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THE PROMISE OF PALERMO

A political history of the
UN Convention against
Transnational Organized Crime

IAN TENNANT

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Cover photo: A mural in Palermo portrays judges Giovanni Falcone (left) and Paolo Borsellino, both assassinated by the mafia. The Italian anti-mafia police unit and the US FBI have arrested several in joint anti-mafia operations. © *Stefano Montesi/Corbis/Getty Images; Alessandro Fucarini/AFP via Getty Images*

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SUMMARY

The disparity between the political momentum and achievements of the late 1990s, and the journey of the UN Convention against Transnational Organized Crime (UNTOC) since its entry into force in 2003 is stark. At the same time, the power and reach of transnational criminals have continued to consolidate and expand throughout the lifetime of the Convention. On the 20th anniversary of the Convention's signing, this report analyzes the political history of UNTOC and makes suggestions on how the international community can move forward its collective efforts on achieving the Convention's aims and thereby fulfilling the promises made in its signing ceremony in Palermo, Italy.

'It is an instrument that will act as a shield for all countries of the world against the operations of organized criminal groups; an instrument that will strengthen the existing capacity of countries to counter organized crime and create that capacity for those countries that do not yet possess it; and an instrument that will ensure there are no more safe havens for organized criminal groups to operate from, flee to or hide in and enjoy their ill-gotten gains.'

DIMITRI VLASSIS¹

ACRONYMS AND ABBREVIATIONS

CCPCJ	UN Commission on Crime Prevention and Criminal Justice
CoP	Conference of Parties
IRM	Implementation Review Mechanism
MLA	mutual legal assistance
UNCAC	UN Convention against Corruption
UNGA	United Nations General Assembly
UNODC	UN Office on Drugs and Crime
UNTOC	UN Convention against Transnational Organized Crime



INTRODUCTION

When UN conventions and other major international treaties are agreed, they leave an indelible imprint on history through the legal framework that is created and implemented over time. They are substantial developments in bodies of law, affecting real lives and in some cases the course of history. They require significant effort, diplomacy and expertise in order to come into being, and become the professional focus of groups of experts, UN officials, lawyers and diplomats. However, the story of how these treaties are created is not always told. In the case of the UN organized crime treaty – the Palermo Convention – over 30 years have passed since the idea of its creation was first mooted. And as time goes on, the generation that was involved in that story grows further apart in time and distance from the current diplomatic and expert community who deal with the Convention today. For the current and future generations to make sense of the context of the legal framework with which they are dealing, they will of course refer to the extensive official records and supplementary materials of the Convention's history. However, it is also important for them to understand the complex interplay of people, politics and policy that created the convention.²

The aim of this report is to ensure that the political story of the Convention is not forgotten, and that those making policy now and in the future do not understand it through the current political debates and structures only. A key insight from the history of the Convention is that those who created it understood very well the threat that organized crime poses to security, sovereignty, human rights and development, and worked together to create a new response to those threats within the context of the political space available to them. Unfortunately, these threats remain and grow stronger, despite the advances made by the creation of the Convention. The geo-political context has also changed dramatically, further challenging the ability of the Convention to achieve its aims. This report investigates how the UNTOC became reality and calls on current and future generations to be inspired and informed by these efforts and to make further progress towards comprehensively countering the dominance and power of organized criminals.

▲ The UN headquarters in New York. Over 30 years have passed since the idea of a legal instrument targeting organized crime was first mooted by the international community. © Getty Images/Tetra images RF



UN Secretary-General Kofi Annan meets with the presidents of Austria and Italy in Palermo, at the signing ceremony for the Convention, December 2000. © Eskinder Debebe

Genesis of the UNTOC

This year, 2020, marks the 20th anniversary of the adoption and signing of the UNTOC, which took place in Palermo, Sicily, the heartland of the Italian Cosa Nostra and the home city of anti-mafia prosecutor Giovanni Falcone. Falcone was assassinated by organized crime in Palermo in May 1992, only one month after representing Italy at the first session of the UN Commission on Crime Prevention and Criminal Justice (CCPCJ) in Vienna. Falcone, along with contemporaries in the Italian and American law-enforcement and criminal-justice communities, is credited with laying the strategic and intellectual foundations of international cooperation against organized crime, of which the Convention is now the near-universal legally binding framework.

It was not inevitable that the international community would successfully negotiate a legally binding convention on transnational organized crime, which is an issue that only began to be discussed and understood in the relevant international fora in 1975.³ By the mid-1990s, there was growing recognition of the all-pervasive threat to security and sovereignty that organized crime posed, and the idea of a convention had been discussed in intergovernmental meetings. However, even when the 1994 World Ministerial Conference on Organized Transnational Crime convened in Naples, the delegates could not agree on whether a new convention should be drafted; the idea was merely listed as one of the options that the international community should pursue.⁴ However, despite initial scepticism in the Western world about the idea of a convention, pressure for increased multilateral action was growing, powered by the shared experiences of two countries with the most deeply ingrained history of fighting organized crime and cooperating internationally to do so – Italy and the US. Italy

was actively promoting the concept, and once the process to create a convention began in earnest, the US swung behind it and ensured it was shaped to their preferences. However, for reasons that will be explored in this report, it was in fact the government of Poland who made the key step of presenting a draft framework convention to the United Nations General Assembly (UNGA), which later approved the time-limited negotiation process that gave birth to the Convention.

The UNTOC took shape in the context of the end of the Cold War, a period of relatively fruitful multi-lateral cooperation to address major issues. The Russians and Americans agreed to dismantle two-thirds of their nuclear warheads under the Strategic

Arms Reduction Treaty II, and the Oslo Peace Process seemed to usher in a momentary step forward in the intractable conflict in the Middle East.⁵ The 1990s also saw the reshaping of many countries and societies as they evolved and engaged with a broader range of cultures, ideas and economies, facilitating evolution and progress for organized criminals as they took advantage of new markets and newly open borders and societies. Although not explicitly calling for a new convention, the administration of President Bill Clinton was vocal in prioritizing action against organized crime both domestically and internationally, and in urging other countries to do the same, including on two occasions at the UNGA.⁶

High hopes and international stagnation

By the end of 1998, two years after the presentation of a draft convention by the Polish president, the UNGA had established a committee to draft the new convention. Over the next two years, under the chairmanship of Italian diplomat Luigi Lauriola, the committee developed the UNTOC, overcoming exceedingly difficult issues on definitions, types of crime and discrepancies between common- and civil-law systems. The Convention was the first legally binding normative framework to be produced under the auspices of the UN Crime Programme, notwithstanding the relevant and related conventions coming from other parts of the UN (for example, the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances). Until then, work under the CCPCJ, its predecessor, the UN Committee on Crime Prevention and Control, and the UN Crime Congresses had produced only soft law – guidelines, model laws and rules on both domestic and transnational issues and responses.⁷ With the UNTOC, the UN had a legally binding instrument governing international cooperation between law-enforcement and judicial authorities to share

evidence and pursue international criminal actors, and a framework for countries to update their legislation to better investigate and prosecute such criminals. Its impact as a step-change in the legal framework against transnational organized crime is widely acknowledged.⁸

Today, the Convention has 190 parties, making it an almost universally ratified legal instrument, with its supplementary protocols also achieving high levels of participation. These include the Trafficking in Persons Protocol (178 parties), the Smuggling of Migrants

Antonio Maria Costa, former executive director of the UNODC, presents the 2006 World Drug Report. Maria Costa was critical of member states' poor implementation of the Convention's protocols.

