



**GLOBAL
INITIATIVE**
AGAINST TRANSNATIONAL
ORGANIZED CRIME

IS THE UNTOC WORKING?

AN ASSESSMENT OF THE
IMPLEMENTATION AND IMPACT OF
THE PALERMO CONVENTION

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OCTOBER 2024

NOTE

This brief is produced ahead of the 12th Conference of Parties to the UNTOC, taking place in Vienna from 14–18 October 2024.

ACKNOWLEDGEMENTS

The authors would like to thank the eminent experts and officials who contributed to this report through interviews and more informal conversations, in particular Jean-Paul Laborde, Yvon Dandurand, Shenaz Muzaffer, Eduardo Vetere, Andreas Schloenhardt, Ugi Zvekić and Neil Boister. The authors would like to thank Gwen Boniface and Peter Gastrow, and GI-TOC staff members who contributed to the research and analysis, including Tuesday Reitano, Summer Walker, Livia Wagner, Elsadig MohammedAhmed, Ebru Erkan, Nadia Schwartz Rivero and Misha Khamseh, and the Publications team for their tireless efforts to review, prepare and finalize this publication.

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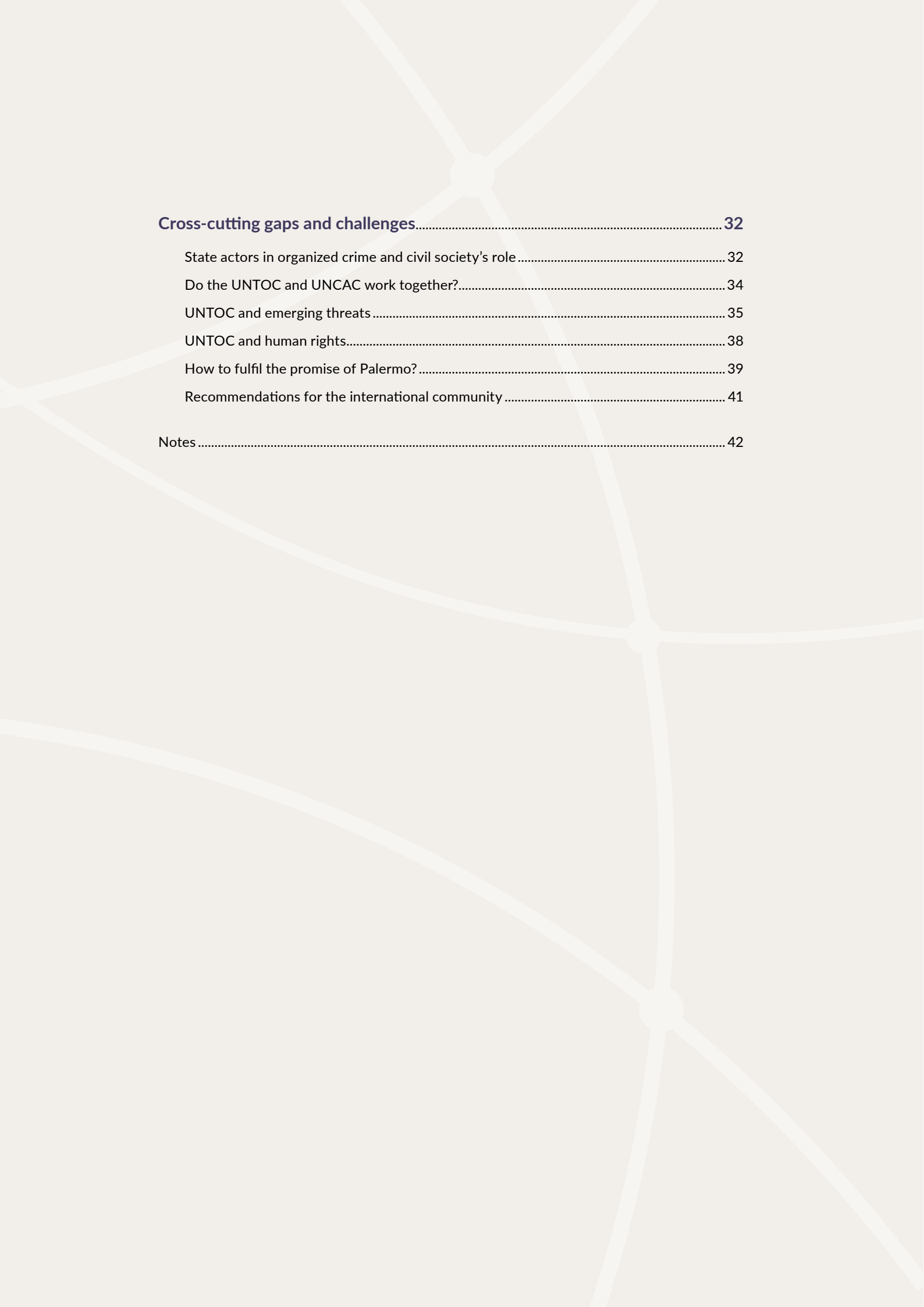
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FOREWORD

The story of the United Nations Convention Against Transnational Organized Crime (henceforth 'UNTOC') is a remarkable one. As then UN Secretary-General Kofi Annan said at its adoption in Palermo in 2000, the Convention was a 'milestone in the struggle for the rule of law'. At a particularly advantageous time in geopolitics, the international community came together around a vision for a more effective international response against the mafia-style groups who, at that time, were terrorizing communities and threatening the viability of certain states.

