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UNCivil society

ADDRESSING THE DIMINISHING SPACE
FOR CIVIL SOCIETY IN UN POLICYMAKING
BODIES ON TRANSNATIONAL CRIME

Ian Tennant

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SUMMARY

The shrinking space for civil society in public life is evident in various contexts at the community level, at the national level in many countries and, increasingly, in our multilateral institutions. Manifestations of this include everything from tighter restrictions and supervision to censorship and control of the activities of civil society organizations, to, at the extreme end, threats, violence and assassination. It is easy for countries to exert control within their own national borders, but NGOs have long faced similar restrictions at the multilateral level as well. By taking advantage of consensus-based decision-making, some states have imposed their will on the multilateral process, using the United Nations as a tool for the repression, control and censorship of both national and international NGOs.

This has become an increasingly familiar and problematic issue at the drugs- and crime-focused discussions, and processes held in Vienna under the auspices of the UN Office on Drugs and Crime (UNODC). The key UN meetings and processes related to organized crime take place in the governing and treaty bodies of the UNODC, particularly those connected to the UN conventions against transnational organized crime and against corruption.

This paper examines the diminishing role of civil society in the various UN forums related to multilateral transnational crime policy, explains how this evolved and offers conclusions and recommendations that could help the international community better understand and improve the situation. It also restates the importance of meaningful engagement and collaboration with non-state civil society actors and the need to defend this space, for the benefit of governments and societies alike. Ultimately, by shutting out community and expert voices, the international system risks allowing organized crime and corruption to carry on with impunity.





CONTEXT

Transnational organized crime remains a major challenge facing governments and societies. The manifold ways in which harms our societies, environments and economies are even clearer to see now than in 2000, when the UN Convention against Transnational Organized Crime (UNTOC) was adopted.¹ In all the crises facing our world, transnational organized crime is a common, persistent and pervasive thread. Every member state of the United Nations is affected, whether as a country of origin, transit or demand for the goods and services of criminal groups.

Indeed, more than three-quarters of the world's population live in countries with high levels of criminality.² Efforts to counter drug trafficking reveal the ways in which law enforcement agents, ostensibly engaged in fighting organized criminal groups, become overwhelmed and enmeshed in criminal and even terrorist worlds. The scramble for natural resources and influence across the developing world brings into sharp relief the collusion of organized crime, mercenaries, the private sector and governments to exploit resources and people, and damage the environment.

The cross-continental trade in wildlife products demonstrates once more that our natural world is threatened by combinations of corrupt or unscrupulous officials, businesspeople and criminal actors. This disregard for the environment contributes to the ever-more-real threats of climate change. It is also mirrored in the disregard for human rights and dignity illustrated by the unabated flow of people recklessly smuggled for profit across seas, deserts and borders, and the trafficking of vulnerable people, including children, in a modern-day form of slavery. On the internet, horrendous abuse of children is carried out with apparent impunity, with perpetrators able to facilitate, fund and view the abuse from the comfort of their own homes.

UN Secretary-General Kofi Annan meets with the presidents of Austria and Italy at the signing ceremony for the UNTOC, December 2000.

© Eskinder Debebe

All of this exploitation, abuse and suffering are lubricated by the flow, stashing and laundering of dirty money through both illegal and legal financial systems without sufficient reaction by governments or the international system.³ Globalization opened up vast new opportunities for organized criminals to embed themselves in financial markets both on and under the surface. In liberal democracies, mafias and oligarchies now ride on the coat-tails of respectable private-sector concerns and move freely in their boardrooms, financial markets and politics.⁴

These problems are neither new nor confined to any country or region: what is now urgently needed are stronger, more concerted analyses and responses. The international community has woken up and responded to this threat before, with the almost-universally ratified legal instruments of the UNTOC in 2000 and its 'sister' convention, the 2003 UN Convention against Corruption (UNCAC). But the situation today shows us that something is not working – the problems caused and facilitated by organized crime and corruption run deeper and are more damaging than ever before.⁵

Meanwhile, the range of civil society actors concerned with the everyday effects and harms of organized crime has expanded and diversified. Despite the barriers they face, civil society NGOs have been at the forefront of national responses to organized crime – and they have played a key role in the history of UN policymaking on the issue. Bringing experience and data from the front lines against organized crime, developing community-focused responses and offering new perspectives to the broader debates, their value cannot be overstated.

In his introduction to the UNTOC, the then secretary general of the UN, Kofi Annan, eloquently describes the struggle against organized crime as setting the forces of 'civil society' against the forces of 'uncivil society'.⁶ Annan's call for whole-society engagement was not just a rhetorical point; it was an articulation of what had been learned so far.

KOFI ANNAN, INTRODUCTION TO THE UNTOC

“ One of the starkest contrasts in our world today is the gulf that exists between the civil and the uncivil. By 'civil' I mean civilization: the accumulated centuries of learning that form our foundation for progress. By 'civil' I also mean tolerance: the pluralism and respect with which we accept and draw strength from the world's diverse peoples. And finally, I mean civil society: the citizens' groups, businesses, unions, professors, journalists, political parties and others who have an essential role to play in the running of any society.