© Maxim Marmur/AFP via Getty Images



Protocol (149 parties) and the Firearms Protocol (118 parties). The widespread signing and ratification of the Convention seems to paint a picture of universality and success. Given the demonstrated political priority and the success achieved in its negotiation, some had high hopes for what it would achieve, while delegates involved in the negotiations interviewed for this report recall a sense of realism due to the compromises that had been made in its negotiation. In fact, it was not long before cracks began to show, manifested by the difficulties in measuring and demonstrating progress in implementation. When addressing the UNGA on the occasion of the adoption of the Convention in 2000, Ambassador Lauriola was realistic that the Convention was only the first step, and that more needed to be done to achieve its aims: 'The dangers posed by organized crime to the individual citizen and to the international community have rightly risen to the top of the agenda. The first steps have been taken, but we still have a long way to go.'⁹

The UNTOC entered into force in 2003, but it took until 2018 for an Implementation Review Mechanism (IRM) to be adopted by its parties. That mechanism is due to be launched at the biannual Conference of Parties (CoP) in 2020 and will not be fully operational until 2021. This means that there has been no effective way of measuring and improving the implementation of the Convention, despite earlier attempts by the UN Secretariat, on the mandate of the CoP, to gather information on implementation through questionnaires. The CoP itself and its thematic working groups do play a role in discussing implementation, but they have no systematic way of gathering and disseminating relevant findings. By 2006, Antonio Maria Costa, the executive director of the UN Office on Drugs and Crime (UNODC, the guardian body of the Convention), was already chastising countries for not doing enough to implement the Convention or to monitor its implementation. In a note to the CoP as it met in 2006, he noted:

The political priority accorded to the Convention and the Protocols is waning. ... Allowing the political priority of the full and effective implementation of these instruments to slip further will have

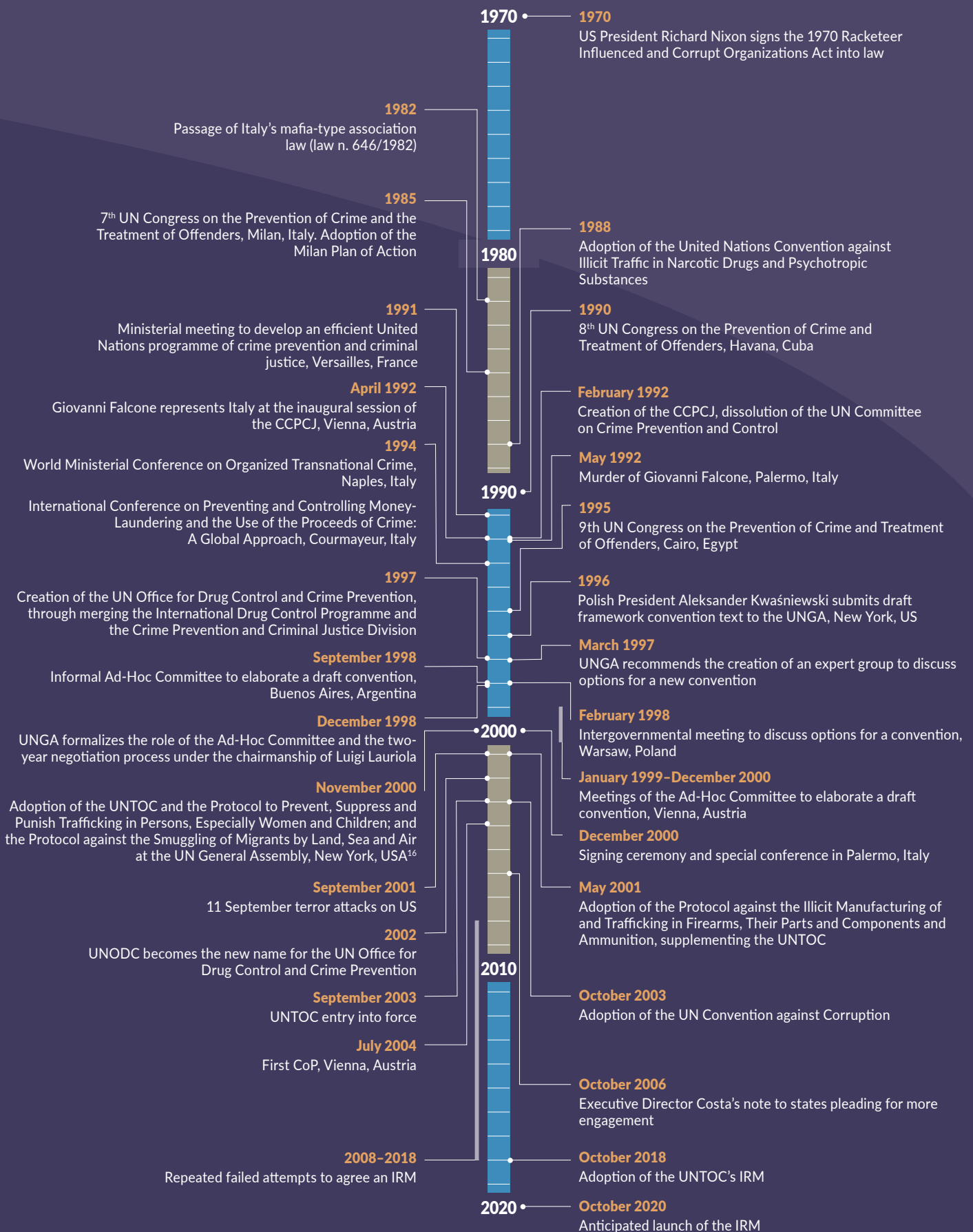
dire consequences for all countries regardless of their level of development. ... It is a matter of seriousness of attitude and credibility of political pronouncements.¹⁰

Costa went on to repeat these criticisms until the end of his term in 2010, when he briefed the UN Security Council on member states' 'patchy' implementation and 'neglect' of some of the Convention's protocols.¹¹ This view was shared by then secretary general of the UN, Ban Ki-Moon, who at the same meeting called on member states to 'sharpen' the Convention.¹² Costa's successor, Yury Fedotov, initially continued with the criticism of member states. At the CoP in 2010, he warned of the increasing threat of organized crime, but noted that the Convention remained underused:

... the threat that organized crime poses to international security and development has ballooned to global proportions ... The Convention is a powerful tool, but it remains underutilized. ... To date, we know of only 19 of the 157 States Parties having used the Convention to facilitate international cooperation, including extradition, to fight organized criminal groups.¹³

Following previous attempts, in 2012, the parties again failed to agree on an IRM, a development that Fedotov described as 'deplorable'.¹⁴ Despite the progress in finally agreeing a mechanism by 2018, this was achieved at a glacial speed and significant compromises in the mechanism that bring into doubt its usefulness as a means to measure implementation.¹⁵ In the meantime, there is not enough data to understand how the Convention is being implemented and what impact it has had.¹⁶ Concurrently, the extent and reach of organized crime continues to expand and wreak havoc in societies around the world, undermining the rule of law, compromising states, damaging economies and ultimately unleashing violence and death. The UNTOC may be widely ratified, but despite the ongoing efforts of the UNODC to document its use in cases, there is not enough evidence to show how widely used it is, or that it has deterred organized criminals from continuing and expanding their activities and empires.

LIFE STAGES OF THE CONVENTION





Palermo, 1992. The Italian Carabinieri execute an anti-mafia operation after a tip-off from Cosa Nostra 'repentants'. © Franco Origlia via Getty Images.

THE UNTOC AND CRIMINALS

The pervasiveness of organized crime's links to business, politics and society can be seen in the history of the UNTOC itself. The president of the 1994 Naples Ministerial Conference, which paved the way for the Convention, was Silvio Berlusconi, the Italian prime minister at the time. During the conference, he was named in a corruption investigation, providing an embarrassing episode for the Italian government and the conference organizers.¹⁸ This happened only two years after the extensive *mani pulite* (clean hands) investigation had begun to uncover widespread political corruption, leading to the opening of the political field for media tycoon Berlusconi to win at the 1994 election with his new party, Forza Italia.

Berlusconi was later convicted of tax fraud in 2013; however, he remains a pivotal figure in Italian politics and society. The legal cases associated with him are a matter of public record. More troubling for the history of the UNTOC is the 2010 conviction of Marcello Dell'Utri in Palermo, for mediating between the Sicilian Mafia and the Milan business elite from 1974 to 1992.¹⁹ Dell'Utri was a close associate of Berlusconi: they worked together to set up Forza Italia, and he ran the advertising for Berlusconi's media empire at the time of the Naples Ministerial Conference in 1994.

The uncomfortably close links between this anti-crime effort and criminal actors were also seen at the UNTOC's signing ceremony in Palermo, when allegations emerged that the conference centre used for the ceremony had been built by the mafia.²⁰ This highlighted the hubris of the comments made by then executive director of the UN Office for Drug Control and Crime Prevention, Pino Arlacchi, who claimed that Cosa Nostra was on the verge of defeat at the beginning of



Silvio Berlusconi presided over the Naples Ministerial Conference, during which he was named in a corruption investigation. © Franco Origlia/Getty Images

the Conference.²¹ His comments earned a public rebuke from the sisters of Giovanni Falcone, who wrote an open complaint to the Italian president published by a major Italian newspaper – another embarrassing episode in the history of the Convention.²²

It has been claimed that the Convention does not attempt to address or acknowledge the links and dynamics between organized crime and the state or 'shadow state'.²³ There is, however, one unwitting intervention that organized criminals have had on its history. According to Gioacchino (Gino) Polimeni, who accompanied Falcone to the first CCPCJ in 1992, the murder of Falcone by the mafia stiffened more than ever the Italian system's resolve to ensure that a Convention had to be agreed.



A group of women, who may have been trafficked from Laos to Thailand as sex workers, are rounded up by police in Narathiwat during a campaign against human trafficking involving women and minors in November 2018. One of the Convention's protocols addresses trafficking in persons. © Madaree Tohlala/AFP via Getty Images

What does the UNTOC do?

