. The survey concluded, among other things, that some aspects of electronic government procurement were relatively advanced (such as electronic publication systems, the use of government procurement websites and the legislative framework), but that these aspects were not always sufficiently supported. Thus the survey considered that practical aspects of the programmes, such as systems integration and functionality, management control, monitoring procurement process information, and internal audit would play a significant role in promoting good procurement practice.

11. The preparation of requirements for electronic procurement under MDB financed projects is ongoing. These requirements will support the E-Tendering Requirements published in October 2005 and the E-reverse Auction Guidelines published in December 2005,<sup>8</sup> and will supplement and not replace existing requirements in procurement processes for MDB funded activities. The requirements will be documented, including through interactive standard bidding documents, guidance notes on electronic tendering, electronic reverse auctions, and electronic purchasing, and papers on the specification and codification of electronic government procurement.

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<sup>4</sup> A/CN.9/584, para. 55, and A/CN.9/598/Add.1, paras. 5-9.

<sup>5</sup> A/CN.9/598/Add.1, para. 10, and see also "Current activities of international organizations related to the harmonization and unification of international trade law" that was before the Commission at its thirty-eighth session (the "2005 Secretariat Note"), A/CN.9/584, paragraph 50.

<sup>6</sup> The UNCITRAL Secretariat participates in meetings of the Joint Working Group as an observer.

<sup>7</sup> The survey is available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1064452>.

<sup>8</sup> Discussed in A/CN.9/598/Add.1, paras. 14-20.

12. For a further aspect of the Joint Working Group's activities, see paragraph 46 below.

#### 4. Africa

##### *African Development Bank*

13. In the period under review, the AfDB has continued the publication of country procurement assessment reports and the provision of support to subregional organizations, such as COMESA and WAEMU in various legislative initiatives on harmonization and modernization of public procurement systems at national, subregional and regional levels (see paras. 14 to 17 below).

##### *Common Market for Eastern and Southern Africa*

14. In the 2006 Secretariat Note, the Commission's attention was drawn to the work of COMESA on the Enhancing Procurement Reforms and Capacity Project (EPRCP) under the Public Procurement Reform Project (PPRP).<sup>9</sup>

15. In 2007, COMESA commenced a project to consolidate the reforms under the EPRCP and PPRP in COMESA States, with the support of the AfDB. The aims of the project are to ensure full awareness of the principles and workings of the national and regional public procurement systems, the publication of national procurement laws and regulations that are consistent with the COMESA procurement directive passed under the PPRP, and the issue of procurement training materials and case studies. A further aspect of this project involves assessing the levels of implementation of these reforms in selected COMESA member States, and assessing capacity-building needs.

##### *West African Economic and Monetary Union*

16. Following the adoption of the WAEMU Public Procurement Directives in December 2005,<sup>10</sup> with the support of the AfDB and the African Capacity Building Foundation (ACBF), the WAEMU commenced a Regional Public Procurement Reform project in 2007. The objective of the project is to modernize and harmonize public procurement systems in the Union's member States through effective implementation of its regulations on public procurement. The project will develop and promote a framework for public procurement, and build institutional and human capacity in the Commission and the member States of the Union.

17. The project is expected to result in the incorporation of two WAEMU directives on public procurement into national laws of the eight member countries of the Union,<sup>11</sup> the preparation of regional standards in bidding documents, and the creation of a regional public procurement monitoring capacity. Under a related project, a regional electronic government procurement portal will be established for the publication of procurement information including notices, contract award results and other procurement-related information.

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<sup>9</sup> Developed by the COMESA secretariat pursuant to the decision taken at the seventeenth meeting of the COMESA Council of Ministers (Kampala, 4-5 June 2004).

<sup>10</sup> See A/CN.9/598/Add.1, para. 27.

<sup>11</sup> Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo.

## 5. Asia

### *Asia Pacific Economic Cooperation*

18. During the period under review, the APEC Government Procurement Expert Group (GPEG)<sup>12</sup> has completed its consideration of the member economies' voluntary reviews and reports to GPEG on the APEC non-binding Principles on Government Procurement (the "Principles"),<sup>13</sup> and continues its work on revising the Principles, in particular to incorporate the APEC Transparency Standards on Government Procurement (the "Transparency Standards") as reported in the 2006 Secretariat Note.<sup>14</sup>

19. The GPEG has also identified the areas of the Principles that are relevant to anti-corruption in procurement, and has completed and published Model Measures for Government Procurement (in the context of regional and other free trade agreements, and building on the Principles and Transparency Standards).<sup>15</sup>

20. In support of its work regarding the Principles and the Transparency Standards, GPEG is continuing to develop capacity-building projects, including progressing small and medium-sized enterprise initiatives in consultation with the SME Working Group,<sup>16</sup> encouraging the development of electronic government procurement systems through a framework for electronic procurement Guidelines.