Arrayed against these constructive forces, however, in ever greater numbers and with ever stronger weapons, are the forces of what I call 'uncivil society'. They are terrorists, criminals, drug dealers, traffickers in people and others who undo the good works of civil society. They take advantage of the open borders, free markets and technological advances that bring so many benefits to the world's people. They thrive in countries with weak institutions, and they show no scruple about resorting to intimidation or violence. Their ruthlessness is the very antithesis of all we regard as civil. They are powerful, representing entrenched interests and the clout of a global enterprise worth billions of dollars, but they are not invincible.

”



Judge Giovanni Falcone, seen here leaving the court of Palermo, was a key figure in developing the UNTOC.

© Vittoriano Rastelli/Corbis via Getty Images

The roots of the UNTOC lie deep in Italy's experience of countering organized crime through international cooperation, 'following the money' and, crucially, encouraging all of society to pull together against the common threat of organized crime. Anti-mafia community groups and national activist organizations remain strong in Italy today. At key moments in their history, civil society and state figures have worked together, sometimes pressuring one another, sometimes disagreeing, but always sharing a common objective.⁷

Today, away from the boardrooms of Vienna, life in communities affected by organized crime is dangerous and deadly. Violence faced by members of civil society is depressingly familiar.⁸ Civil society figures targeted by organized crime and their associates include journalists, lawyers, activists, whistle-blowers, relatives of victims of organized crime, politicians and the others that Annan listed.

And yet, the positive experiences of cross-society collaboration in Italy were born out of this lethal pattern. Several leading members of their society's fight against the mafia were assassinated, including Giovanni Falcone, the judge who is credited with laying the intellectual and strategic foundations of the UNTOC.⁹ He was assassinated in 1992, just after leading Italy's delegation to the inaugural UN Commission on Crime Prevention and Criminal Justice. The state and civil society actors who paved the way for the Convention and its cooperation and engagement guidelines did not envisage that the UNTOC and its associated policymaking mechanisms would be closed off to relevant external experts.¹⁰

Civil society's engagement with governments on UNTOC implementation is not living up to the spirit of the Introduction or its Article 28 on the 'collection, exchange and analysis of information on the nature of organized crime', which encourages the sharing of data and experiences between different sectors of society.

Article 28 first calls for state parties to consider analyzing, 'in consultation with the scientific and academic communities', organized crime trends, circumstances and actors in its territory. Secondly, it calls for the development and sharing of this expertise 'with each other and through international and regional organizations', along with determining and applying 'common definitions, standards and methodologies'. Thirdly, it calls for monitoring and assessing the effectiveness and efficiency of its policies and measures to combat organized crime. All of these require the expertise and cooperation of national and international civil society organizations.



Members of civil society organizations meet in Kenya as part of a programme of dialogues on resilience to organized crime. © Jonah Njoroge Mureithi

WHAT IS CIVIL SOCIETY?

Civil society as a collective term includes, according to a World Economic Forum definition, 'community groups, NGOs, labour unions, indigenous groups, charitable organisations, faith-based organisations, professional associations and foundations, and advocacy groups'.¹¹ Such groups carry out a variety of roles and activities around the world. One 2018 research study listed the following:

- Service provider (e.g. running primary schools and providing basic community healthcare services).
- Advocate/campaigner (e.g. lobbying governments or business on issues, including indigenous rights or the environment).
- Watchdog (e.g. monitoring public-sector compliance with human rights treaties).
- Building active citizenship (e.g. motivating civic engagement at the local level, and engagement with local, regional and national governance).
- Participating in global governance processes (e.g. civil society organizations serve on the advisory board of the World Bank's Climate Investment Funds).¹²

This diversity, which offers myriad viewpoints, experiences and insights, is catered for in the UNTOC, its protocols and the rules of the review mechanism. Their texts outline various groups of actors with whom governments should engage. For example:

- Article 31 on prevention refers to 'the strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry.'

- Article 32 speaks of '[c]ooperating with relevant international and regional organizations and non-governmental organizations'.
- The Trafficking in Persons Protocol refers to 'non-governmental organizations, other relevant organizations and other elements of civil society'.
- The review mechanism refers to an even broader group of 'all relevant stakeholders, including, where appropriate, the private sector, individuals and groups outside the public sector, non-governmental organizations and academia', and goes on to include 'relevant stakeholders, including non-governmental organizations'.¹³

Recent decades have seen a wide-ranging expansion of both civil society organizations and their engagement with the UN and internationally. They play a prominent role in a broad range of issues from climate change to human rights to cyber-governance. Civil society representation takes various forms, and their operations and political context vary country by country, as does their relationship to the state. However, with globalization and technological advances, civil society groups now operate online and across borders with increased ease.

In a similar vein, their ability to bridge the gap between governments and the private lives of citizens led the World Economic Forum to conclude that the 'changes that civil society is undergoing strongly suggest that it should no longer be viewed as a "third sector"; rather, civil society should be the glue that binds public and private activity together in such a way as to strengthen the common good.'¹⁴

Whether religious leaders in violent communities or volunteers who run refuges for victims or survivors, many organizations and individuals can classify themselves as 'civil society' (or 'relevant stakeholders', in the case of private-sector actors that are affected or have expertise in the area of concern, e.g. multinational technology companies) and they all bring something different to the table.