Italy grasped the threat it was facing and, together with civil society, mounted a resistance to the tyranny of organized crime and took their proposals for an international convention to the United Nations. Although at first they faced some resistance, they brought a wide cross-section of countries on board, alongside proactive experts from the UN Secretariat, who championed the need for the new treaty.

In a relatively short time, the treaty was adopted by consensus and achieved widespread ratification levels, as did the protocols on trafficking in persons, smuggling of migrants and trafficking in firearms, as proposed by other member states. Those of us who were participants in the negotiation process for the four legal instruments saw how multilateralism can work at its best to achieve a common vision, even on technically, legally and politically complex issues. At the time, we did not know to what extent the UNTOC would be able to disrupt criminal networks, but we knew that the world had put itself on the front foot.

But here we are, almost a quarter of a century later, in a more fragmented and unstable world. The favourable international-political situation that bathed the turn of the millennium in optimism has disappeared.

First, the UNTOC was quickly overshadowed by the threat of terrorism in the wake of 9/11, and by the adoption of the UN Convention against Corruption (UNCAC) in 2003. Meanwhile, globalization, technological change and lack of regulation over both technology and financial flows enabled organized crime to become more pervasive and potent. Over time, deteriorations in international cooperation and multilateralism, and lack of attention to organized crime as a priority threat have allowed criminal groups to exploit and profit from the global situation, intermingling deftly with political and private sector power.

What's more, the lack of data and critical multisector analysis on the implementation and impact of the UNTOC leaves us in the dark, without access to the information and equipped with the tools needed to mount a more effective response. The slow pace of the review mechanism, and its restrictions on outside expertise, leave us doubtful about whether we will ever know whether the UNTOC is achieving its potential.

This report encourages officials and experts to reflect on where the UNTOC has travelled since its adoption, and in doing so outlines the challenges and drawbacks that inhibit more effective implementation, as well

as recommendations to drive forward a more impactful UNTOC. We know that the UNTOC was never supposed to be a panacea. But it was supposed to be a sharp and flexible legislative tool, alongside a wide range of others – a strong and enabled civil society, a free media, and an honest and open evidence-based debate to review its implementation.

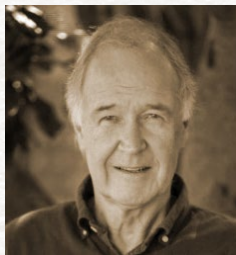
Today, the implementation and impact of the UNTOC is not fulfilling the potential that we envisioned in 2000. We hope that states, experts and the UN itself take heed of this report, and put its recommendations into practice, to revitalize the potential and spirit of the Palermo Convention, as it approaches its 25th anniversary.



Gwen Boniface

CHAIR, GLOBAL GI-TOC BOARD

Gwen Boniface served in Canadian policing for 30 years, including eight as the Commissioner of the Ontario Provincial Police. From 2010 to 2012, she was the Transnational Crime Expert for the United Nations Police Division. In 2006, she was selected to serve as the Deputy Chief-Inspector of the Garda Inspectorate, an organization established to reform and modernize Ireland's national police service. In July 2024, she was appointed the new Chair of the global GI-TOC Board.



Peter Gastrow

CHAIR, AFRICA BOARD, GI-TOC

Peter Gastrow is a former member of the South African Parliament, and served on the National Peace Committee, and chaired the transitional government structure responsible for providing safety and stability during the first democratic elections in South Africa in 1994. After the 1994 elections, he became special adviser to the Minister for Safety and Security to assist with the transformation of South Africa's police agencies. During 1999 and 2000 he served on the South African delegation at negotiation process in Vienna that led to the adoption of the UNTOC, and was the rapporteur of the negotiating committee.



Jean-Paul Laborde

SENIOR ADVISER, GI-TOC

Jean-Paul Laborde has held several senior positions in the French judiciary, most recently as President of Chamber in charge of financial and economic crimes at the Court of Appeals of Aix-en-Provence and as a judge at the French Judicial Supreme Court, la Cour de Cassation. He currently serves as roving ambassador for the Parliamentary Assembly of the Mediterranean (PAM) and as special adviser to the president of the PAM on issues related to transnational organized crime, terrorism and promotion of the rule of law. He was head of the secretariat for the negotiations of the UNTOC at the UNODC in Vienna before assuming the functions of assistant secretary general in New-York as executive director of the Counter-Terrorism Executive Directorate at the UN Security Council.