The UNTOC:

- Defines and standardizes certain terms that are used with different meanings in various countries and circles, for example 'organized criminal groups', 'transnational', etc.
- Requires states to establish specific offences as crimes.
- Requires the introduction of specific control measures, such as protection of victims and witnesses.
- Provides for the forfeiture of the proceeds of crime.
- Promotes international cooperation, for example through extradition, legal assistance and joint investigations.
- Provides training, research and information-sharing measures.
- Encourages preventive policies and measures.
- Contains technical provisions, such as for signature and ratification.

The provisions of the UNTOC and its Protocols 'do not all have the same level of obligation', meaning that some are mandatory, some must be considered by states, and some are optional. It also notes that the UNTOC was 'drafted for general purposes', meaning its wording should be applied to national legal frameworks and circumstances.

The UNTOC does not define transnational organized crime, or organized crime, but it does define an 'organized criminal group' and a 'serious crime', allowing both criminal groups and certain types of crime to be targeted through its implementation.

SOURCE: UNODC, Legislative Guides for the Implementation of the UNTOC and the Protocols Thereto.



THE CIRCUMSTANCES THAT MADE THE UNTOC POSSIBLE

The short period in which the UNTOC was elaborated, negotiated and adopted was conducive to its successful completion, but it was by no means inevitable. Rather, the completion of the Convention was, in part, built on the foundation of a long evolution of discussion and consensus-building in international fora. Public opinion, geopolitics, and personal interventions and connections before and during the 1990s were crucial in creating the environment that gave birth to the Convention.

▲ Judge Giovanni Falcone was assassinated in May 1992, a month after representing Italy at the first session of the UN Commission on Crime Prevention and Criminal Justice. © Livio Anticoli/Gamma-Rapho via Getty Images

The need to do something

It is important to understand the context that drove the political will of countries like Italy, the US and Poland, who all played decisive roles, but also that allowed the rest of the world to engage and eventually support the Convention. The political impetus that drove the UNTOC was powered by the twin engines of the Italian state and its anti-mafia judicial establishment, on the one side, and the US administration and its law-enforcement and judicial community on the other. Both countries had a long experience with mafia infiltration into their economies and societies, and Italy was still suffering from the violent campaign of mafia terrorism across Italy perpetrated against those who threatened the mafia's power, culminating in the attack that killed Falcone. Driven by their common determination to work across borders to tackle their common enemies, the operational and political partnership between the US and Italy on anti-mafia cases was already bearing fruit in the 1980s, long before the adoption of the UNTOC.²⁴ In a ceremony marking the 20th anniversary of Falcone's death, then FBI director Robert Mueller said of US-Italian cooperation that it had 'set the

standard for global cooperation among law enforcement.²⁵ But the Italians were always more forward-leaning on the idea of a convention than the Americans, who took longer to get behind the idea.

On the international stage, organized crime had been recognized as a threat since the 4th UN Crime Congress in Kyoto in 1970. Five years later, it was included as an agenda topic in the 5th Congress in Vienna. By the 7th Congress, held in Milan in 1985, the international community more clearly recognized the importance of organized crime as a threat, as expressed in the Milan Plan of Action that recommended the launch of a 'major effort to control ... and eventually eradicate the destructive phenomenon of ... organized crime', and declared in the resolution dedicated to organized crime.²⁶

E. Other resolutions and decision adopted by the Congress

Resolutions

1. Organized crime

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Seriously concerned by the abundant evidence of the escalation of organized crime, including illicit drug trafficking, in many countries and its enormous social and economic costs,

Aware that organized crime increasingly crosses national boundaries, is often camouflaged as apparently legitimate business activity and is extremely difficult to combat,

(...)

1. Calla upon Member States to intensify their efforts to combat more effectively organized crime at the national level, including consideration, if thought necessary in their respective systems, of the following measures, subject to safeguards and the maintenance of basic rights under ordinary legal procedures and in conformity with international human right standards:

(a) The modernizing of national criminal laws and procedures, including measures to:

- (i) Introduce new offences directed at novel and sophisticated forms of criminal activity;
- (ii) Provide for the forfeiture of illegally acquired assets;
- (iii) Facilitate the obtaining of evidence abroad for use in criminal proceedings in national courts;
- (iv) Modernize national laws relating to extradition;

(b) The conduct of national campaigns against drug abuse to develop measures for the treatment, rehabilitation, law enforcement and educational processes to deal with drug abuse;

(c) The strengthening of law enforcement authorities and the provision to those authorities of increased powers;

(d) The establishment of national institutions, such as national crime authorities or commissions, with appropriate powers, to investigate and obtain evidence for the prosecution of those centrally involved in organized criminal activity;

(e) The review or adoption of laws relating to taxation, the abuse of bank secrecy and gaming houses, in order to ensure that they are adequate to assist in the fight against organized crime and, in particular, the transfer of funds for or the proceeds of such crime across national boundaries;

2. Urges Member States to increase their activity at the international level in order to combat organized crime, including, as appropriate, becoming parties to relevant multilateral treaties and entering into bilateral treaties on extradition and mutual legal assistance;

(...)

5. Recommends that Member States should accord the highest priority to measures to combat organized crime and, in particular, should give urgent attention to the development of extradition treaties and mutual legal assistance and co-operation arrangements, under ordinary legal procedures and in conformity with international human rights standards.

From then on, UN documents agreed by member states were beginning to reflect the challenge of organized crime, which were taken a step further by a 1990 unpublished declaration drafted by members of the expert-constituted (but government-nominated) UN Committee on Crime Prevention and Control, in its last years before its abolition and replacement by the CCPCJ. The document was drafted under the chairmanship of the Committee's last chairman, Dušan Cotič, who also served as vice president of Yugoslavia's Supreme Court. Another instrumental figure on the Committee and on this declaration was Ronald L. Gainer, nominated by the US government and serving as the US associate deputy attorney general. The lost declaration was never published as a UN document, but it highlighted the recognition of the growing impacts and harms of organized crime, and called for a new convention to drive the work of the UN on organized crime.²⁷ The document's publication was reportedly blocked by then-chief of the UN office in Vienna and first female under-secretary-general of the UN, Dame Margaret Anstee, on account of its provocative language and the lack of unanimity among all the Committee members. The lost document was titled 'World-wide crime and the responsibility of the international community: A declaration on the end of complacency.' It is striking how the issues highlighted and remedies called for could have been written today.

Despite the clarity of the message, politicians do not tend to act just to respond to the opinions of expert committee members; rather, their electorates and power bases need to be considered. So the clarion call of the Committee was not wholly taken up by the international community at this point, or during the following years of meetings and debate, despite the progress made on strengthening the UN Crime Programme and the creation of the CCPCJ.²⁸ In 1995, the 9th UN Crime Congress in Cairo did in fact adopt a resolution entitled 'International instruments, such as a convention or conventions against organized transnational crime', which did not commit to a new instrument, but at least kept the consultation process going.²⁹

Notwithstanding the recognition of the threat of organized crime and the need to discuss potential international instruments, there was initially strong scepticism, especially in the Western world. Interviewees for this report name the UK, the US, Belgium and Canada as particular sceptic states in the run-up to the negotiation of the Convention, despite the apparent enthusiasm of some of the practitioners and experts from those countries. Matti Joutsen, a Finnish delegate involved in key negotiations during this period, said that 'in the early 1990s the West was very much against the idea of a Convention, which they saw as a waste of resources, and not something that the UN should be getting involved in. Others around the world were also sceptical.'

WORLD-WIDE CRIME AND THE RESPONSIBILITY OF THE
INTERNATIONAL COMMUNITY

A DECLARATION OF THE END OF COMPLACENCY

There comes a time when patience loses virtue. There comes a time when good intentions stand alone as futile. There comes a time when human tragedy is so compounded that honest men and women must seek effective remedies or lose their self-respect.

The tragedy is world-wide crime. The men and women who must speak out include the undersigned. The time is overdue.

Control of crime ranks at the forefront of governmental responsibilities. It is of unique importance. It is a prerequisite to national progress. To the extent that a nation cannot protect the safety and security of its citizens, their possessions and their fundamental institutions, that nation's economic, social, and cultural advancement will be stifled. Yet, in all countries serious crime persists, in most nations it is increasing, and among nations it is burgeoning. Domestic crime has outstripped the control of most individual nations, and transnational crime has accelerated far beyond the current reach of the international community. Most countries need help with problems of national crime, and some need it desperately. All countries manifestly require help with the overwhelming problems of transnational crime.