Civil society will never offer a homogeneous view on crime or how to prevent or respond to it, but each member adds value by widening our pool of data, expertise and insights, and therefore contributes to strengthening the common good and building both local and transborder resilience to organized crime.



Members of Italy's anti-mafia association, Addio Pizzo, celebrate the arrest of a mafia don. © Tullio Puglia/Getty Images

CIVIL SOCIETY'S ROLE IN THE FIGHT AGAINST ORGANIZED CRIME

As noted in the GI-TOC's Global Organized Crime Index, 'Civil society organizations are engaged in local communities, where local ownership against organized crime is formed, leading to more sustainable response measures. [...] Thus, the more civil society capacity a state has, the more resilient it is to organized crime.'¹⁵ Italy's fight against organized crime offers an example of how civil society and other non-state actors were able to achieve objectives that were beyond the capabilities of judicial, legislative and investigative forces. The state, in turn, promoted and allocated funding to foster a strong and independent civil society.¹⁶

Put simply, for countries to have a truly effective and efficient response to organized crime, they need civil society participation. When civil society is excluded from joint efforts, both at the national and multilateral level, it diminishes the likelihood of success.

Many examples can be offered to illustrate diverse civil society responses to organized crime that reinforce our view that tackling these issues cannot be left to the criminal justice, law enforcement and political systems alone. In fact, civil society is critical to success, and effective and efficient responses:

- In the US, research shows that local non-profit community groups played key roles to reduce gang-linked crime and violence in various urban centres from the 1990s to the 2010s.¹⁷

- A Canadian framework for collaborative community policing was developed when the police recognized that they could not reduce gang activity by law enforcement alone. Working initially with counselling services and then expanding to include 40 local organizations, the initiative promoted community-wide efforts to enhance responsibility to address gang violence, identify vulnerable youths and create community networks of support.¹⁸
- Mexico offers countless examples of community groups, such as mothers of the disappeared and art collectives, that have come together with researchers and journalists to reclaim public space from criminals, challenge corruption in the public sector and engage with law enforcement and public institutions to improve collective responses and change legislation.¹⁹
- Elsewhere in Latin America, Ecuador launched a new strategy for public safety in 2007, in which the state and civil society worked together to fight crime through social inclusion. This included legalization of youth street gangs, which led to a dramatic reduction in homicides.²⁰ (Conversely, in Colombia, the criminalization of social protest in 2021 served to create opportunities for organized and opportunistic criminal activity.²¹)
- In South Africa, violence-reduction activists and initiatives (often connected to religious groups) have facilitated mediation and dialogue between gangs, despite the rise in illegal firearms, gang culture and the corruption that enables it.²² Whistle-blowers and public interest lawyers have helped uphold the country's rule of law as it faces grave challenges of corruption and organized crime.²³
- In Guinea-Bissau, a country deeply affected by crime, corruption and instability related to transnational cocaine trade in the region, local radio and community activism have helped to disseminate information and advice to communities as they seek to counter the threat and engage with authorities to bring those responsible to justice.²⁴
- Across West Africa more broadly, a vibrant and growing ecosystem of organized crime researchers and academics is engaged with national governments and international organizations, providing evidence and data to policymakers.²⁵ Indeed, academics in all countries play a vital role in understanding criminal markets and dynamics, and contributing to improved policymaking through evidence, debate and engagement.
- In South Eastern Europe, civil society groups have become key protagonists in rehabilitating at-risk youth, and engaging in resilience building activities, such as supporting the social reuse of confiscated assets.²⁶

NGOs have also become central to national and international responses to specific illegal markets.

In the area of environmental and wildlife crime, organizations including the Environmental Investigation Agency, the World Conservation Society, WWF and the Wildlife Justice Commission engage directly with law enforcement to bring perpetrators to justice, as well as working in advocacy and other initiatives. The Global Initiative to End Wildlife Crime is another NGO engaged at the multilateral level, providing close support to national delegations as they negotiate resolutions on the topic.²⁷

Responses to human trafficking include a strong civil society sector that supports victims, liaises with law enforcement and advocates prevention and justice initiatives. This even happens with the blessing of countries that are not usually in favour of an active civil society.²⁸

Drug policy also attracts a spread of advocacy, victim-support and policy-focused NGOs that engage nationally and internationally. They have been instrumental in changes made through the UN, such as the 2016 General Assembly Special Session political declaration on the world drug problem and the 'alternative development' programmes.

In a more obvious example, anti-corruption NGOs and journalists are integral actors in exposing cases of corruption, holding governments and the UN to account and advocating transparency.