EXECUTIVE SUMMARY

Since the adoption of the UN Convention against Transnational Organized Crime (UNTOC) in 2000, transnational organized crime has – perhaps ironically – grown and diversified to astonishing proportions. The sheer diversity and ubiquity of global organized crime today, a quarter of a century after the adoption of the global legal instrument designed to tackle it, are now its defining characteristics.¹

The UNTOC's aim was, and is, to criminalize core organized criminal offences, to enhance international cooperation to prevent and counter transnational organized crime, and to 'deny safe havens to those who engage in transnational organized crime by prosecuting their crimes wherever they occur and by cooperating at the international level' (UN General Assembly Resolution 55/25). However, in 2024, despite almost all countries being signatories to the convention, and high ratification levels for its Protocols on human trafficking, human smuggling and firearms trafficking, there is no shortage of safe havens where criminals carry out transnational criminal activity, evade justice, and move and hide their ill-gotten gains. Indeed, the criminal markets covered by the protocols continue to grow, as part of an increasingly interconnected criminal ecosystem.

In recent years, the available data suggests that organized crime is expanding and diversifying significantly, while resilience (essentially, the state's capacity to absorb and respond to organized crime) is failing to catch up with the rising criminality.² This growth in organized crime has been facilitated by hyper-globalization (followed by barrier-raising), digital transformation and the criminalization of politics combined with geopolitical volatility.

Judge Giovanni Falcone leaving the Court of Palermo with police security, 16 May 1985. Falcone, who was killed by the mafia in 1992, was instrumental in the lead-up to the Palermo Convention. © *Vittoriano Rastelli/Corbis via Getty Images*



- Hyper-globalization enabled criminal networks to exploit legal and regulatory discrepancies, and establish sophisticated supply chains for illicit goods. And all indications are that the COVID period provided a boon for cross-border criminal activity and local forms of criminal governance. Even with the recent slowdown of globalization and building of barriers to entry, opportunities exist for well-resourced criminal groups.
- Digital transformation has provided new tools (e.g. the dark web, encrypted communication and cryptocurrencies) that enable anonymous and rapid transactions, and facilitate the recruitment and coordination of criminal activities.
- The combination of the criminalization of politics and, more recently, geopolitical volatility creates environments for organized crime to thrive, weakens state institutions and law enforcement, and embeds state actors as key players in illicit markets.

Although the widespread application of the UNTOC has undoubtedly transformed the framework for international cooperation and legislative responses to organized crime, two decades after Resolution 55/25 was adopted, the convention does not appear to have achieved the intended impact on safe havens pledged by states.

Notwithstanding, the convention's mere existence, and its widespread ratification, is remarkable. The convention has 192 states parties,³ which are all UN member states apart from the Holy See, the State of Palestine and the European Union. The handful of countries that have not ratified the convention are notable for being hubs of illicit economies, such as Iran⁴ and Somalia.⁵ Achieving such a high level of buy-in is the result of political convergence and near universal acceptance of the convention's core tenets.⁶ A major step forward was that the convention was able to provide a common framework or blueprint for criminalizing and combating (through cross-border coordination) transnational organized crime.

However, it is difficult to say definitively whether the UNTOC is working or not. There is limited data about the convention's implementation in country legislation and practice, and therefore it is difficult to ascertain whether it is having a positive effect or not.⁷ The UNTOC implementation review mechanism (IRM), which is the only official way of assessing implementation, is running behind schedule, and has limited resources and low reservoirs of political will. After 25 years, no country has yet been reviewed on its implementation of the convention. Furthermore, the IRM gives states high control over outputs and limits civil society participation, and focuses more on legalistic implementation rather than the tangible impact on criminal markets.⁸ In a context of dynamic, fast-changing illicit economies, the IRM is simply not well placed to provide timely data or impactful recommendations any time soon.

If the UNTOC was supposed to be a panacea for shutting down organized crime, it has clearly not had the desired preventative or reactive effect, as organized crime continues to mount and consolidate worldwide.⁹ However, this paper is not arguing that the UNTOC is ineffective and should be replaced. It is calling for an honest discussion on what is working, what is not working and how to better use the convention as part of a more strategic range of responses to prevent and counter transnational organized crime, as there is surprisingly little debate about this, especially in the UN's conference rooms in Vienna. It seems that the UN and the states parties are content to count ratification as an achievement in itself and have no incentive to assess and evaluate the impact of UNTOC, either through the IRM, peer pressure from other states, media or public pressure, or indeed the leadership of the UN.