21. The content of the Principles and the Transparency Standards, and any published revisions, will continue to be brought to the attention of the Working Group as and when they are relevant to its work.

### *Asian Development Bank*

22. In February 2007, the ADB published revised Procurement Guidelines, which require international competitive bidding unless that procurement method would not be the most economic and efficient method of procurement, or where other methods are deemed more appropriate.<sup>17</sup>

## 6. Europe

### *European Commission*

23. During the period under review, the EC issued a new Remedies Directive,<sup>18</sup> based on extensive consultations with procuring entities and the private sector, which seeks to strengthen legal review procedures in the area of public procurement. The Directive also seeks to combat illegal direct awards of public contracts, which the EC considers to be the most serious infringement of EU procurement law. The

<sup>12</sup> The Group was established in 1995 as a sub-forum of the APEC Committee on Trade and Investment.

<sup>13</sup> Available at [http://www.apecsec.org.sg/apec/apec\\_groups/committees/committee\\_on\\_trade/government\\_procurement.html](http://www.apecsec.org.sg/apec/apec_groups/committees/committee_on_trade/government_procurement.html).

<sup>14</sup> A/CN.9/598/Add.1, para. 29.

<sup>15</sup> Annex 1 to the GPEG Model Measures, available at [http://aimp.apec.org/Documents/2007/GPEG/GPEG1/07\\_gpeg1\\_003.pdf](http://aimp.apec.org/Documents/2007/GPEG/GPEG1/07_gpeg1_003.pdf).

<sup>16</sup> See the discussion of the SME-related activities in A/CN.9/598/Add.1, paras. 29, 40 and 41.

<sup>17</sup> Available at <http://www.adb.org/Documents/Guidelines/Procurement/>.

<sup>18</sup> Directive 2007/66/EC, published on 20 December 2007, amending Directives 89/665/EEC and 92/13/EEC.

Directives enable national courts to render public contracts ineffective if they have been illegally awarded without transparency and prior competitive tendering, or, in appropriate circumstances and by reference to the national interest, to impose alternative penalties that are effective, proportionate and dissuasive. Member States have until 20 December 2009 to implement the new Directive into national law. The question of remedies will be taken up by the Working Group in at its fourteenth session.<sup>19</sup>

24. For contracts based on framework agreements and dynamic purchasing systems, where speed and efficiency are generally considered to be particularly relevant, the Directive provides for a specific review mechanism. For these types of contracts, Member States may choose to replace the normal 10-day standstill obligation by a post-contractual review procedure. The Working Group will also be addressing these types of contracts at its fourteenth session.<sup>20</sup>

25. Also during the period under review, the EC published a series of feasibility studies in connection with the implementation of electronic procurement, regarding electronic catalogues, the electronic publication of procurement-related information, compliance verification in electronic procurement and the provision of electronic certificates.<sup>21</sup>

#### *EBRD*

26. In October 2007, the EBRD started work on the first comprehensive review and updating of its Procurement Policies and Rules (PP&R) since their adoption in 1992. The aim of the review is to address the evolving needs of the EBRD, its clients and suppliers, and its public stakeholders. The review is being conducted in the light of the increased activity in the east and south regions, and in municipal infrastructure and concession financing. The EBRD considers that these activities entail greater procurement risks, especially where the procuring entities do not have adequate experience in international open tendering and contract management. Further, ten of the EBRD's countries of operations have joined the European Union and have incorporated the EC procurement directives into their legislation.<sup>22</sup> Finally, the PP&R will be considered in the light of anti-corruption and integrity initiatives and other procurement objectives.

27. The EBRD envisages that the reforms to the PP&R will focus on ensuring enhanced transparency and accountability through improved monitoring and reporting on compliance, increased disclosure of procurement-related information, strengthened enforcement mechanisms to promote integrity and fight corruption, accommodating local conditions including local law, language, currency, and adapting thresholds for mandatory tendering to reflect differing local environments, modernizing procurement processes and reports through the use of electronic procurement. The results of the review have not yet been published.

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<sup>19</sup> A/CN.9/648, para. 17 and annex. The fourteenth session will be held in Vienna, from 8-12 September 2008, subject to confirmation by the Commission.

