



## The UN Convention against Transnational Organised Crime

Dr. Sandro Calvani  
Representative Regional Centre for  
East Asia and the Pacific

1

## A global commitment towards comprehensive international instruments

September 1996	Poland proposes draft framework Convention to General Assembly
December 1998	General Assembly creates open-ended intergovernmental Ad Hoc Committee (General Assembly resolution 53/111, of 9 December 1998, established an Ad Hoc Committee):
1999-2001	Over 120 States successfully complete Convention and 3 Protocols in only 24 months and 12 sessions.

2

## The Ad Hoc Committee

- ▶ General Assembly resolution 53/111, of 9 December 1998, established an Ad Hoc Committee:
  - to elaborate a new comprehensive international convention against transnational organized crime;
  - to elaborate three additional international legal instruments or protocols

3

## Instruments adopted

- ▶ United Nations Convention against Transnational Organized Crime
  - Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children
  - Protocol against the Smuggling of Migrants by Land, Sea and Air
  - Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition

4

## Purpose of the UN Convention against Transnational Organized Crime

“To promote cooperation to prevent and combat transnational organized crime more effectively” (Art. 1)

5

## Structure of Convention

- Defines and standardizes terminology
- Requires States to have specific crimes
- Specific control measures (money-laundering, corruption etc.)
- Confiscation of proceeds of crime
- International cooperation (extradition, legal assistance, investigative measures etc.)
- Training, research, information exchange
- Prevention
- Implementation review mechanism

6

## Scope of application

(Art. 2 a,b)

- ▶ The convention applies to the “prevention, investigation and prosecution” of
  - offences established by the convention (Art. 5, 6, 8 and 23)
  - Other serious crimes defined in Art.2
  - Protocol offences (Protocols, Art.1)
- ▶ Only when:
  - transnational in nature
  - an organized criminal group is involved

7

## Transnational in nature

- ▶ The Crime is *transnational in nature* if:
  - Committed in more than in one State;
  - Substantial part of preparation, planning, direction or control takes place in another state;
  - Involves an organized criminal group engaging in criminal activities in more than one State; or
  - Has substantial effects in another State. (Art.3.2)

8

## What is an organized criminal group ?

- structured group
- three or more persons
- existing for a period of time
- acting in concert
- aim of committing:
  - *serious crime(s)* or Convention offences
  - to obtain direct or indirect financial or other material benefit (Art. 2.a)

9

## What is a structured group ?

- Not necessarily formal organization, membership or structure, but
- more than just “...randomly formed for the immediate commission of an offence”

10

## What is a serious crime ?

- conduct designated by national law as an offence
- punishable by at least four years

11

## Offences established by the Convention

- ▶ Convention requires States Parties to have four basic offences:
  - Participation in an organized criminal group (Art. 5)
  - Laundering of proceeds of crime (Art. 6)
  - Corruption (Art. 8)
  - Obstruction of justice (Art. 23)
- ▶ Transnationality must not be made an element of these offences in domestic law (Art.34.2)

12

## Money laundering measures

(Art.7)

- ▶ Comprehensive regulatory regime for banks and financial institutions
- ▶ Identify customers, keep records, identify suspicious transactions
- ▶ Cooperation with other States
  - financial intelligence units
  - monitor cross-border movement of cash and instruments
- ▶ Guidelines from regional, interregional or multilateral initiatives

13

## Corruption offences

(Art.8)

- ▶ Mandatory offences:
  - promise, offer, give, solicit or accept
  - any undue advantage to/by a public official
  - to act or refrain from acting
  - any matter relating to official's public duties
  - participation as an accomplice
- ▶ Optional offences
  - corrupting of foreign or international public servants
  - other forms of corruption

14

## Corruption measures

(Art.9)

- ▶ Legislative or other measures
  - to promote integrity
  - to prevent, detect and punish corruption of public officials
  - to ensure effective action by officials
  - as appropriate and consistent with legal system
- ▶ Provide anti-corruption authorities with sufficient independence to deter exertion of inappropriate influence on their actions

15

## A global consensus for enhanced international cooperation in:

Extradition (Art. 16)

Mutual Legal Assistance (Art. 18)

Other forms of cooperation (Art. 20, 26, 27)

16

## Extradition

(Art.16)

- ▶ Extradition available for all Convention and Protocol offences
- ▶ Convention extradition provisions harmonize with existing treaties and arrangements
- ▶ Where extradition is refused, the States involved, the States involved should consult

17

## Mutual Legal Assistance

- ▶ “States Parties shall afford one another the widest measure of mutual legal assistance...” (Art.18.1)
- ▶ States Parties are required to designate a *central authority* to receive, execute or transmit legal assistance requests
- ▶ more direct liaison arrangements permitted for other forms of cooperation (Art.18.13, Art.19, 27)

18

## Use of modern means of communication

- ▶ Where technically and constitutionally possible, States parties must allow testimony by video-conference (Article 18.18)
- ▶ Mutual legal assistance requests in writing or other technical means capable of producing a written record, provided authenticity can be established (Art.18.14)