At the same time, as a result of the destabilizing impact of organized crime, several countries are desperately in need of a more effective response. In some places around the world, organized crime is effectively challenging the existence of the state, rendering state-led responses and governance ineffective – a prime example is Haiti.¹⁰

Since 2022, the GI-TOC has been one of the actors to engage in the Constructive Dialogues, which are a space for stakeholders from civil society, academia and the private sector to engage with the IRM, providing regular inputs and comments to the parties to the convention, both through official meetings and its own analysis.

The GI-TOC publishes this paper, ahead of the first International Day for the Prevention of and Fight against All Forms of Transnational Organized Crime (15 November 2024¹¹) and of UNTOC's 25th anniversary in 2025. By evaluating the collective approach of the international community in implementing the UNTOC, and its successes and challenges, the paper seeks to answer the question, is the UNTOC working? It looks at the following aspects:

- In the absence of country outputs from the IRM, what is known about the implementation of the UNTOC in terms of effective legislation and its use as a tool for international cooperation, and what is the status of the IRM?
- What is the UNTOC's influence and impact on international cooperation?
- What evidence is there of the convention's impact on transnational criminal markets?
- What are the systemic and temporary challenges to more effective implementation of the UNTOC?
- What can be done to enhance the impact of the UNTOC, as part of a holistic approach to preventing and reducing organized crime?

The UNTOC is one of many building blocks needed to tackle transnational organized crime. Ultimately, the findings from this report show that there is a need to shift our understanding of the UNTOC, from being an end in itself to being part of an arsenal of required responses. This report concludes that ratification of the UNTOC should no longer be regarded as an achievement in isolation but rather as a starting point, especially as analysis of its implementation remains difficult. This also implies a conceptual shift from accepting that states are the ultimate judges of whether or not UNTOC is being implemented properly to understanding where the UNTOC is working (or not), and using that analysis to work towards more effective implementation. It means providing more support to the review mechanism but realizing where it will fall short, where data will be lacking, and what instruments and processes lie outside of the convention's existing structures to achieve the convention's aims, and what provisions of the treaty could be revitalized – particularly those on public awareness, civil society engagement, and assessment and analysis.

The paper puts forth a case for how the convention's provisions must be complemented by broader strategic responses to organized crime, beyond those formulated by the state, in order to tackle illicit economies in a more sustainable way and better fulfil the promise of Palermo.

Key findings

The findings of this report are nuanced and diverse, but all point in a similar direction. The overarching point of commonality across the findings is that the UNTOC's broad adherence has not translated into widespread tangible impact. The impact on legislation varies depending on the country; the impact on international cooperation varies depending on the region and country; and the impact on criminal markets remains impossible to assess. Underlying all of these findings is a lack of available data and analysis, and a lack of central reporting and facilities to promote the availability of more data. There is an imbalance in data and engagement between the Global North and the Global South, with the Global North producing more data and engaging more with the international cooperation mechanisms provided by the treaty.

This lack of reporting and data is, in turn, exacerbated by a slow, poorly designed and under-funded review mechanism, driven by low levels of political will and lack of incentives. In addition, the implementation

of the UNTOC has overlooked key provisions on outside expertise and data, further holding back progress. The isolated position of UNTOC in the international system is another block to effective implementation, as it pertains to better addressing corruption and upholding human rights.

The main findings of the paper are as follows:

- Ratifying the UNTOC should lead to tangible legislation, but often this is not the case. Legislation varies significantly from country to country, and these legislative variations (and how they are understood) can impede or slow down international cooperation. In addition, there is no central mechanism for reporting on how countries implement the UNTOC in their legislation, and data is patchy and dispersed, making collection and analysis difficult.
- The UNTOC's Independent Review Mechanism (IRM) is poorly designed, with restricted access for civil society and a lack of transparency, in contrast to Articles 28, 29, 30 and 31 of the Convention. It is fundamentally hamstrung by its state-centric nature and lack of political support and resources. Country reviews are woefully behind schedule and, in the short to medium term, are unlikely to produce useful state-level data on a meaningful scale. Inertia and 'vested interests' are holding back implementation, and reform is not possible in light of the current geopolitics and UN leadership. Yet, despite these challenges, the IRM provides a platform for multi-stakeholder exchange.
- Despite almost universal membership of the UNTOC, the world has more safe havens for criminals than ever. The UNTOC alone is not seen by enough states as a solid legal basis for international cooperation on a wide scale. Many countries prefer bilateral or regional agreements to international instruments, and even at times direct enforcement actions across borders. The flexible provisions of the UNTOC on mutual legal assistance (MLA) and extradition are not used enough to overcome legal difficulties, such as lack of recognition of dual criminality – which can be a result of diverse legislation used to implement the convention. A lack of transparency and detailed reporting means that full picture of cooperation cannot be measured.
- The Global Organized Index reveals what is going on with criminal markets around the world. It shows us that criminal markets are more pervasive and complex, and have evolved, outpacing the lack of evolution in the UNTOC. But the success of transnational organized crime does not necessarily mean that the UNTOC has failed, as it is not possible to isolate the impact of the convention on criminal markets. It is clear that adherence to UNTOC can be seen to enhance countries' international cooperation scores under the Index, and therefore their resilience scores.
- The UNTOC's implementation is siloed from that of the UNCAC and the wider UN system, limiting the impact of both conventions. An antidote to corruption and state involvement in organized crime is transparency and a strong society, which is reflected in the UNTOC. But the way that states have chosen to implement the UNTOC (through the IRM) shuts out civil society, which is mirrored in many countries where civil society activities are restricted. The resultant lack of external scrutiny undermines 'forgotten' articles of the UNTOC related to collection of information, training and technical assistance.
- The UNTOC does not provide for international cooperation on all forms of organized crime (although it does provide for criminalization of four core offences), cooperation can only be triggered when there is a transnational element and there is limited consensus on how to address the criminal markets not specifically mentioned in the UNTOC, such as cybercrime and environmental crime.
- The UNTOC contains some built-in rights (e.g. of the defendant and protection of witnesses), but there is no guarantee that the same safeguards will be included in domestic legislation. The UNTOC's implementation is susceptible to human rights abuses by authoritarian regimes, and so human rights need to be central to the international community's wider response to organized crime.