<sup>20</sup> See previous footnote.

<sup>21</sup> Further details are set out at [http://ec.europa.eu/internal\\_market/publicprocurement/e-procurement\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/e-procurement_en.htm).

<sup>22</sup> Directive 2004/EC/17 and Directive 2004/EC/18.

## **B. Transparency and anti-corruption in procurement**

### **1. Background**

28. Multilateral instruments and initiatives have been developed in recent years to enhance international cooperation in the fight against corruption and fraud, many of them addressing the area of public procurement, which has been acknowledged to be an area of significant vulnerability in this regard.<sup>23</sup> This section of the note sets out a non-exhaustive summary of the implementation of measures to promote transparency and integrity in public procurement, noting where that work has been carried out in conjunction with the Secretariat.

29. The UNODC, the OECD and UNDP, and the MDBs, in addition to the provision of information on relevant activities to the Working Group and Secretariat, have during the period under review sought the input of the Working Group through the Secretariat on materials and publications issued in this area of activity, and have sought the participation of the UNCITRAL Secretariat in the procurement-related aspects of the activities described below.

30. These activities have followed the entry into force of the United Nations Convention against Corruption in December 2005 (the "Convention").<sup>24</sup> There are both legislative initiatives and the provision of functional and technical guidance on the infrastructure that is required to support those initiatives, including the promotion of integrity and transparency in procurement systems and the assessment of implementation in States in various regions.

### **2. Relevance to the work of the Working Group**

31. The Working Group has noted that the above anti-corruption activities may have implications for its work for three reasons. First, the Model Law is (through its article 3) expressly subject to international obligations of enacting States, such as those imposed by the Convention.<sup>25</sup> Secondly, the activities described may influence how the Model Law is implemented in certain enacting States,<sup>26</sup> and consistent and effective implementation is a vital aspect of UNCITRAL's work in procurement. Thirdly, the requirements of the Convention link procurement systems with adequate internal control and risk management in public finances, requiring

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<sup>23</sup> As per the Organisation for Economic Co-operation and Development (OECD): "[p]ublic procurement has been identified as the government activity most vulnerable to corruption": Integrity in Public Procurement: Good Practice from A to Z (OECD, 2007), available at [http://www.oecd.org/document/60/0,3343,en\\_2649\\_34135\\_38561148\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/60/0,3343,en_2649_34135_38561148_1_1_1_1,00.html).

<sup>24</sup> Adopted by the General Assembly on 31 October 2003, General Assembly resolution 58/4, annex. Other relevant texts include the African Union Convention on Preventing and Combating Corruption, the SADC Protocol against Corruption, the OECD Convention against Bribery of Foreign Public Officials, the Inter-American Convention against Corruption, the ADB-OECD Anti-Corruption Action Plan for Asia-Pacific, and the Council of Europe Criminal Law Convention on Corruption.

<sup>25</sup> See, also, paragraph 6 above.

<sup>26</sup> UNCITRAL's technical assistance mandate includes preparing and promoting the use and adoption of its Model Law, among other texts, and its mandate to coordinate the work of relevant organizations and to encourage cooperation includes the avoidance of duplication of effort and the promotion of efficiency, consistency and coherence in relevant work.

procurement systems to address non-legislative issues.<sup>27</sup> Such issues may include the planning and contract administration phases of procurement, and other questions of public sector governance that fall outside the remit of the Model Law.

### 3. United Nations Office on Drugs and Crime

32. The United Nations Convention against Corruption contains an article (within its preventive measures chapter) dedicated to prevention of corruption in procurement, through the promotion of safeguards to ensure efficiency, transparency and accountability in the procurement process and the effective management of public finances. The UNODC, as custodian of the Convention, has published a Legislative Guide to the Convention,<sup>28</sup> which notes that the introduction of the measures set out in the text may require amendments to, or new, legislation or regulations, depending on the existing legal framework of each State Party, and refers to the Model Law as a relevant legislative text in this regard.

33. UNICRI and UNODC are developing and maintaining a Technical Guide to support the Legislative Guide, with the contribution of procurement-related material from expert consultants and the UNCITRAL Secretariat. This material will address anti-corruption and other procurement goals and objectives (focusing on the key role of transparency), and the role of electronic procurement as a tool for achieving those sometimes conflicting goals. Publication is anticipated in the second quarter of 2008.