We, the undersigned, are members of the United Nations Committee on Crime Prevention and Control and heads of the affiliated institutes dealing with problems of crime and justice. We have reviewed the problems of world-wide crime from the standpoint of specialists in the field. We are not alarmists. We have not reached our conclusions in haste. We are professionals and realists who have tried our best to work within existing structures and existing strictures. Over time, though, our tolerance for inadequacy has been eroded by repeated evidence of the tragic plight of victims. Our patience has been ground thin by the creaky wheels of the intergovernmental mechanism in which we find ourselves enmeshed. Our forbearance has been stretched to the snapping point by the witnessing of entire nations falling prey to crime. We have become convinced that effective reduction of world-wide crime requires nothing less than a completely restructured, comprehensive, practical, boldly-active programme several orders of magnitude greater than that yet attempted by the international community. To continue as we have would cost far more - in money, in suffering and in conscience.

With this conviction, we submit the attached report for review by the national representatives attending the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. We commend it to their very careful attention. Upon its consideration, we call for a resolution from the Congress for the drafting of a United Nations Convention on Crime Prevention and Control - a Convention that will detail the structure, functions, and financing of a complete programme for effective assistance against national and transnational crime. We call upon the same national representatives, and their colleagues, for support of such a Convention in the General Assembly.

We call, on behalf of all humanity, for the end of complacency.
(To be individually signed by Committee members and institute heads).

The unpublished declaration from members of the UN Committee on Crime Prevention and Control.

However, by the end of the decade there was enough public awareness to allow the idea of a Convention to become acceptable in enough countries, including key ones like the US. According to Ambassador Lauriola, in his 2000 address on the UNGA adoption of the Convention:

... it was this emerging political will, driven by newspaper headlines and public opinion, that was the catalyst that gave decisive impulse to the search for a global response to organized crime on a global level. In the final analysis, it was this will that animated our work and forged the good faith of participating states and the talent of their representatives into an instrument able to overcome successive obstacles as they arose.³⁰



A view of a section of the Berlin Wall being demolished in November 1989. The growth of organized crime in central and eastern Europe after this event played a role in increasing public awareness of the problem and gave momentum to the Convention. © Gerard Malie/AFP via Getty Images

Lauriola's view was that the political will was made possible by an emerging understanding among the public, and that there was more political space for states to move forward on this issue. This is shared by some of those interviewed for this report. A former lead official on UNTOC in South Africa, Peter Gastrow, encapsulates the general feeling that organized crime was getting worse and that something needed to be done, and that feeling made the Convention politically feasible.

According to Jean-Paul Laborde, who serviced the Ad-Hoc Committee as part of the UN Secretariat, the growth of organized crime in central and eastern Europe after the fall of the Berlin Wall played a role in increasing public awareness and, therefore, momentum. As former UN official Ugi Zvekic said, 'it soon became clear that organized criminal groups from those regions were invading Europe and the US, which increased pressure on governments to do something'.

The importance of the Italian experience was shared by Antonio Balsamo, currently serving as an advisor at the Italian Permanent Mission in Vienna and an anti-mafia judge from Palermo, who highlighted the importance of the Italian experience:

There was definitely a very strong commitment in the 1990s to tackle organized crime. This was due to the mafia terrorism that was ongoing from the 1970s to the early 1990s, culminating in the Capaci bombing that killed Falcone. The Italian authorities had decided it was no longer possible to coexist with the mafia. The mafia had become isolated from society, having previously been a key part of

Sicilian society. They came to be regarded as pure criminals, and were marginalised. After Capaci, the mafia adopted a so-called submersion strategy, and there was a different atmosphere, and new laws against organized crime were adopted.

The Italian and US law experiences are widely acknowledged as the legal inspirations for the Convention, in particular the US 1970 Racketeer Influenced and Corrupt Organizations Act, and the Italian anti-mafia legislation that criminalizes being part of an organized criminal group by allowing law enforcement to pursue those suspected of being part of a criminal enterprise rather than just individuals committing specific crimes.³¹ This gave the proponents of the Convention something on which to model the instrument. In parallel, there was a gradual development of a corpus of legal instruments that adopted innovative approaches, most notably the 1998 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The 1988 Convention was the first international legal instrument specifically aimed at transnational organized crime and provided inspiration for the UNTOC, given its comprehensive provisions on criminalization and international cooperation against drug traffickers and money laundering. The creation of the UNTOC brought those anti-drug and anti-crime efforts at the UN closer together, in spite of their different histories and personnel, but even today the level of coordination among all UN processes on drugs and crime issues still leaves significant room for improvement.

Politics and people

Awareness and political space were growing, and those involved had some models to build on, but political and personal interventions and interactions needed to take place. Building on the previous activity of the Italian government in hosting the 1994 Naples World Ministerial Conference, it was the initiative of the Polish government that kick-started the process through the UNGA. Włodzimierz Cimoszewicz, a Polish politician who served as vice chairman of that conference, was at the time deputy prime minister and justice minister of Poland.³² He went on to serve as prime minister from February 1996 to October 1997, a tenure during which, together with Minister of Justice Leszek Kubicki and Minister of Foreign Affairs Dariusz Rosati (with the support of members of the UN Secretariat in Vienna),³³ he submitted a draft framework convention to the UNGA, which culminated in the adoption of the Convention only four years later. Cimoszewicz's president, Aleksander Kwasniewski, presented the draft in his statement to the UNGA on 24 September 1996, explaining Poland's position as follows:

Organized crime distorts the image of democratic societies on a national, regional and global plane. To combat it, we need the solidarity of all States, and a concerted effort by all of us. [...] Organized crime is like a form of corrosion in societies. Organized crime corrupts States. Organized crime is a cancer in our communities, a cancer that we should fight together. Alone, we risk losing the battle and endangering our security. I am convinced that only a worldwide effort under United Nations auspices has any prospect of stopping these crimes, which threaten democratic freedoms and democracy itself.³⁴

His words still ring true today, but the outlined vision of a convention has been achieved: the UNGA subsequently took forward the process of consulting member states on the draft framework convention in March 1997.³⁵ Arguably, without Cimoszewicz's involvement in the Naples Conference, his engagement with other politicians and UN officials³⁶ and his short-lived elevation to prime minister at a key moment, the Convention might not have come to fruition or, at least, it would not have happened in the same timeline or with the same momentum. The impact of this Polish intervention in the process was so great that, at the 1998 Warsaw meeting, the French delegation even proposed naming the Convention 'The Warsaw Convention' and it was suggested that the signing ceremony should be held in Warsaw rather than Palermo.

Dimitri Vlassis, the widely respected ad-hoc committee secretary and a key figure throughout the history of the UNTOC, the UN Convention against Corruption (UNCAC) and the UN Crime Programme more generally, emphasized how important it was when, following the Polish intervention, that the committee was actually established by the UNGA following the recommendation³⁷ of the CCPCJ:

In establishing this Committee, the Assembly took a giant step toward closing the gap that existed in international cooperation in an area generally regarded as one of the top priorities of the international community in the 21st century.



Dimitri Vlassis, the ad-hoc committee secretary, played a key role in moving forward the development of the UNTOC.

© UN Photo/Devra Berkowitz

The Assembly also [laid] to rest the uncertainty and uneasiness that surrounded the endeavor by manifesting the collective political will of all States to tackle conceptual and political problems and find commonly acceptable solutions.³⁸

Despite the consensus on moving forward, delegates and officials interviewed for this report who were involved in the discussions and negotiations between 1994 and 2000 describe a lack of consensus on the precise nature of the Convention, the definition of (transnational) organized crime and the other issues that should have been included in it. Certainly, the sense of clarity and urgency proclaimed in the unpublished report of the UN Crime Committee or the speech of the Polish President to the General Assembly were not widespread positions. But once the UNGA agreed in 1998 to commence a two-year time-limited negotiation period, with a named chairman (Italian Ambassador Lauriola), the negotiations seemed to pick up a momentum of their own, even if it was not clear what the Convention would look like at that point.

It is important to recognize the significance of the key figures in the secretariat who, throughout this period, provided the intellectual and procedural support to the Italians, the only delegation dedicated to a convention from the beginning. According to those involved, the actions of figures such as Eduardo Vetere and Dimitri Vlassis ensured that the dream of the convention was kept alive during the difficult years of diplomacy. And during the negotiations themselves, other names are usually mentioned, like Jean-Paul Laborde and Christopher Ram, who both supported Vlassis as the secretary of that Committee. Together, these individuals and the teams they led ensured that the proponents of the Convention were equipped and substantively able to move forward at key moments. Within the bubble of the Vienna-based negotiations and wider interventions in the UN system, the importance of secretariat manoeuvres, the Polish intervention, and the subsequent approval of UNGA is clear. But these moves did not take place solely within that bubble. To understand more about how this was possible, one needs to take a step back and look at the bigger geopolitical picture.