Recommendations for the international community

The findings paint a stark picture and present major challenges to the international community, who collectively bear responsibility for monitoring and improving the impact of the UNTOC, and getting closer to achieving its potential. Responding to these findings will require some changes in how the UNTOC has been addressed in recent years, which has seen the UNTOC retain a low level of political engagement (and therefore political will) and low public profile (outside of key countries like Italy), and for civil society and other outside expertise to be effectively shut out of the review process, draining the UNTOC review process of the data, analysis and external scrutiny that it needs to move forward. A business-as-usual approach to the UNTOC will result in prolonged stagnation, and ultimately irrelevance. The convention is approaching its 25th anniversary yet its trophy cupboard is sparsely filled. This paper proposes the following measures to address this malaise, and reinvigorate the convention and its aims:

- Enhance political attention to the UNTOC IRM, to address its slow pace, while also increasing financial resources, to improve its ability to carry out its functions.
- Establish an independent research and monitoring centre under UN auspices to gather and disseminate the latest information and analysis on organized crime and UNTOC's value, free of state influence and interference.
- Open up discussions on UNTOC implementation that go beyond legalistic approaches, and consider varied and new data to understand where and how UNTOC has had an impact on criminal markets, through multistakeholder Track 1.5 processes.
- Introduce critical evaluation into the UNTOC implementation discussions and encourage member states to speak up when they see problems, and to open themselves up to scrutiny.
- Call out where a state is involved in organized crime and, therefore, unable to credibly carry out a self-assessment of its UNTOC implementation.
- Empower and fund independent institutions to carry out civil society-led shadow reviews (at the country, regional or thematic levels) that go beyond the legal assessments that form the basis of the official UNTOC reviews, to assess the impact of state efforts, including their use of the UNTOC, on transnational organized crime.
- Bring together data sources into a global transnational organized crime monitoring mechanism that includes data from civil society and academia, together with the official UNTOC reviews, so that impact can be judged based on holistic information.

Methodology

The authors made use of existing data and analysis, including official information from governments, academic and research studies, and reports from the proceedings of intergovernmental meetings and other conferences. In the absence of any forthcoming country level data from the IRM, other sources from the UN were used, including the United Nations Office on Drugs and Crime (UNODC) Digest of Cases. However, analyzing the UNTOC's impact is difficult because information about the implementation of the convention is not collected or disseminated in an effective way. Some trends could be found, but there were gaps, which were filled using the views of experts in the field. The authors interviewed several leading experts, including from academia and practitioners, and received guidance from serving UN staff. This report does not cover the implementation of the UNTOC's protocols, but rather focuses on the 'mother' convention.



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What does the UNTOC do?

The UNTOC:

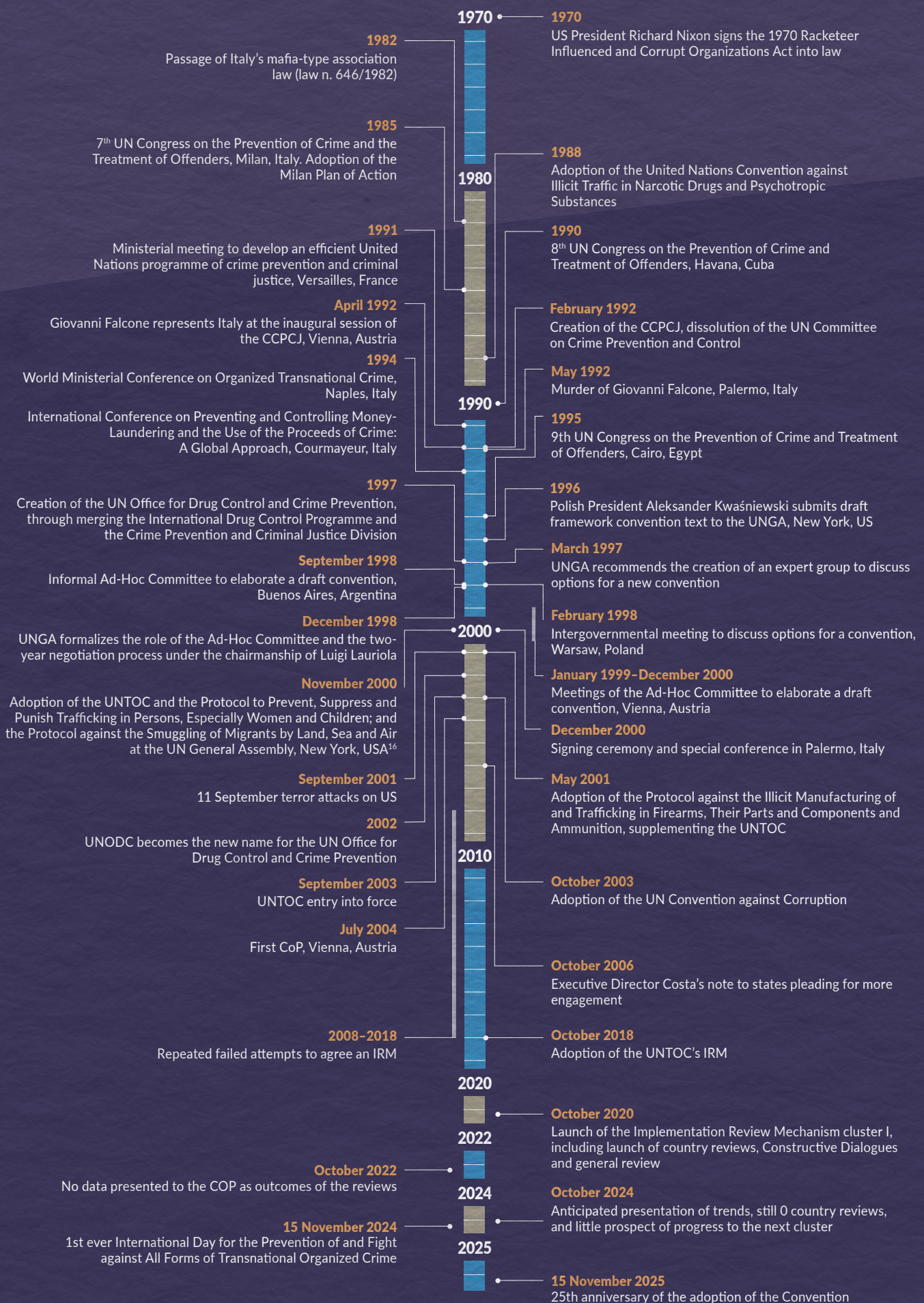
- Defines and standardizes certain terms that are used with different meanings in various countries and circles, for example 'organized criminal groups', 'transnational', etc.
- Requires states to establish specific offences as crimes.
- Requires the introduction of specific control measures, such as 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.

KEY DEVELOPMENTS IN THE HISTORY OF THE UNTOC





IS UNTOC LEGISLATION WORKING?

KEY FINDINGS

- Ratifying the UNTOC should lead to tangible legislation, but often this is not the case. Legislation varies significantly across countries, and these legislative variations (and how they are understood) can impede or slow down international cooperation. In addition, there is no central mechanism for reporting on how countries implement the UNTOC in their legislation, and data is patchy and dispersed, making collection and analysis difficult.

UNTOC requirements

Parties to the UNTOC's protocols are required to create four offences unless these offences are already established in state law:

- Participation in the activities of an organized criminal group (Article 5)
- Certain activities related to money laundering (Article 6)
- Activities related to corruption (Article 8)
- Obstruction of justice (Article 23)

States are also required to establish some additional offences related to specific criminal activities, including human trafficking, human smuggling and firearms trafficking.

The UNTOC contains three types of measures for states to incorporate into legislation:¹² Measures that are mandatory (either absolutely or subject to certain conditions), usually indicated by the verb 'shall' and phrases such as 'states are required to'; measures that states shall consider implementing or endeavour to implement; and measures that are optional (usually indicated by the word 'may').