Building and implementing better responses to organized crime rely on data, accountability, oversight or collaborative capacity provided by civil society participation.²⁹ The Global Organized Crime Index found that state support for civil society or 'non-state actors' is an indicator of resilience. It notes that, in several countries, such actors 'were assessed to be the strongest or only responders to organized crime, often operating in highly restricted contexts and where state institutions engage in or propagate criminal activities'.³⁰

State and criminal hazards to civil society

The Global Organized Crime Index captures not only the strength of civil society, but also the degree of freedom in which they operate and the threats they face. Where the chief perpetrators or enablers of criminal activity are embedded in the state, 'civil society actors routinely find themselves in the crosshairs of repressive government action'.³¹ Criminal groups also constrain civil society actors by intimidation and attacks. In Italy, even with its state support for civil society, almost two dozen journalists covering organized crime are under permanent police protection.³²

Johannesburg, August 2021: a vigil is held for assassinated government whistle-blower Babita Deokaran. © Gallo Images



In countries where civil society organizations are not actively supported, such as Serbia, civil society action may still be strong, even in the face of hostility and inflammatory rhetoric.³³ Across the Western Balkans, a growing community of committed CSOs work together to build resilience to organized crime.³⁴

In another variation, particularly in countries with more autocratic or authoritarian regimes, there are governments that actively restrict civil society efforts. In Zimbabwe, for example, a dynamic civil society sector is under increasing pressure as socio-economic conditions deteriorate. In 2020, the Index reports, 'security agencies escalated the pressure on CSOs and investigative journalists, evident in the regular arrests and abductions'.³⁵

Such is the range of restrictions and challenges that civil society faces at the national level, due to both state and non-state actors, as set out in the in-depth country reviews of the Global Organized Crime Index. And yet, their spirit and determination to work against organized crime are not easily suppressed. Their work – and government support for it – are crucial ingredients in the holistic approach that is needed for effective response and resilience to organized crime. As noted in a recent book on the UN's approach to tackling transnational crime:

[O]pening up these policy deliberations to civil society actors may [...] offer a possibility not only for democratizing the international crime policy agenda but also for improving the quality of critical dialogues and debates. This is essential for promoting a better global politics of crime and, by extension, more impactful approaches to global crime governance.³⁶



Scene from the launch of the GI-TOC's 'Landscapes' project, which highlights the issue of enforced disappearances as a tool of criminal control. © GI-TOC

FREEZING CIVIL SOCIETY OUT AT THE MULTILATERAL LEVEL

Despite the active involvement of civil society at local and national levels, and the widespread evidence of its value in the fight against transnational organized crime, it is widely accepted that the space for civil society engagement has been shrinking across the UN for a long time.³⁷ According to Civicus's 2022 State of Civil Society Report,

states often delay civil society reports and accreditation on flimsy grounds. Each institution offers a varying level of space for civil society. What spaces are available tend to privilege elite civil society groups. And in all cases civil society complains of being behind not only states but also the private sector when it comes to access.³⁸

This is increasingly the case at UN meetings and conferences related to organized crime and corruption, both at the UNODC headquarters in Vienna and UN headquarters in New York. But why is this happening, and why it is accelerating? There are several factors in play:

- Some states see civil society organizations as a foreign or malign influence. They are suspicious of the motives and/or funding of any NGO that takes an interest in sensitive policy areas, takes (or is perceived to take) a stance on internal or political issues, or exposes government abuse, incompetence or failures. This factor, which goes beyond the scope of this paper, contributes to the shrinking space for civil society at the UN more generally.³⁹
- Transnational organized crime has historically been treated as an internal national security issue. For states that do not want to 'internationalize' or invite external scrutiny, the protective sovereignty clauses of both the UNTOC and the UNCAC

can be used to provide cover for ignoring or overriding their provisions regarding civil society engagement and transparency.

- In many decision-making bodies – including the NGO Committee of the Economic and Social Council (ECOSOC), which grants ECOSOC Consultative Status, and the Vienna-based bodies that govern the work of the UNODC and the implementation of both the UNTOC and the UNCAC – the practice of ‘Vienna spirit’ (i.e. consensus based decision-making) can be abused. When it is used by governments acting alone or with extreme or isolated positions, it can confer de facto veto powers to countries that hold extreme or isolated positions. This can include the processes that decide on the participation of CSOs in multilateral processes.
- Civil society representatives, with their relatively meagre resources, are not always coordinated, funded and able to effectively argue for their own access. They may not be well-versed in the ways of engaging at UN meetings, which can be seized upon by states that do not want them there. They may also feel (or be) under threat and unwilling to expose themselves to attack.

There are, however, deeper or more political issues that are difficult to analyze. The development of effective multidimensional strategies to address these issues requires ‘fostering uncomfortable conversations about the causes and consequences of crime [...] In some instances, this means calling attention to those actors, state and non-state, who stand in the way.’⁴⁰

The UNTOC does not address the possibilities of links between organized crime and the state, or of organized criminal groups being formed by or run by state officials.⁴¹ But, as the Global Organized Crime Index shows, state actors at various levels and in differing contexts can and do play a major role in facilitating illicit markets, from low-level bribery up to state capture.⁴² Organized crime flourishes where there is corruption in the state and corruption spreads wherever organized crime provides funding and opportunity to officials who either participate willingly or are susceptible or vulnerable to persuasion.