34. The Conference of the States Parties to the Convention (the “Conference”)<sup>29</sup> set up several Open-ended Intergovernmental Working Groups, including a Working Group on Technical Assistance, also to be served by the UNODC Secretariat. In the context of coordination regarding technical assistance, the UNODC and the UNCITRAL Secretariat<sup>30</sup> have agreed that the latter should participate in the provision of technical assistance that will be required for implementing the Convention’s provisions, initially regarding short- and medium-term activities such as legislative assistance and advisory services regarding the Convention and its implementation, but also including the development of a strategic plan for longer-term activities.

35. As a first step in this regard, the UNCITRAL Secretariat presented a note to the second session of the Conference (Nusa Dua, Indonesia, 28 January-1 February 2008) entitled “The United Nations Convention against

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<sup>27</sup> The relevant provision is article 9 (2) of the Convention: “2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia: ... (d) Effective and efficient systems of risk management and internal control ...”.

<sup>28</sup> United Nations Publication Sales No. E.06.IV.16, ISBN-10: 92-1-133755-0, also available at [http://www.unodc.org/pdf/corruption/CoC\\_LegislativeGuide.pdf](http://www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf).

<sup>29</sup> As reported in para. 44 of the 2006 Secretariat Note, the implementation of the Convention will operate through the Conference of the States Parties to the Convention, assisted by the UNODC Secretariat, which also ensures coordination with the secretariats of relevant regional and international organizations on the implementation of the Convention (General Assembly resolution 58/4, annex, para. 8).

<sup>30</sup> Details of the Technical Assistance Working Group and its work to date are found at <http://www.unodc.org/unodc/en/treaties/CAC/working-group3.html>.

Corruption – implementing procurement-related aspects”.<sup>31</sup> The note considered the Convention requirements regarding procurement systems, and concluded that the text of the Model Law addressed almost all the procurement-related legislative provisions of the Convention, and the Guide to Enactment that accompanies the Model Law addressed in broad terms the remainder. However, as the 2006 Secretariat Note advised, the requirements of article (1) (e) of the Convention addressing conflicts of interest, screening procedures and training are not provided for in the Model Law itself, and the Commission requested the Working Group to ensure that the Model Law, when revised, should comply with the requirements of the Convention.<sup>32</sup> The Working Group is to consider the implementation of this recommendation at its fourteenth session.<sup>33</sup>

36. The resolutions of the Conference at its second session emphasized, among other things, that States parties to the Convention should continue to adapt their legislation and regulations to implement its requirements, and that coordination and enhancing technical assistance for the implementation of the Convention should be strengthened (including as between donors, through the identification of technical assistance needs and through the work of the Technical Assistance Working Group).<sup>34</sup> The third session of the Conference (to be held in Qatar in 2009), is planned to address, *inter alia*, the field of preventive measures, which will include a focus on the provisions regarding public procurement, together with proposals for a review mechanism for implementation of the Convention.

37. The Technical Assistance Working Group held an “International Cooperation Workshop on Technical Assistance for the Implementation of the United Nations Convention against Corruption”, in Montevideo, Uruguay, from 30 May to 1 June 2007, and a further meeting in Vienna on 1 and 2 October 2007. The Working Group presented its reports to the Conference at its second session, which stressed the importance of preventive measures, and which were considered by the Conference in formulating the resolutions described above.<sup>35</sup> Further meetings of all of the Working Groups constituted by the Conference will be held in the latter part of 2008.<sup>36</sup>

38. In its support of the Technical Assistance Working Group, the UNODC conducted a survey regarding implementation of the procurement-related aspects of the Convention through a self-assessment checklist, and has published a report of its

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<sup>31</sup> CAC/COSP/2008/CRP.2, transmitted under cover of A/CN.9/WG.I/XIII/INF.2 to the Working Group for information on 12 February 2008.

<sup>32</sup> A/CN.9/598/Add.1, para. 43, A/61/17, para. 192.

<sup>33</sup> See footnote 18, above.

<sup>34</sup> See draft “Resolutions and decisions adopted by the Conference of the States Parties to the United Nations Convention against Corruption”, available at <http://www.unodc.org/documents/treaties/UNCAC/COSP/session2/UNEDITED-COSP2Resolutions.pdf>.

<sup>35</sup> “Report of the Workshop on Development and Technical Assistance” (Montevideo, 30 May-1 June 2007), CAC/COSP/2008/6, and “Report on the meeting of the Open-ended Intergovernmental Working Group on Technical Assistance” (Vienna, 1 and 2 October 2007), CAC/COSP/2008/5, available at <http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session2.html>.