19

## Investigative measures

Convention calls for:

- agreements governing joint investigations (Art.19)
- domestic and cooperative use of special investigative techniques (Art.20)
  - controlled delivery
  - electronic or other forms of surveillance
  - undercover operations
- measures to encourage those involved in transnational organized crime to cooperate with law enforcement (Art.26)

20

## Law Enforcement and other Cooperation Instruments

(Art.27)

- ▶ States parties called upon to:
  - enhance and establish channels of communication;
  - cooperate in inquiries concerning
    - the identity, whereabouts and activities of suspects;
    - the movement of proceeds of crime or instrumentalities
  - exchange information on
    - specific means and methods used by organized criminal groups
    - general trends, analytical techniques, definitions, standards and methodologies

21

## Protection of Victims and Witnesses

(Art.24, 25)

- ▶ Must provide effective protection for witnesses, within available means:
  - physical protection
  - domestic or foreign relocation
  - special arrangements for giving evidence.
- ▶ Within available means, must also assist with:
  - procedures for claiming compensation and restitution
  - opportunities to present views and concerns at appropriate stage of criminal proceedings.
- ▶ Both articles apply to victims who are also witnesses.

22

## Technical and other instrumental assistance

- ▶ State Parties called upon to:
  - implement convention domestically and through international cooperation
  - take into account effects of organized crime on societies and sustainable development
  - to enhance financial and material assistance to developing countries

23

## Training

(Art. 29)

- ▶ Calls for establishment or improvement of training programs for law enforcement and other personnel:
  - prevention, detection and prosecution of Convention offences
  - techniques, routes or movements of offenders, contraband, proceeds of crime or instrumentalities of crime
  - investigative and control techniques
  - combating the use of computers and telecommunications by transnational organized crime
  - methods for protecting victims and witnesses

24

## Prevention

(Art. 31)

States Parties called upon to develop, implement and share both direct and indirect prevention methods

- administrative and regulatory controls to prevent abuses in key areas (professions, corporations)
- rehabilitation/reintegration of former offenders
- public awareness campaigns (domestic and international)
- social programs to alleviate conditions that make groups vulnerable to recruitment or victimization by transnational organized crime groups

25

## Conference of the Parties

(Art. 32, 33)

- ▶ Convention establishes a Conference of the Parties to:
  - promote and review implementation
  - make recommendations to improve convention
  - consider means of implementing and difficulties encountered by States
- ▶ Conference will meet within one year of entry into force
- ▶ Initial meeting of Conference will adopt rules of procedure, a draft of which will be prepared by the Ad Hoc Committee that carried out the negotiations

26

## Now it is the Palermo Convention!

At the High Level Signing Conference held in Palermo from 12-15 December 2000:

- ▶ 123 States and the European Community signed the Convention
- ▶ 80 States and the European Community signed the Protocol on Trafficking in persons
- ▶ 77 States and the European Community signed the protocol on smuggling of migrants
- ▶ Now, the signatories are 126, 85 and 82 respectively.

## Protocols of the Convention

- ▶ Protocol against trafficking in persons
- ▶ Protocol against the smuggling of migrants
- ▶ Protocol against illicit trafficking in firearms, parts, components and ammunition

28

## Relationship with the Convention

- ▶ To become Party to a Protocol, a State must first be a Party to the Convention (Convention Art. 37)
- ▶ Protocols interpreted together with the Convention (Convention Art. 37)
- ▶ Convention provisions apply to protocols, *mutatis mutandis* (Protocols, Art.1.2)
- ▶ Protocol offences regarded as convention offences (Protocols, Art. 1.3)

29

## Purposes of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

(Art. 2)

- ▶ To prevent and combat trafficking
- ▶ To protect and assist victims
- ▶ To promote cooperation

30

## Definitions

- ▶ Trafficking in persons (Art. 3.a)
  - the action of: recruitment, transportation, transfer, harbouring, or receipt of persons
  - by means of the threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim
  - for the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices, and the removal of organs.
  - consent of the victim is irrelevant where illicit means are established (Protocol, Art.3.b, Convention Art.11.6)

31

## Assistance and protection of victims

(Art.6)

- ▶ Calls for further measures to support physical, psychological and social recovery:
  - legal and other counselling
  - medical, psychological, material and housing assistance
  - possibility of obtaining compensation
- ▶ Consider age, gender and special needs of victims, especially children

32

## Prevention

(Art.9)

- ▶ Convention calls for direct and indirect prevention measures:
  - research, information and mass-media campaigns
  - cooperation with NGOs and elements of civil society
  - alleviation of social and economic factors that make victims vulnerable to trafficking
  - measures to discourage demand for exploitation which leads to trafficking

33

## Border and other control measures

(Art.11-13)

- ▶ Calls upon States Parties to strengthen border and security measures:
  - obligations on commercial carriers to check passenger travel documents
  - States must ensure travel documents are difficult to misuse, falsify, alter or replace
  - safeguard production issuance of genuine travel documents
  - verify travel documents as genuine on request

34

## Purpose of the Protocol against the Smuggling of Migrants by Land, Sea and Air

(Art. 2)

“... to prevent and combat the smuggling of migrants as well as to promote cooperation among States Parties, while protecting the rights of smuggled migrants.”