The geopolitical context

As Zvekic has pointed out, key steps were taken in the period between the fall of the Berlin Wall and the 2001 terrorist attacks in the US. Seismic changes occurred in societies across the former Soviet Bloc, transforming economies and everyday life for the populations concerned as well as for organized crime. The 1990s were a key period in the progress of European integration, with the creation of the EU in 1993, and enlargement and further integration throughout the 1990s, as well as the introduction of the euro common currency in 1999. It was also a turning point in the EU taking organized-crime and criminal-justice issues more seriously, and not just an 'Italian' problem. Modern US political multilateralism under the Clinton presidency was also high during this period, as was a shifting of policy priorities away from containing the Soviet threat and towards addressing



transnational crime as a security threat.³⁹ In addition, Russia and the West were momentarily turning to multilateral cooperation, including on organized-crime issues, before returning to their usual confrontational stance in subsequent decades. The scale of the favourable multilateral cooperation in this period, including on criminal matters, is further demonstrated by the 1998 adoption of the Rome Statute which established the International Criminal Court in the same five-year period as the adoption of the UNTOC and the UNCAC.

It is likely that negotiations for the UNTOC may not have succeeded had the wider geopolitical picture been different. In fact, external political pressures came to haunt the Convention's implementation in later years, such as with the drawn-out process of the IIRG negotiations, which fell victim to the end of the 'golden era' and a general decline in multilateralism.

**Firearms seized in 2018
from a group suspected of
trafficking weapons from the
European Union to Russia.**
© TASS via Getty Images



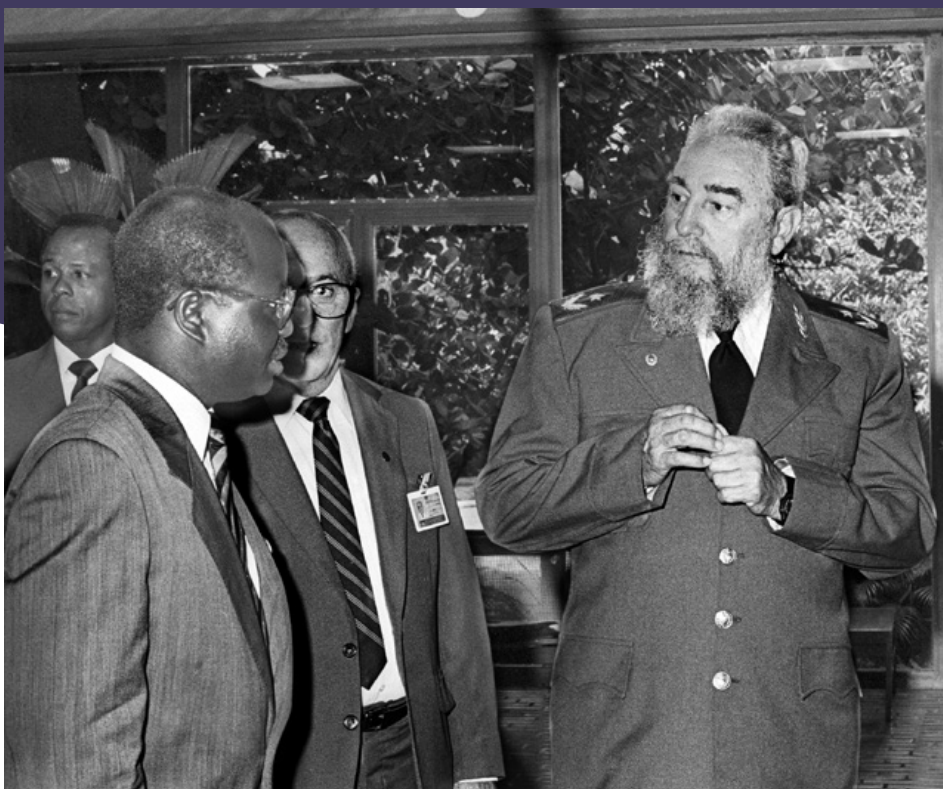
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The Vienna International
Centre, home to the
UNODC. © JacobH/Getty
Images

GETTING THROUGH THE UN SYSTEM

After early attempts to create it, the Convention still had to get through the UN system. Following the increased discussion and understanding of organized crime that evolved at the UN, starting at the 5th UN Crime Congress in Geneva in 1975,⁴⁰ the early 1990s heralded key changes in the infrastructure of the international community's efforts to combat organized crime.

In 1990, the 8th UN Crime Congress took place in Havana, and was opened by Cuban leader Fidel Castro. Upon the recommendations of the UN Committee on Crime Prevention and Control, the congress paved the way for the creation of the CCPCJ and the UN Crime Programme, which was later agreed at the Ministerial Conference in Versailles in 1991. The report of the congress also called for a convention or other legal instrument to structure that programme, as referenced in the Committee's official report of its pre-congress meeting of 1990, but the official report did not include the unpublished declaration that chastised the international community for their lack of action.⁴¹

In 1992 the UNGA replaced the Committee and established the CCPCJ, meaning intergovernmental decision-making had superseded the expert-led system. The substantive UN drugs- and crime-focused offices and programmes in Vienna soon evolved into the merged UN Office for Drug Control and Crime Prevention (which became the UNODC in 2002). But agreement on the normative element of a convention was still elusive, even at the conclusion of the 1994 Naples Ministerial Conference. In fact, several more years passed until member states agreed to commence official negotiations.



The 8th UN Crime Congress, in 1990, which took place in Havana, was opened by Cuban president Fidel Castro.
© UN

In 1995, the outcome agreed by member states of the 9th Crime Congress in Cairo included a request to the CCPCJ to take forward the idea of a convention by soliciting views from governments and proposed some elements that could be included in such an instrument. The CCPCJ responded by again asking for member-state views and setting up a working group to consider them, and the Commission and other relevant bodies continued to discuss this question with no resolution. In 1996, the Polish government's draft was submitted, and the UNGA subsequently asked member states for their views on the draft text. The following year, the UNGA recommended setting up an intergovernmental group of experts, which met for the first time in Warsaw in February 1998 and agreed on a list of options for what could be included in such an instrument. In September of the same year, an informal ad-hoc committee met in Buenos Aires to draft the text of a convention, before being formalised by the UNGA in December. The Ad-Hoc Committee officially met for the first time in January 1999 in Vienna and went on to have a total of 12 sessions between then and January 2001.

In November 2000, the UNGA adopted the Convention and its protocols on human trafficking and migrant smuggling, and one month later it was opened for signature at the high-level ceremony in Palermo. The UNTOC entered into force on 29 September 2003.⁴²

A new convention

The adoption of the Convention is an impressive diplomatic and legal achievement. It was and is an incredibly modern instrument, which gave the international community a new framework for criminalizing serious offences and cooperating internationally

to pursue those carrying out those offences. The conditions were favourable, the right people made the moves at the right time, and negotiators and officials worked hard to achieve consensus in the given timeframe, but what did the existence of the Convention achieve? But did the existence of the Convention achieve what its negotiators had originally intended?

The text itself is quite clear, but also broad: 'The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.'⁴³ Throughout the negotiations, it was never clear whether, for example, terrorism or corruption would be dealt with specifically. In the end, terrorism was not included, despite strong advocacy on the issue led by Turkey, Spain and Egypt. Corruption, however, is included, but the negotiations on this issue gave birth to the UNCAC – for some, a key achievement of the UNTOC in its own right; for others, a development that has overshadowed the UNTOC. (Although heavily based on the UNTOC, the UNCAC included more well-developed provisions on prevention than the primary focus on law enforcement and international legal cooperation of the UNTOC.)

Attempting to define organized crime would always be a tricky issue and, in the end, definitions were avoided, describing offences or types of offences instead, giving the Convention a large degree of flexibility for states to apply it to their own settings and legislation. Another key achievement is the way in which the Convention allows both common- and civil-law jurisdictions to apply the same provisions; for example, the Convention caters for both conspiracy-type offences from common law and the Italian association offence from civil law. What most can agree on is that this gave many countries the basis of legislation for the criminalization of organized criminal activity, and tools to enhance international cooperation in criminal matters, such as with extradition and mutual legal assistance (MLA).

Polimeni, who served as an Italian judge and later an international affairs delegate from the Italian Ministry of Justice, told the GI-TOC that one of the main benefits of the UNTOC is its flexibility, and its utility for countries lacking in legislation and/or networks of bilateral and multilateral international-cooperation treaties. Despite its broadness and the fact it is not strictly necessary for those countries with advanced legislation and treaty agreements, he claims that the Convention has globalized the Italian approach to tackling organized criminal groups, rather than attacking specific crimes: 'As Falcone said, it does not matter what type of criminal group you are dealing with, you have to use the criminal-justice system to destroy it.'