Connections or blurred lines between state actors and organized crime can therefore blunt the political will that is necessary to engage openly to address the problem, especially in a multilateral setting.⁴³

Taken together, these factors have allowed for the curtailment of NGO access to UN meetings and processes for preventing and countering transnational organized crime. The following examples demonstrate how this happened in various forums.

ECOSOC Consultative Status

ECOSOC Resolution 1996/31, on the consultative relationship between the UN and non-governmental organizations, sets out the rules for NGOs to receive consultative status. This has been the main route for civil society access to the UN, with more than 6 000 organizations accredited.⁴⁴ This sounds like a lot but, as will be explained, access has become more restricted through this route. Having consultative status allows NGOs to have regular access to UN meetings and processes, without having to apply for observer status for every meeting.

It is widely accepted that the space for civil society engagement has been shrinking across the UN.

ECOSOC has an NGO Committee that recommends organizations to it for approval. This committee usually meets twice a year and is made up of 19 countries, many of which can be regarded as not supportive of civil society. States may ask questions of each NGO applying for ECOSOC status, which defers the application to the next meeting. Although states have long taken advantage of this de facto veto power of deferral, the Committee's work has become increasingly obstructed in recent years. The applications of over 350 NGOs have been deferred multiple times, of which 40 have been deferred for over four years and one for 14 years.⁴⁵ At its most recent meeting, in September 2022, the Committee approved only 170 applications out of 564 that were considered.⁴⁶ A March 2022 policy note by the International Drug Policy Consortium highlighted the diminishing rate of approvals, with drugs-related NGOs facing particular challenges.⁴⁷

This has knock-on effects for civil society representatives attempting to engage with organized-crime or drug-policy issues at the UN. Lack of consultative status not only restricts NGOs from attending ECOSOC or General Assembly meetings in New York, but also keeps them from the meetings of the twin governing bodies of the UNODC: the Commission on Narcotic Drugs and the Commission on Crime Prevention and Criminal Justice.

Conference of States Parties to the UN Convention against Corruption

As with organized crime, active civil society engagement is required for international and domestic anti-corruption efforts to be effective. NGOs with ECOSOC status are invited to attend the UNCAC Conference of States Parties (COSP), and other relevant NGOs may apply to attend the regular meetings.

However, since the adoption of the UNCAC in 2003 and its implementation review mechanism in 2009, civil society has faced a consistent and growing set of obstacles. The infamous 'Marrakesh compromise', struck at the 2011 COSP in Morocco, sets the rules for NGO engagement.⁴⁸ Under the compromise, NGOs can attend the main sessions of the UNCAC COSP Conference but cannot attend the COSP's subsidiary bodies, including the working group that meets to monitor the implementation of the Convention.

An 'NGO briefing' has been instituted, where civil society and states can meet on the margins of the Implementation Review Group. However, NGOs that attend may not mention 'country situations', i.e. what is happening with corruption or UNCAC implementation in any specific country. The UNCAC Coalition's September 2022 report outlines the shortcomings of the current process and presents recommendations to improve inclusiveness, transparency and effectiveness of the review mechanism to enhance global efforts against corruption.⁴⁹

The main UNCAC Conference has also suffered from a growing trend of states parties objecting to the attendance of specific non-ECOSOC NGOs. In the past, countries would normally object to NGOs from their own country, but it is now common for NGOs to be objected to by another country. In particular, several NGOs attending the 9th COSP in Sharm El-Sheikh, Egypt in 2021 received objections from a foreign state and were unable to attend, in the absence of consensus on their status amongst member states. Throughout 2022, the EU and US delegations in Vienna have called for a COSP Special Session to discuss and possibly vote on the exclusion of the NGOs. As their efforts have

not found sufficient support from delegations, the NGOs face continued uncertainty with regard to their observer status.

The Crime Congress

In 1991, UN General Assembly Resolution 46/152 established the UN Congress on Crime Prevention and Criminal Justice (the Crime Congress) as a consultative body of the UN crime programme, to provide 'a forum for the exchange of views between States, inter-governmental organizations, non-governmental organizations and individual experts representing various professions and disciplines'.⁵⁰

The Crime Congress, which takes place every five years, is mandated to adopt 'a single declaration containing recommendations derived from the deliberations of the high-level segment, the round tables and the workshops, to be submitted to the Commission for its consideration'.⁵¹ In the past, this ensured that NGOs were present during the deliberations on the declaration. However, before the last two Congresses – in Doha, 2015 and Kyoto, 2021 – had even started, diplomats in Vienna negotiated behind closed doors and provisionally agreed on the declaration. This means that the NGOs who attended the two congresses could not engage on the outcome of the meeting.

With access to the Kyoto Congress restricted by the COVID-19 pandemic, civil society had little to no interaction with member states before the Congress started and only minimal input in the drafting of its declaration. Before the pandemic, UNODC organized a regional preparatory process for the benefit of member states to raise issues to be included in the political declaration. Only 15 NGOs attended the meetings. Some NGOs also faced objections to their participation from individual states.