<sup>36</sup> Open-ended Intergovernmental Expert Working Group on Review of Implementation (Vienna, 22-24 September 2008 and 15-17 December 2008), Open-ended Intergovernmental Working Group on Asset Recovery (Vienna, 25-26 September 2008), Open-ended Intergovernmental Working Group on Technical Assistance (Vienna, 18-19 December 2008).

findings.<sup>37</sup> This report noted that 56 per cent of reporting parties indicated full compliance with the requirements of article 9 of the Convention (one advising through the enactment of procurement legislation based on the Model Law),<sup>38</sup> 40 per cent indicated partial compliance and 4 per cent provided no information. Detailed information regarding compliance on a regional basis is set out in the report. A second report, addressing the requirements for technical assistance needs identified by reporting parties for the implementation of the Convention,<sup>39</sup> noted that the parties reporting partial compliance with the requirements of article 9 identified needs including a development plan for implementation, legal advice, legislative drafting, model legislation and a site visit by an anti-corruption expert.<sup>40</sup> These reports will form the basis for the ongoing technical assistance work of the UNODC, assisted by the UNCITRAL Secretariat, in the short to medium term.

39. A 7th Global Forum on Reinventing Government, on the theme of “Building Trust in Government” (Vienna, 26-29 June 2007), was organized by the UNODC in cooperation with the Government of Austria. The UNODC and UNCITRAL Secretariats, and representatives of UNDP, the OECD, Transparency International<sup>41</sup> and the World Bank participated in a session on “Public Procurement, Money Laundering and Asset Recovery: Rethinking and Repairing Government Vulnerability”.<sup>42</sup> The session discussed the preventive mechanisms to address corruption in public procurement and their interaction with other objectives of procurement systems. The conference also aimed to promote better international and regional cooperation, and to facilitate the exchange of information on good practice and experiences. It concluded with the issue of the “Vienna Declaration on Building Trust in Government”.<sup>43</sup>

#### 4. Organization for Economic Cooperation and Development

40. During the period under review, the OECD has continued its efforts at both international and regional levels on public procurement reform from the perspective of public governance, development aid and the prevention of bribery of foreign public officials. The work involved has included a series of outreach measures, such

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<sup>37</sup> “Self-assessment of the implementation of the United Nations Convention against Corruption”, CAC/COSP/2008/2, available at <http://www.unodc.org/documents/treaties/UNCAC/COSP/session2/V0788913e.pdf>, paras. 42-47 and Figure IV.

<sup>38</sup> As noted on the UNCITRAL website, approximately 20 States have notified the Commission that they have enacted procurement legislation based on or inspired by the Model Law. See [http://www.uncitral.org/uncitral/en/uncitral\\_texts/procurement\\_infrastructure/1994Model\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/1994Model_status.html).

<sup>39</sup> “Self-assessment of technical assistance needs for the implementation of the United Nations Convention against Corruption”, CAC/COSP/2008/2/Add.1, available at <http://www.unodc.org/documents/treaties/UNCAC/COSP/session2/V0789301e.pdf>.

<sup>40</sup> *Ibid.*, paras. 26-31 and Figure 4.

<sup>41</sup> Transparency International (TI) is actively engaged in public procurement as an aspect of anti-corruption efforts. One focus of TI’s procurement-related work is areas considered as particularly vulnerable to corruption, such as defence procurement, construction projects and aid delivery, and publishes guidelines and other information at [http://www.transparency.org/global\\_priorities/public\\_contracting/projects\\_public\\_contracting](http://www.transparency.org/global_priorities/public_contracting/projects_public_contracting).

<sup>42</sup> This session formed part of a workshop entitled “Reinvention with Integrity: Using the United Nations Convention against Corruption”.

<sup>43</sup> The text is available at <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan026677.pdf>.

as the issue of publications after consultation and collaboration with governments and procurement specialists (including the UNCITRAL Secretariat), country monitoring and reporting, and workshops, and regional conferences and other forums aimed at introducing the recommendations and guidance set out in those publications and at exchanging information on good practice.

41. The OECD Working Group on Bribery in International Business Transactions published in 2007 its “Bribery in Public Procurement: Methods, Actors and Counter-Measures”, which considered bribery in the context of the growing complexity of bribery schemes in public procurement, and provided mechanisms to identify and prevent corruption in public procurement through effective prevention and sanctions. This OECD Working Group also recognized at the second session of the Conference that the OECD Convention on Combating Bribery in International Business Transactions and the Convention (against Corruption) are complementary in many aspects. The OECD Working Group and UNODC are consequently cooperating as regards the implementation of the Convention, through, for example, contributions by the OECD to the Conference of State Parties, and the provision of input into the development of the Legislative Guide and the Technical Guide to support the Convention described in paragraphs 35 and 36 above.