Adding to this view, Laborde highlights how the UNTOC facilitates cooperation between prosecutors and judges around the world, stating that there is an 'increased knowledge' of the use of international cooperation in criminal matters, which is used by prosecutors although its political visibility is low. This is shared by Tom Burrows, the senior counsel for multilateral affairs from the US Department of Justice, who states that this was a 'game changer':

First, the criminalization requirements caused more than 100 countries to adopt legislation criminalizing the crimes set forth by the protocols: trafficking in persons, migrant smuggling, falsifying travel documents, and trafficking in firearms, as well as the main Convention: participating in an organized criminal group or conspiracy to commit serious crimes. For countries that require dual criminality for cooperation,



the criminalization requirements were critical. UNTOC also created binding obligations between (now) 190 countries for international cooperation; previously many of the 190 had no binding MLA relationship between them.⁴⁴

However, the perspective of some delegates at the time was less enthusiastic. Matti Joutsen said that it wasn't clear how this would work on a global scale, and that they 'didn't think it would be a game-changer globally'. This view is shared by Gastrow, who described his mixed feelings once the Convention was adopted:

Agreeing the Convention did not feel like a momentous occasion, although it did feel serious. Quite powerful countries were still not that convinced that organized crime needed to be tackled at an international level. In any case, the US continued with the development of its overseas presence, and its pursuing criminals outside of its jurisdiction, increasing its network of agents and presence in embassies around the world.

Gastrow believes that law-enforcement cooperation has improved in some cases, but deteriorated in others, with cooperation between developed and developing countries declining due to a lack of trust.

These challenges and others facing the UNTOC, including its lack of sanctions or an international body governing the monitoring of its implementation, show that, at the time of the Convention's creation, it would have been impossible to predict what it would have achieved by its 20th anniversary. For example, the issue of implementation review would come back to haunt the UNTOC repeatedly over the 18 years since its adoption. As Ambassador Lauriola said in 2000, there was still a long way to go.

A couple are arrested in Italy in 2017 as part of an international investigation into weapons smuggling into Libya and Iran. The Convention in theory gives 190 countries the basis for criminalizing certain organized criminal activities and tools to enhance international cooperation.

© Salvatore Laporta/Kontrolab/
LightRocket via Getty Images



Still a long way to go with the Convention is the view of many. It is almost universally ratified but faces implementation, and monitoring and review obstacles. © Akn Kiyagan/Anadolu Agency via Getty Images

PROGRESS AND SETBACKS

The Convention is doing extremely well on ratification: having 190 parties, it is an almost universally ratified legal instrument. Monaco was the first party to ratify the treaty, on 5 June 2001, with the most recent country being Palau, on 13 May 2019. It took the US until 2005 to ratify, and even longer for Italy, who did not become a party until August 2006.

The Convention's protocols also enjoy similar levels of ratification, with the least adhered-to instrument being the Firearms Protocol (118 parties) due to several major countries not becoming parties, including the UK, who signed it in 2002 but never ratified it, and the US, who has never signed it but did come close to acceding to it.⁴⁵

The high numbers of parties are undoubtedly a significant achievement for a legal instrument that was not universally acknowledged as necessary at the beginning of the process that led to its adoption. However, this measure needs to be seen alongside, firstly, how these countries are implementing the provisions of the Convention and, secondly, what impact it is having on the disruption of organized criminal activity. Both questions are extremely difficult to answer, especially before the launch of the IRM.

Those interviewed for this paper were of the general view that the Convention is not understood or utilized enough, or that it is impossible to find out how much it is really being used and what impact it is having. Antonio Balsamo, for example, believes that, even in Italy, it could be better used, emphasizing the need to enhance judicial training to 'fully realize its potential'. One current member of the UN Secretariat with experience of working with UNTOC said that some areas of the convention are not implemented:

[...] for example, there is no offence of racketeering in most places. Electronic evidence is not really dealt with. Overall, the UNTOC is under-utilised. For example, on liability of legal persons, or with action against intermediaries. And there's still a lot to be done in terms of domestic jurisprudence referring to UNTOC.

In 2016, in one of the few studies on the implementation of the UNTOC, Neil Boister analyzed the use of its international-cooperation provisions. He found that there is no source of consolidated information on law-enforcement cooperation that uses UNTOC, and that there is insufficient information as to whether the Convention is increasing trust and information among law-enforcement agents.⁴⁶ On extradition and MLA, he finds some interesting data, such as a higher level of use among Western countries, primarily the US, and increasing reliance on it by others, primarily China, but concludes that there is not enough macro-level information available and that, 'overall, the incidence of the use of the UNTOC as the sole basis for extradition and MLA

still appears to be low'.⁴⁷ Boister looks forward to the IRM shedding more light on the overall picture and assessing whether the Convention is having any tangible impact on organized criminal activities around the world.

Aside from the analysis of the Convention's implementation, regular research is carried out by the UNODC. The UNODC Research and Analysis branch undertakes regular studies on the issues covered by the UNTOC's protocols. It has published four global reports on human trafficking, as mandated by the UNGA in 2010,⁴⁸ which presents data and trends on the prevalence and nature of trafficking in persons through the analysis of data provided by member states. Using a similar model, the UNODC published its first global report on the smuggling of migrants in 2018 and a first global study on firearms trafficking in 2020, following an initial study in 2015.⁴⁹ The mandate and findings of some of these reports were contested by some member states, with the US particularly unhappy about the 2015 firearms study. Importantly, these studies do not serve as analyses

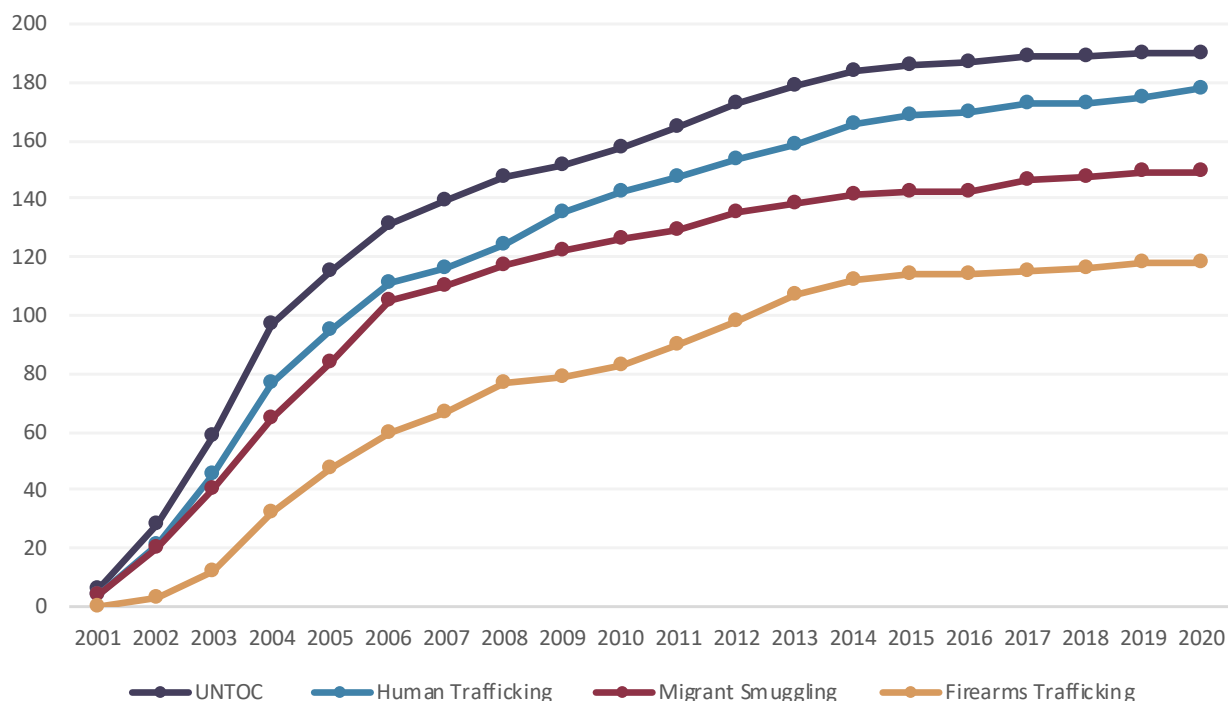


FIGURE 1 Ratification progress of the UNTOC and its three supplementary protocols

SOURCE: UNODC, Signatories to the United Nations Convention against Transnational Organized Crime and its Protocols

of countries' implementation of the Convention and its Protocols.

In addition, in 2012 the UNODC published a digest of organized crime cases to gather data on national experiences in fighting organized crime, including where the use of the UNTOC has been relevant.⁵⁰ However, this cannot act as a global analysis of implementation or compliance. It is worth noting that the UNODC-hosted Sharing Electronic Resources and Laws on Crime platform gathers case law and hosts a central authority database. But as it is currently constituted it cannot act as an overarching statistical analysis of the implementation of the Convention, although it will have a key role in information management throughout the IRM.