A variety of useful tools and publications help states to incorporate the UNTOC provisions into their national legislation. These are the core of the capacity-building and technical assistance provided under the Global Programme to implement the UNTOC.¹³

UNODC's Global Programme

The IRM is supposed to act as a catalyst for rolling out capacity-building and technical assistance to where it is needed the most. However, given the lack of data from the IRM and limited project-based resources,

the UNODC's Global Programme provides capacity-building support to countries who request it.¹⁴ Support includes assisting countries to update their legislation, to ensure that it is in line with the UNTOC, to train prosecutors and broader judicial systems in how to use the legislation and the UNTOC's international cooperation provisions, and to prepare for the IRM. The UNODC's support goes beyond the implementation of the UNTOC and its IRM to include a toolkit on developing organized crime strategies,¹⁵ and integrating human rights and gender considerations.¹⁶

Ratification does not mean legislation

In 2018, the EU-funded ENACT programme¹⁷ published a report, which found that even though the vast majority of African countries are party to the UNTOC, only '20 out of 54 countries [in Africa] have passed legislation that meets both of the convention's definitions. Unfortunately, a mere 25 countries have such laws in the first place'.¹⁸ This is reflected in other research that concurs that the mere accession to or ratification of UNTOC does not necessarily lead to tangible results in legislation.¹⁹

Legislative responses vary significantly across countries

The UNTOC's mandatory criminalization provisions are clear and prescriptive, but there are many voluntary provisions in addition. The options given for the criminalization of 'participation in an organized criminal group' were provided, so that they could be applied in a broad range of common and civil law jurisdictions, and to enable states to find ways around domestic legislative obstacles.²⁰ Despite this, there is variation in how the UNTOC shapes domestic law across countries. In 2020, the UNODC identified several challenges related to implementing UNTOC into domestic jurisprudence.²¹

- States are not required to use the same legal definitions of the terms in Article 2 (e.g. 'organized criminal group', 'predicate offence') in their domestic legislation, even though the criminalization of the offence is required. This can result in the criminalization of participation in an organized criminal group varying wildly, for example, as found in the Asia Pacific region.²²
- Courts and judges are required to make judgments about the applicability of UNTOC provisions and how they relate to domestic law. In Canada, a court found that the 'definition of "criminal organization" [...] violated the Canadian Charter of Rights and Freedoms by being either vague or overbroad', but this was later overturned by the Constitutional Court.
- Interpreting predicate offences²³ under the UNTOC in various countries is difficult. For example, an Indian court ruling found that 'States had discretion as to what offences constituted predicate offences for the purpose of money-laundering'.
- In a dispute between Equatorial Guinea and France concerning state sovereignty when prosecuting predicate offences, an International Court of Justice ruling found that the particular 'provisions of the Convention helped to coordinate but did not direct the actions of States parties', and that France could not claim jurisdiction for prosecuting predicate offences committed outside of its territory.
- In its recently published review of trends and patterns in the implementation of the UNTOC, based on initial analysis of 43 countries' responses to the self-assessment questionnaire of the IRM,²⁴ the UNTOC Secretariat finds that there are various ways in which states have implemented Article 5 (Participation in an organized criminal group). It also finds that some states had only partially implemented it. It finds that states have taken different routes to implementing the money



laundering provisions, but most had done so, as they had for the obstruction of justice and liability of legal persons provisions. The pool of countries represents only around a quarter of parties, and before their responses had been reviewed, highlighting the paucity of official data and analysis available, four years after the launch of the IRM.

Remarkably little is known about whether states parties have implemented UNTOC and its protocols in their national legislation, whether they enforce such legislation, and whether they make use of UNTOC's provisions concerning international cooperation (e.g., extradition and mutual legal assistance). In other words, the influence of these instruments in practice remains largely unknown.

CECILY ROSE, THE CREATION OF A REVIEW MECHANISM FOR THE UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND ITS PROTOCOLS, *AMERICAN JOURNAL OF INTERNATIONAL LAW*, 114, 1, 51-67.

Diverse legislation can impede international cooperation

There is no uniform approach from states on exactly how to implement its provisions, which can lead to problems with different country legislation, despite the mandatory criminalization provisions of the UNTOC, and UNODC's efforts to support national legislative efforts through capacity building and a Legislative Guide²⁵ (which is still a guidance, rather than something more directional). This can affect a state's ability to regard legislation in another country as having met its threshold for dual criminality, whereby the alleged offence must be a criminal offence in both the requesting and requested state. This can lead to failures in securing international cooperation, one of the core objectives of the treaty, when the requested state does not recognize the legislation of the requesting state as being equivalent. However, the flexibility afforded in the provisions, in particular Article 18, of the treaty was designed to ensure that states should be able to overcome such difficulties.²⁶

According to Jean-Paul Laborde, the head of the UNTOC Secretariat during the negotiations of the UNTOC, one of the biggest risks, aside from ineffective legislation, of this diverse implementation of the criminalization provisions, is that authoritarian states that implement a wide range of domestic legislation to criminalize all sorts of activities can request assistance from countries with stronger human rights and rule of law regimes, who should not be able to cooperate. At the same time, those authoritarian countries could more freely use UNTOC to cooperate with each other to crack down on journalists, civil society and others.²⁷