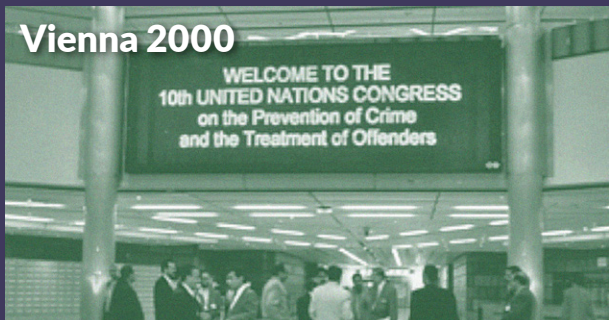
The wording of the political declarations of the Congress also shows a stark weakening of support for the role of civil society in crime-prevention and criminal-justice policy and responses. At the 2000 Vienna Congress, member states agreed that civil society representatives were 'partners and actors', alongside governments, in the field of crime prevention and criminal justice.⁵² By Bangkok in 2005, civil society had been relegated to 'contributing' to efforts, 'within the rule of law'.⁵³

The 2010 Salvador Declaration asserted the 'responsibility of states' along with 'an integrated approach that includes all relevant stakeholders including those from civil society'.⁵⁴ Doha 2015 declared that states 'should take measures to ensure the contribution of civil society'.⁵⁵

In Kyoto, at the initiative of the Russian Federation during the closed-door negotiations, the Congress further weakened its support for civil society, declaring, 'We emphasize our primary role and responsibility as States and Governments for defining crime-prevention strategies and policies.' They also undertook to engage with civil society 'as appropriate' – a UN proviso commonly used to weaken or introduce ambiguity into commitments.⁵⁶

CIVIL SOCIETY AT THE CRIME CONGRESS: FROM RECOGNITION TO A DOWNGRADED ROLE

Vienna 2000



We emphasize that effective action for crime prevention and criminal justice requires the involvement, **as partners and actors**, of Governments, regional, and international institutions, intergovernmental, national and non-governmental organizations and various segments of civil society, including the mass media and the private sector, as well as the recognition of their respective roles and contributions.

We recognize the role of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in contributing to the prevention of and the fight against crime and terrorism. We encourage measures to strengthen this role **within the rule of law**.

Bangkok 2005



We recognize that the development and adoption of crime prevention policies and their monitoring and evaluation are **the responsibility of States**. We believe that such efforts should be based on a participatory, collaborative and integrated approach that includes all relevant stakeholders including those from civil society.

Salvador 2010



We also recognize that, to enhance the effectiveness and fairness of such strategies, we **should take measures to ensure the contribution of civil society**, the private sector and academia, including the network of institutes of the United Nations crime prevention and criminal justice programme, as well as the media and all other relevant stakeholders, in the development and implementation of crime prevention policies.

Doha 2015



KYOTO DECLARATION, 2021

We emphasize our primary role and responsibility as States and Governments for defining crime prevention strategies and policies.

We undertake to enhance multidisciplinary efforts to prevent and combat crime through cooperation and coordination between law enforcement and other criminal justice institutions, and other governmental sectors, as well as to support their work, by engaging in and fostering multi-stakeholder partnerships with the private sector, civil society, academia and the scientific community, and with other relevant stakeholders **as appropriate**.

UN Convention against Transnational Organized Crime

The implementation of the UNTOC at the multilateral level is overseen by its own COSP, which counts almost all countries as members, at 190.⁵⁷ Like the other policy-making bodies under the auspices of the UNODC, it operates under the Vienna spirit of decision-making, effectively handing states a veto if they wish to wield it. This helped ensure that the Conference did not adopt a review mechanism until 2018, a full 15 years after the treaty entered into force.

The issue of civil society participation, along with the mechanism's financing, was a major sticking point for delegates who could not agree on an appropriate review mechanism to measure and improve implementation of the Convention.⁵⁸ The compromise that was finally reached in 2018 was modelled on the UNCAC review mechanism, which included the 2011 Marrakesh compromise. It had a clearly defined role for civil society, although with high levels of restrictions and low levels of transparency. However, unlike the UNCAC mechanism, there are no country visits, which are the key opportunities for state and non-state actors to engage with each other through the mechanism.

The Marrakesh compromise also inspired the UNTOC's 'Constructive Dialogues' that allow for generic engagement between states and non-governmental actors in the margins of the UNTOC Conference. The review mechanism followed the practice of denying NGOs access to subsidiary bodies, which in this case includes the Conference's working groups on trafficking in persons, smuggling of migrants, trafficking in firearms, and international cooperation and technical assistance.

NGOs that do attend the Constructive Dialogues are subject to strict requirements as to what they can and cannot say (again, specific country situations cannot be mentioned). Some countries have successfully and unilaterally blocked specific NGOs from attending, despite a lack of consensus among the Extended Bureau and the broader membership as to whether the objections had any legal or procedural merit.