At the level of legislative compliance, the implementation of the UNTOC across Africa was investigated by the EU-funded ENACT programme in 2018. This research found that the legislative base of organized crime laws across Africa is not keeping up with the standards of the Convention:

At the time that the UNTOC came into force, organized crime was not high on the list of priorities for Africa, and African states played a limited role in the finalisation of the convention. Today, however, the UNTOC has been ratified by the majority of African states [...] it seems that while Africa has little problem in developing organized-crime legislation, these laws fall short of meeting the UNTOC considerations. Crime type-specific legislation is particularly lacking in meeting these definitions, compared to their 'general organised crime' law counterparts. On the other hand, criminal market-specific laws/provisions don't necessarily need to achieve that if they fall under the purview of other market-focused international instruments.⁵¹

This point is of primordial importance in understanding what impact the Convention is having. As far as can be ascertained, there has been no comprehensive study on the incorporation of UNTOC terms into domestic legislation. This is important because of the prerequisite principle of dual criminality that the incorporation of these terms has for any future successful international legal cooperation, such as extradition and MLA. This is the essential first step in understanding the scope of

the Convention's implementation, which should then lead to increased incidents of successful international cooperation.

To tackle the low awareness of the UNTOC, including whether it has been properly incorporated into domestic legislation, the lack of training and to help build the personal connections that could facilitate its use, the UNODC has led initiatives to build networks and cooperation between prosecutors, such as the West African Network of Central Authorities and Prosecutors (WACAP).

WACAP's report from its most recent meeting in January 2020 notes that, in 2013, 13 years after the adoption of the Convention, '[...] there was a general lack of knowledge of the process of international cooperation and there was no direct contact between national prosecutors and law-enforcement officers. Also, most of the countries had not yet established central authority units for sending and receiving MLA requests.'⁵² Since then, WACAP has ensured that central authorities have been established in several countries across the region and claims to have facilitated 167 cases.

A similar network in South East Asia is also being discussed through the facilitation of UNODC. In these interventions, domestic institutionalization and training are needed for the UNTOC to be used effectively, as well as the building of personal connections between the prosecutors involved. Looking to other parts of the world, Brazil has also used UNTOC in high-profile legal cases.

Gary Balch, the general counsel of the International Association of Prosecutors, agreed that the existence of the UNTOC has been an important development, but that its use is dependent on each jurisdiction's existing network of treaties, and how well developed prosecutors' international networks are:

Those countries with strong domestic legislation and a rich architecture of bilateral treaties and agreements are likely to pursue requests directly through bilateral channels. In some regions, assistance can be pursued through regional structures – EU Eurojust is an obvious example. (...) Lack of trust can be a barrier to MLA when the process involves jurisdictions with significantly different

political, judicial, or legal systems. The importance of personal connections and trust cannot be overestimated. Both are essential to overcome operational hurdles. Prosecutorial functions are not exercised in a silo and in their work, prosecutors must manage complex overlapping relationships with domestic and international colleagues.⁵³

The lack of centralized information on implementation is a by-product of the lack of an IRM, but also the slowing down of political momentum in support of the Convention in the years following its entry into force. In the early years of the CoP, the UN Secretariat did attempt to gather and disseminate information on the use and implementation of the Convention. At the second CoP, held in 2005, an analytical report on the Convention's implementation was published by the secretariat.⁵⁴ A similar report was prepared for the 3rd CoP in 2006. By the 4th CoP in 2008, no such report was published in preparation for that and future CoPs. Indeed, during the 3rd CoP, UNODC executive director Antonio Maria Costa admonished member states over the lack of political priority and information being received from state parties.

In 2007, at the opening session of that year's CCPCJ, Costa continued in this vein, claiming that '[the Convention's] teeth are only starting to nibble on extradition, [MLA] and cross-border judicial cooperation'.⁵⁵ He emphasized this when briefing the Security Council in 2010:

The United Nations Convention against Transnational Organized Crime, [...] was a twenty-first century solution to a twenty-first century problem. Yet, one-third of Member States, including some major countries, had not yet ratified it. Implementation was patchy. There was no review mechanism, and some of its protocols were neglected.⁵⁶

Since then, ratification has clearly improved, but it remains impossible to comprehensively analyze implementation, and the IRM is still only due to begin its operations in 2020. The time it took to negotiate the review mechanism is evidence that the political priority of the Convention had waned. The negotiation of the Convention had overcome exceedingly difficult legal and political issues, but the negotiation of its review mechanism had proved an almost impossible barrier. By contrast, the same diplomatic community in Vienna negotiated the UN Convention Against Corruption, which was signed in 2003 in Mérida, Mexico, and its review mechanism was agreed on by the end of the decade.

Mexico, in fact, became one of the key protagonists of attempts to agree a UNTOC review mechanism in subsequent years. The substantive stumbling blocks to its negotiation lay in the funding model, the role of civil society, and more generally around the nature of the peer review and the primacy of its intergovernmental nature. The details of these disagreements have been analyzed,⁵⁷ and the twin issues of budget and civil society clearly plagued the diplomatic discussions on this issue. But what the drawn-out process and lack of agreement demonstrates is that, during this period, the combination of factors that allowed the Convention to be negotiated were not there.

Politicians and diplomats did not feel the external pressure to do something, and there was no overwhelming groundswell of support for making progress; it remained a strong priority for key supporters, like Italy (backed by France) and Mexico, but not many other delegations. The higher-level politics were also not favourable. There are

The time it took to negotiate the review mechanism is evidence that the political priority of the Convention had waned.



The wrecked carcass of the World Trade Center, 13 September 2001. The 9/11 attacks are widely believed to have signalled the point when appetite for the Convention began to decline. © Chris Hondros/Getty Images

several reasons why this was the case, and those interviewed for this report give various explanations. The impact of the 9/11 terror attacks in the US are widely cited in the decline of interest in the UNTOC. According to Gastrow:

9/11 pushed counterterrorism to the top of the international agenda – the public didn't care as much about transnational organized crime, which is not as directly threatening as terrorism. Counterterrorism got the money and attention, and there was not any pushback against that. Transnational organized crime was just kept ticking over, and there was no political risk in governments not taking action. No one understands transnational organized crime in the same way as terrorism, therefore terrorism responses will always be in more demand. Importantly, the US directed its attention to terrorism, convincing others to adopt measures on terrorism.

A serving member of UNODC staff agreed with this, and attributed the importance given to terrorism to populism. Since the public views the risk of terrorism as greater than that of organized criminal groups (although the opposite is in reality true), politicians follow the public mood. Eduardo Vetere shared this view, by declaring that 'the enthusiasm and momentum for the Convention was frustrated by 9/11'.

But this was not the only factor. Laborde does not wholly share this analysis, claiming that the adoption of the UNCAC was of prime importance in the decline in interest in the UNTOC:

After the adoption of the UNTOC, its political importance was suspended almost immediately due to the adoption of UNCAC, which only covers a portion of transnational organized crime. It is attractive and sexy because it allows politicians to claim credit for catching individual corrupt politicians or officials. The media also only concentrates on UNCAC and the politicians that are caught, meanwhile

transnational organized crime continues to grow. The UNTOC is too deep into the real criminality, but corruption campaigns are good for politics and fashionable. It is easier and less dangerous to fight corruption, rather than transnational organized crime. The risks of taking on transnational organized crime are higher, due to the different levels of violence concerned.

Related to this perceived overshadowing of UNCAC by UNTOC, Vetere believes that the UN itself made a strategic mistake in this period by splitting the secretariats of the UNTOC and the UNCAC, with Dimitri Vlassis leaving the UNTOC and heading the secretariat for the UNCAC. Vetere's view is that, if the secretariat had remained together, the UNTOC would not have been left behind and would have benefited from the strategy and momentum that propelled UNCAC forward. In addition, because the negotiation of the UNCAC followed so hotly on the heels of the completion of the UNTOC process, members of the secretariat and national delegates switched their focus to the new negotiation process, thereby taking institutional knowledge and capacity away from the efforts to follow up on the UNTOC process.⁵⁸

This internal lack of coherence and coordination has been exacerbated by the proliferation of organized-crime mandates across the UN, outside of the scope of the UNODC.⁵⁹ Although the issue of transnational organized crime has been increasingly picked up by the Security Council, including at periodic thematic discussions related to the UNTOC, this has not resulted in an increased profile or momentum in support of the Convention in general, although it has led to new activity related to the Trafficking in Persons Protocol.

Moreover, Zvekić gives a broader range of factors that heightened the UNTOC's stagnation related to the changing geopolitical conditions, stating that 'the financial crisis of 2008 further dampened interest amongst member states in the UNTOC. In addition, Russia and the US became less willing to take part in negotiation and compromise with each other in international affairs.'