42. The OECD’s Public Governance and Territorial Development Directorate also published a document in 2007 entitled “Integrity in public procurement: Good practice from A to Z”, compiled following a Symposium and Forum held in November 2006 entitled “Mapping out Good Practices for Integrity and Corruption Resistance in Procurement”.<sup>44</sup> Significant findings included that while the bidding process had been improved through many recent initiatives in projects such as roads, defence and dams, other vulnerable but less visible areas had been overlooked, including needs assessment, procurement planning and contract administration. Further, the report considered exceptions to competitive procedures, such as emergency contracting and defence procurement. The report cited examples of good practice not only in OECD countries, but also in Brazil, Chile, Dubai, India, Pakistan, Romania, Slovenia and South Africa.

43. Also following the conclusions of the Symposium and Forum referred to above, the OECD has issued a “Draft Checklist for Enhancing Integrity in Public Procurement”, again after consultation with interested parties including the UNODC and UNCITRAL Secretariats. The Checklist, when finalized, is intended to be a practical instrument aimed at providing standards for policymakers in reforming public procurement systems to reinforce integrity and public trust in how public funds are managed, addressing functional guidance and subject to the relevant legislative framework (with reference to the Convention and Model Law).

44. During the period under review, the OECD has held regular regional conferences and workshops on best practice and enhancing integrity in public procurement. Recent venues have included central Europe, Latin America and the Middle East and North Africa. The UNODC and UNCITRAL Secretariats participated in the most recent such event, organized by the General Treasury of the

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<sup>44</sup> The UNCITRAL Secretariat participated in both the Symposium and the Forum, and provided input in the resulting publication.

Kingdom of Morocco in collaboration with the OECD.<sup>45</sup> Held in Rabat, Morocco, on 3-4 April 2008, it included a Regional Conference on Enhancing Integrity in Public Procurement, and a Workshop on Sharing Good Practices for Enhancing Integrity in Public Procurement, and discussion of the conclusions of a Joint Learning Study (JLS) on Integrity in Public Procurement in Morocco. The JLS is intended to operate as the OECD's pilot study on public procurement in the region, and so the conference and workshop explored lessons learned from the adaptation of the OECD methodology in the JLS, and future uses for OECD instruments, such as the Draft Checklist for Enhancing Integrity in Public Procurement.

## **5. United Nations Development Programme**

45. The UNDP Democratic Governance Group conducts regional anti-corruption projects and UNDP has worked with UNODC since the Convention came into force in regional projects regarding its implementation.<sup>46</sup> In the period under review,<sup>47</sup> the Europe and Commonwealth of Independent States region of UNDP set up an Anti-Corruption Practitioners Network, based at its Bratislava Regional Centre.<sup>48</sup> Its main current objective is the implementation of an anti-corruption regional project focusing on national capacity assessment and development in the region, and the UNCITRAL Secretariat will provide input on the procurement aspects of the project.

## **6. MDBs**

46. The Joint Working Group continues to promote the use of electronic procurement as a useful tool against corruption, and has issued a study entitled "Corruption and Technology in Public Procurement", identifying the key risk areas in the procurement process and the use of electronic systems to assist in meeting the risks identified.<sup>49</sup> The MDBs are using this study in the development of the documents and tools referred to in paragraph 11 above.

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<sup>45</sup> The event was also part of the OECD's Good Governance for Development in Arab Countries Initiative, and other international organizations attending included the African Development Bank, the European Commission, the Organisation of the Islamic Conference (OIC), the World Bank and the World Trade Organization (WTO), together with representatives of 12 regional and 6 OECD governments.

<sup>46</sup> UNCITRAL participated in one such project, reviewing draft procurement legislation and presenting findings at a workshop, in 2007.

<sup>47</sup> Following the UNDP Regional Forum on Anti-Corruption Institutions (Vienna 12-14 December 2005). See the Report of the Regional Forum on Anti-corruption Institutions, Vienna International Centre, <http://europeandcis.undp.org/files/uploads/Lotta/AC%20Forum%20Report.pdf>.

<sup>48</sup> Details are found at <http://anticorruption.undp.sk>.

<sup>49</sup> "Corruption and Technology in Public Procurement", January 2007, by Dr. Paul R. Schapper on behalf of the World Bank, cited with permission of the World Bank.