At the 11th UNTOC Conference of Parties, which took place between 17 and 21 October 2022, three NGOs received objections. In contrast to the UNCAC conference, member states at the 11th UNTOC conference took a decision by vote in favour of civil society participation, in an unprecedented move. Following a series of procedural discussions, the states eventually voted decisively in favour of the participation of the NGOs in question. Fifty-seven states voted in favour, with only seven against; there were 34 abstentions. This demonstrated a strong majority in favour of NGO participation, but also a sizeable number of countries not willing to take a strong position either way. This decision ensures participation for the three NGOs concerned and eases concerns about participation for other NGOs in future sessions of the conference. However, the actions taken will have an impact not only on the UNTOC Conference, but also on the broad spectrum of meetings and processes held under the auspices of UNODC in Vienna and beyond.

In line with the same objectives, Colombia, Costa Rica and Chile tabled a draft decision for the conference to try to address this issue by clarifying that NGOs accepted as observers for the main conference should have access to the Constructive Dialogues taking place in the ensuing period. This proposal did not reach consensus and was not adopted by the conference, but highlighted again how high profile the issue has become at the conference.⁵⁹



A woman with a sticker over her mouth reading 'freedom' takes part in a civil society protest in Skopje, North Macedonia.
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REASONS FOR HOPE

The picture may look bleak for the prospects of enhanced engagement and policymaking on transnational organized crime issues, but there are some reasons for hope:

- The 11th Conference of UNTOC has shown that there is a critical mass of states willing to stand up for the participation of NGO, and to take issues to a vote if consensus cannot be found. With regard to the UNTOC review, there are several initiatives taking place at the country level to ensure the inclusion of civil society in the review process (for example, in Pakistan, Mexico,⁶⁰ Canada⁶¹ and Switzerland).
- At the Constructive Dialogues and elsewhere, numerous delegations have shown support for civil society in response to the objections that have been placed against NGOs.
- The umbrella Alliance of NGOs on Crime Prevention and Criminal Justice is increasing its membership and activities in Vienna, the home of the UNODC.⁶²
- More broadly, the range and diversity of civil society engagement at the UNTOC Conference is growing, with a record number of registered NGOs expected to take part at the 11th Conference.⁶³
- There are also good practices in the form of intersessional meetings undertaken by the policymaking bodies in Vienna. These may be attended by civil society participants already registered or by civil society panellists nominated by regional groups of states.⁶⁴

As the UN Guidance Note on Civil Society Participation states:

As the drafters of the Charter and of the Universal Declaration of Human Rights clearly recognized, development, peace and security, and respect for human rights are interdependent, and achieving them requires meaningful, inclusive and safe public and civil society participation. Meaningful participation in turn requires open civic space: an environment that brings a diversity of voices into debates, and safe channels and a vibrant media landscape that allow for peaceful disagreement and dissent.⁶⁵

Responses from states

In addition, other best practices have become familiar to the diplomats in Vienna: notably, the modalities for participation in the newly created UN Ad Hoc Committee that has been set up to negotiate a new legal instrument on the criminal use of information and communications technologies (ICTs).⁶⁶

In its formative period, the Committee faced similar problems to those outlined in this paper and the issue of civil society engagement became a political hot potato. States overcame this through the use of open and transparent modalities, with the prospect of voting used to bypass single member states' ability to block civil society. The chair of the process, the Algerian ambassador in Vienna, has also played a key role to ensure sufficient and open processes for engagement throughout the negotiations so far. Since the beginning of the process, regular intersessional consultations have been well attended by member states and civil society alike, engaging with each other in an open manner. This approach has allowed countries to make their objections clear and put them on the record without holding up the work of the Committee or allowing veto powers.

At ECOSOC in New York, states in favour of civil society participation have similarly begun to bypass blocking tactics at the NGO Committee. In July 2022, the United States proposed a vote in favour of granting ECOSOC consultative status to six NGOs that had been subject to several years of deferrals.⁶⁷ This is another example of states' willingness to stand up for civil society participation and put principle ahead of diplomatic conventions, which have contributed to years of deferral and obstruction.

Ad Hoc Committee on the criminal use of ICTs: Towards more inclusive participation

In its 2021 resolution on countering the use of ICTs for criminal purposes, the General Assembly [...]

Reaffirms that representatives of non-governmental organizations that are in consultative status with the Economic and Social Council, in accordance with Council resolution 1996/31 of 25 July 1996, may register with the secretariat in order to participate in the sessions of the Ad Hoc Committee;

Requests the Chair of the Ad Hoc Committee, in consultation with the United Nations Office on Drugs and Crime, to draw up a list of representatives of other relevant non-governmental organizations, civil society organizations, academic institutions and the private sector, including those with expertise in the field of cybercrime, who may participate in the Ad Hoc Committee, taking into account the principles of transparency and equitable geographical representation, with due regard for gender parity, to submit the proposed list to Member States for their consideration on a non-objection basis and to bring the list to the attention of the Ad Hoc Committee for a final decision by the Ad Hoc Committee on participation;

Encourages the Chair of the Ad Hoc Committee to host intersessional consultations to solicit inputs from a diverse range of stakeholders on the elaboration of the draft convention.⁶⁸