The importance of the financial crisis cannot be overstated. The UK led a small group of countries that blocked a mechanism on financial grounds at the CoP in 2012, due to its largely blanket opposition to increases in the UN regular budget. This position did not change in subsequent years, leading ultimately to a mechanism that must be funded through existing regular budget resources and extrabudgetary contributions from donors.

The fundamental geopolitical shifts and declining interest in multilateralism created the foundation for all these differences to stall progress but, by 2014, it was the turn of civil-society engagement to be the main issue that blocked advancement at the CoP. States parties could not agree on a compromise solution between those countries opposed to any independent scrutiny in what they saw as an intergovernmental process (led by Egypt, Pakistan, Russia and China), and those advocating for civil-society involvement as a key part of a meaningful review, led largely by Switzerland and Norway. And as the negotiations trundled on over subsequent years, these two issues became the well-rehearsed reasons for why the review mechanism did not exist. But the lack of ability to make progress on those issues was symptomatic of a low public profile, and a lack of political will and interest.

By 2014, it was civil-society engagement that became the main issue that blocked advancement at the CoP.



▲
The migrant crisis continues to divide EU member states in terms of appropriate responses. Here a Syrian child is rescued by a Spanish NGO off the coast of Libya in 2017. © David Ramos/Getty Images

THE REVIEW MECHANISM AND IDEAS FOR REINVIGORATION

Between 2014 and 2019, the issue of the UNTOC's review mechanism did not have a high profile among the topics being discussed in Vienna. The CoP meetings in 2014 and 2016 could only agree incremental steps forward, and most delegations felt little pressure outside of the negotiation room to move any faster. The unexpected success in achieving a review mechanism was largely due to the determination and diplomatic skill of Italian Ambassador Maria Assunta Accili Sabbatini and her team.⁶⁰ This built on previous work of the ambassadors of Costa Rica and Jordan, who took the lead in previous years but did not manage to make the breakthrough.

The IRM was adopted with no media interest or wider public awareness. And the inevitable compromises made have at long last given the CoP a mechanism – but one with very meagre resources, a complicated and long structure, very narrow scope for engagement from civil society, and extremely low mandatory transparency. The IRM is very much a lowest common denominator agreed on with a view to ending discussions and uncertainty, rather than the political leap of faith represented by the Convention itself, which was born with a sense of urgency and hope that the instrument might really deliver change.

It is important not to pre-judge the success of the mechanism, which has yet to officially launch. But there is already a healthy scepticism among some diplomats and officials who were present in the early stages of the Convention's history. Laborde believes that it is a 'political mechanism' that 'won't work', and Gastrow is not optimistic that 'the slumber of the UNTOC will be ended any time soon'. Similarly, Joutsen said that it is 'just a diluted version of the UNCAC review mechanism, which was itself the result of many difficult compromises'. According to those interviewed, both the member states and the secretariat should share the blame for this situation.



Iraqi migrants at a camp in northern France in September 2020 await a phone call from a smuggler to facilitate their journey to the UK. © Sameer al-Doumy/AFP via Getty Images

The IRM will undoubtedly improve the level of information available and allow the secretariat to produce analytical reports once again on the Convention's implementation. But, on its own, it will not provide the independent and transparent platform that is needed in order to analyze the complex and evolving nature of transnational organized crime around the world. Nevertheless, if the international community wants to accelerate and improve implementation, and therefore have more impact on the organized criminal activities it seeks to disrupt, it needs to ensure it engages meaningfully – maximising transparency and civil-society engagement to ensure that the information available is as useful as possible.

Despite this lack of optimism, those interviewed offered several ideas to stimulate the implementation process, both within and outside the scope of the mechanism. For example, there is a general sense that the CoP does not make enough use of expertise and practical discussions or experience sharing of the type that takes place in the CoP's International Cooperation Working Group. In addition, there are some new issues that should be better reflected in the discussions, such as the use of electronic evidence and special investigative techniques by prosecutors. There is also scope to allow for deeper discussion on new and emerging forms

of criminality, including expanding the focus on criminal groups to allow for prosecution of looser criminal networks. The Convention is particularly well suited to adapt to new and emerging forms of criminality.

Gino Polimeni stated that the Convention is flexible and broad enough to allow innovative and dynamic solutions to be taken forward, and that the CoP 'needs to include more expertise and science', while Zvekic added that the UNTOC 'should be reviewed and updated to cover all modern types of transnational organized crime'. Balsamo shared these views, and agreed with the need for updating and to include expert discussion:

The link between development and organized crime is a challenge for the future. In the current CoP architecture, best practice is not shared in enough detail – it is general context mainly. There could be a two-level system, for example. There should be more consultations at the national level on implementation of the Convention, to understand how the UNTOC is being used. This would allow more specific recommendations to be made to the working groups, and for discussion with civil society in the constructive dialogues. Overall, there should be more targeted and specific discussions.



▲
Time to move beyond
Palermo. Can the UNTOC
be rebooted and re-
stimulated? © *Stefano*
Montesi/Corbis via Getty
Images

CONCLUSION

The story of the negotiation of the UNTOC is an inspiring one of achievement in the face of significant obstacles. Through the efforts of those involved, the need to tackle organized crime was taken to the top of the international political agenda, and concrete measures were taken. This has resulted in real, although unquantifiable, progress in boosting judicial cooperation and the development of legislation to tackle organized crime at an international level.

But since the adoption of the Convention, transnational organized crime has continued to adapt and evolve. It is a more pervasive and dangerous threat to states and societies than ever. The calls for a response included throughout this report are just as needed now as they were then. All these warnings were heeded by the international community's joint efforts to come together and negotiate the Convention, despite the difficulties and compromises. Sadly, Dimitri Vlassis's conviction that the Convention would rid organized criminals of their safe havens, has not come to fruition.

That is not the fault of the design of the Convention, which has undoubtedly created a framework of legislative tools that have been transposed into national legislation and international cooperation provisions used to prosecute organized criminal figures. The UNTOC is an incredibly broad, innovative, and modern legal instrument (it even includes provisions on video testimony for witnesses, long before the COVID-19 crisis forced the mass use of video conferencing). It is flexible enough to adapt to new and emerging crimes and criminal group behaviours. Legislation against transnational organized crime exists where it did not before, and countries can better cooperate

with one another in these investigations. The three supplementary protocols have also increased the profile of and international efforts against the issues concerned, most notably on human trafficking. However, it has been impossible to see or analyze enough comprehensive information in this regard.

Furthermore, the political will and public support that created the convention have dissipated, and the Convention's CoP has been allowed to drift into a degree of irrelevance, unknown in the public sphere, resulting in the agreement of a long-delayed and flawed review mechanism. There are various reasons why this is the case, including broader geopolitical issues, that do not bode well for increased multilateral momentum. In the meantime, other processes and instruments have overshadowed the Convention in the fight against organized crime, such as the UNCAC, counter-terrorism instruments and the looming negotiation of a new convention on cybercrime, which has resulted from non-consensus-based decision-making at the UN in New York.

But there is scope for the CoP to reboot its approach, which has been dogged by political disagreements over the mechanism for many years. It should redirect its focus towards expert-led and technical-expertise sharing, to increase understanding of the UNTOC and what it can do to step up domestic and international efforts against organized crime. It should ensure that the latest developments in organized crime are discussed, understood, and addressed, whether within the framework of the review mechanism or not.

On a macro level, through the Sustainable Development Goals, the UN has recognized the cross-cutting nature of organized crime and implicitly understands the scale of the social, environmental, economic and developmental harms that it causes. The Convention is an important part of responding to that, in its ability to build up legal systems and law-enforcement's capacity to counter transnational organized crime. But it must be understood that the UNTOC, even if fully implemented and reviewed by a functioning mechanism, is not a silver bullet, and simply cannot fulfil the ambitions that some had for it on its own. The Convention should be viewed as part of a broader armoury of tools that can disrupt and deter organized criminals, a central component of a global strategy across all relevant parts of the UN system and the wider international community.

The promise of Palermo has not been fulfilled, despite the substantial progress embodied in the Convention. Although it is important that states and civil society do their utmost to contribute to the review mechanism and to update our understanding of how the Convention can be used, we must also direct our efforts at rethinking our overarching approach. It is time for the international community to make concrete steps towards a new holistic strategy to counter organized crime, ensuring social, development and economic issues are integrated alongside enhanced implementation of the criminal-justice and law-enforcement measures contained in the UNTOC. The creativity, determination and resolve of those who helped create the Convention needs to be rediscovered. It is time to go beyond Palermo.

The promise of Palermo has not been fulfilled, despite the substantial progress embodied in the Convention.

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