35

## Definitions

(Art. 3.a)

- ▶ Smuggling of migrants:
  - procurement of illegal entry
  - into a State Party of which the person is not a national or a permanent resident
  - to obtain direct or indirect financial or other material benefit

36

## Protocol Offences

(Art. 6)

- ▶ State Parties required to criminalize:
  - The smuggling of migrants
  - Producing, procuring, providing or possessing fraudulent travel or identity documents for the purpose of smuggling migrants
  - Enabling a person to remain illegally
  - Attempting, participating, organizing or directing others to commit Protocol offences
- ▶ Aggravating circumstances:
  - circumstances that endanger safety
  - inhuman or degrading treatment

37

## Legal Status of Migrants

- ▶ Migrants who do not smuggle others are not liable to criminal prosecution for protocol offences (Art. 5)
- ▶ Migrants may be liable for other offences under domestic law (Art. 6.4)
- ▶ Status of migrants who are also refugees not affected by this Protocol (Art. 19)

38

## Smuggling of migrants by sea

(Art. 7 - 9)

- ▶ States Parties may call for assistance where vessels flying their flag are suspected of smuggling migrants (Art. 8.1)
- ▶ States Parties may request permission to board and search vessels of other States, where vessels suspected of smuggling (Art. 8.2)

39

## Prevention of smuggling of migrants

- States Parties shall:
  - prevent means of transport operated by commercial carriers from being used for smuggling (Art. 11)
  - ensure adequate quality and security of travel or identity documents (Art. 12)
  - cooperate in public information to prevent potential migrants from falling victim to organized criminal group (Art. 15)

40

## Return of smuggled migrants

(Art. 18)

- States Parties shall:
  - facilitate and accept return of migrants who are their nationals or permanent residents
  - verify whether a migrant is a national or permanent resident
  - carry out the return with due regard for safety and dignity

41

## Protocol against the illicit manufacturing of and trafficking in Firearms, their parts and components and ammunition

42

## Status of the Protocol against Illicit trafficking in firearms

Concluded at the 12<sup>th</sup> session of the Ad Hoc Committee, 2 March, 2001.

Adopted by the General Assembly on 31 May 2001.

Open for signature 30 days after adoption at UN Headquarters in New York

In force 90 days after 40th country ratifies

43

## Statement of Purpose

(Art.2)

“To promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.”

44

## Use of terms

(Art.3 (a))

“Firearm”:

- barrelled weapon
- that can expel a shot, bullet or projectile
- by the action of an explosive
- portable (by one person)
- excludes antiques made before 1899

45

## Scope of application

(Art.4)

Applies to: the prevention investigation and prosecution of illicit manufacturing and trafficking...

...where offences are transnational in nature and involve an organized criminal group

Does not apply to: state-to-state transactions or state transfers related to national security interests consistent with U.N. Charter (Art. 4(2))

46

## Criminalization

(Art.5)

States Parties required to criminalize:

Illicit trafficking

Illicit manufacturing

Falsifying, obliterating, removing or altering markings

Attempts, participation as an accomplice, organizing or directing others to commit Protocol offences

-See also Convention Art.34.2

47

## Marking of Firearms

(Art.8)

States Parties must require unique marking which provides the name of manufacturer, the country or place of manufacture and the serial number.

Countries which presently combine simple geometric symbols and a numeric or alpha numeric code may maintain this practice.

Firearms must be marked at time of manufacture, import, and when transferred from government to private hands.

48

### **Other Provisions**

- Confiscation, seizure and disposal of firearms (Art.6)
- Record-keeping requirements (Art.7)
- Deactivation standards (Art.9)
- Security and related requirements (Art.10-11)
- Information, cooperation and technical assistance (Art.12-14)
- Brokers and brokering (Art.15)
- Conference of States Parties (Convention Art.32)

49

### **For further information:**

**United Nations Office for Drug Control  
and Crime Prevention (UNODCCP)  
UN Building, 14th Floor, Rajadamnern  
Nok Ave.**

**Bangkok 10200, Thailand**

**Telephone: 662 - 288 - 2100  
Fax: 662 - 281 - 2129  
Website: [www.undcp.un.or.th](http://www.undcp.un.or.th)**

Centre for International Crime Prevention  
Office for Drug Control and Crime Prevention (CICP)  
P.O. Box 500A - 1400 Vienna, Austria

Telephone: 43 - 1 - 26060 - 4281  
Fax: 43 - 1 - 26060 - 5898  
Website: [www.odccp.org](http://www.odccp.org)

50

**The UNODCCP will support pre  
and post ratification activities as  
required by Member Countries.**

**Results will come from your  
cooperative action.**

**Thank you for your  
attention.**

51