UN policy and strategy

The UN Secretariat, under Secretary-General António Guterres, published a guidance note on the protection and promotion of civic space in September 2020. Notwithstanding the decision-making role of states (many of whom would not agree with the principles contained in the note), and the difficulties in achieving implementation across the system, the UN Secretariat has espoused the following recommendations for the entire UN system:

- Develop or implement existing policies on inclusive and effective participation in United Nations processes and partnerships; regularly assess the effectiveness of participation channels, and enable feedback loops for civil society.
- Reach out to diverse civil society actors, with a focus on those at risk of being left behind, including communities at the local and grassroots levels and women's organizations.
- Explore avenues for civil society to challenge restrictions on participation and on access to information.
- Pay particular attention to and follow up on allegations of intimidation and reprisal against civil society for cooperating with the United Nations, and take appropriate measures to prevent such acts of intimidation and reprisal.

- Strategize to expand civic space and to address gaps, online and offline, and help to build broad civic space coalitions.
- Speak out against online and offline restrictions on the freedoms of expression, peaceful assembly and association, particularly in the context of attempts to censor and criminalize expression, if inconsistent with international human rights law standards.
- Promote positive narratives on civil society and its contributions in many areas of work, and leverage the convening role of the United Nations between States, businesses and different segments of civil society.⁶⁹

These recommendations are partly reflected in the UNODC's policies adopted under the leadership of the current executive director, Ghada Waly. The UNODC strategy for the 2021–2025 timeframe makes the following commitment to partnering with civil society, in addition to numerous references throughout the thematic chapters of the document:

Civil society partnerships have been critical for ensuring that their voices are heard in intergovernmental and normative processes. We will continue to facilitate multi-stakeholder engagement in the implementation of the conventions, including constructive dialogues with civil society, academia, think tanks and the private sector. We will work to increase the number of regional and national platforms, bringing together government representatives and civil society to jointly develop initiatives to counter corruption and organized crime. Finally, the next five years will see systematic mainstreaming of partnerships with civil society across all UNODC workstreams.⁷⁰

When it comes to the crunch, however, these are merely recommendations and aspirations. They can crumble under the force of realpolitik and, ultimately, the primacy of states, to all of whom the UN is the secretariat.⁷¹



View of the Vienna International Centre, home to several UN agencies, including the UNODC. © Jacob H via Getty Images

CONCLUSION AND RECOMMENDATIONS

The shrinking space for civil society at the UN unfortunately reflects the treatment of civil society at the domestic level in many countries and the general malaise of multilateralism that has intensified in recent times. It is a sad indictment that the political will to tackle organized crime and corruption is increasingly hindered by an aversion to working together across sectors to address the problem.

Some states may benefit when CSOs are excluded from policymaking and public discussion on organized crime, as opposing or uncomfortable views remain unheard. But international efforts to prevent and counter organized crime also suffer. It is impossible to imagine that the international community will be able to truly disentangle the power networks of the corrupt and criminal as long as independent expert voices are not able to impart the latest research and data, hold governments to account and engage with those able to make and implement new policies.

There is a growing awareness in the diplomatic community of what is at stake, and some countries have proven more willing to ensure that the principle of inclusiveness is not sacrificed on the altar of universal consensus. However, if the aim of the international community is to maintain and enhance meaningful dialogue and collaboration between sectors at the multilateral level, the role of the United Nations Secretariat is also crucial to safeguarding civil space. True progress on the implementation of the UN conventions on organized crime and corruption can only be enhanced through more inclusive and holistic engagement and information sharing. Indeed, such engagement

is envisaged in the UNTOC itself in Article 28, clearly reflected in Kofi Annan's introduction to the Convention, evident in the history of successful responses to organized crime, and is an integral part of the history of the UN crime programme and its Congress on Crime Prevention and Criminal Justice.

Based on the common challenges across the multilateral processes, states and the UN should consider the following recommendations:

1. The Vienna-based bodies should institute balanced and inclusive modalities for civil society participation across the board of the treaty bodies and governing bodies that come under the auspices of the UNODC, based on successful practices such as those of the Ad Hoc Committee on the criminal use of ICTs, and building on the decision made at the 11th UNTOC Conference of Parties. This could include more transparency and equitable procedures for the raising of objections, how they should be justified and how civil society can respond.
2. The Vienna-based bodies should create a roster of relevant NGOs to engage across the whole range of UNODC mandates, with or without ECOSOC status.
3. The executive director of the UNODC should ensure that the Secretariat stands up for the rights of civil society in the face of exclusion and intimidation from states, in line with existing UN policies and recommendations: for example, through supportive public statements and diplomatic engagement with member states.
4. States and civil society should work together to raise awareness of and commemorate all who have lost their lives in the fight against organized crime, including those from civil society alongside those from law enforcement and criminal justice systems.
5. Established CSOs should prioritize engagement on the UNTOC and UNCAC Review Mechanisms (as well as other engagement processes) at the national and international levels, raise awareness among civil society at the grassroots level, and provide guidance and support to smaller CSOs.
6. Civil society should publish an annual report on the state of civil society engagement at the policymaking bodies of the UNODC, with input from all the relevant NGO representative bodies and committees.

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