Lack of centralized, accessible data

The UNODC collects information about the implementation of the UNTOC through the SHERLOC portal,²⁸ which is a repository of legislation open to the public. However, the portal is not centrally analyzed or summarized. This means that any researchers wishing to assess UNTOC legislative implementation globally would require the relevant legal and language skills to analyse each country individually. Leading academic experts who were interviewed for this paper agreed that there is no central repository for this kind of analysis, and researchers wishing to compare and contrast would need specific language and legal skills for each country data being analysed.²⁹

Furthermore, the lack of mandatory reporting to date makes assessing legislative implementation of the UNTOC, including the mandatory criminalization provisions, notoriously difficult – even when countries do implement important provisions, it is not necessarily reported. For example New Zealand's incorporation of domestic extra-territorial jurisdiction deriving from the UNTOC was not widely known until relevant judgments emerged.³⁰

A global in-depth analysis of legislative implementation of the UNTOC remains a challenging undertaking. This is due to the diversity and decentralized nature of the available information and, crucially, the lack of a common approach in how to implement it, and a lack of attention to the convention's provisions that do encourage engagement and analysis.

The review mechanism has some serious flaws, because we don't have experts trawling through national laws and national cases. If you really want to get a good picture, you need to know what have they done since they signed up, and which laws have been amended, and in which cases this was applied. I think that many countries don't have the capacity to even answer that.

ANDREAS SCHLOENHARDT, JULY 2024

UNTOC implementation in Canada and China

This case study delves into how Canada and China have incorporated the UNTOC provisions into their

domestic legal frameworks, providing perspectives from two very different legal traditions and political systems.

Legislative incorporation of UNTOC

Canada has made considerable strides in integrating the definitions of Article 2 of UNTOC into its domestic legal framework. The Criminal Code's definition of a criminal organization is similar to that of the UNTOC, emphasizing groups that facilitate or commit serious offences for material benefit.³¹ However, Canada omits the term 'structured group', which is part of the UNTOC's definition. This omission could affect the interpretation and application in Canadian courts, as a narrower definition could limit the scope of prosecutable groups and exclude loosely organized groups without formal structures.³²

China's legal framework has also incorporated elements of UNTOC's definitions but does not explicitly use the term 'organized crime'. Instead, collective criminal activities are addressed through provisions on 'criminal groups' and 'organizations in the nature of a criminal syndicate'.³³ Article 26 of China's Criminal Law defines a criminal group as a relatively stable organization formed by three or more persons for committing crimes. This definition lacks the specificity required by the UNTOC, such as the severity of crimes or financial motives. Article 294 targets organizations in the nature of a criminal syndicate, prescribing punishments for their participants,³⁴ but it is narrower than the UNTOC's definition, which requires elements such as violence or threat and larger membership.

Criminalization and jurisdiction

Canada has effectively criminalized activities outlined in the UNTOC, including participation in organized criminal groups, obstruction of justice, migrant smuggling and aspects of human trafficking. These provisions are integrated into Canada's Criminal Code and other relevant legislation.³⁵ However, according to experts and stakeholders, there is a lack of clarity and understanding among practitioners regarding extended or qualified jurisdiction.³⁶ Canada's definition of 'serious offense' is comprehensive, but the definition of a 'criminal organization' often targets street-level gangs rather than transnational organized crime groups, as seen in cases such as *R. v. Payne and British*

*Columbia (Director of Civil Forfeiture) v. Angel Acres Recreation and Festival Property Ltd.*³⁷

China has also criminalized participation in organized crime, money laundering, corruption and obstruction of justice, aligning with UNTOC's requirements. Amendments to the Criminal Law expanded predicate offences to include money laundering and introduced comprehensive anti-money laundering measures.³⁸ However, China has not amended the definitions of 'criminal group' or 'quasi criminal syndicate' since ratifying UNTOC, indicating that revising the legal definition of organized crime is not a legislative priority.

Cooperation and enforcement

Despite Canada's participation in international joint force operations and cooperation frameworks, practical cooperation remains a challenge. Issues include inefficient mutual legal assistance processes and the reluctance of some countries to use the UNTOC as the basis for extradition.³⁹ Enforcement challenges, particularly regarding money laundering, reveal significant gaps, as seen in the Cullen Commission's findings on money laundering in British Columbia.⁴⁰

In China, regulatory oversight has been reinforced with the establishment of the China Anti-Money Laundering

Monitoring and Analysis Center and the China Banking Regulatory Commission.⁴¹ China's participation in international bodies, such as the Financial Action Task Force (FATF), further demonstrates its commitment to publicly align with its commitments.⁴² However, practical challenges remain in ensuring witness protection and preventing evidence tampering, despite a largely adequate legal framework. Outside the legislative assessment of Chinese efforts, the parallel political party/state structures and opaque reporting in China presents a major challenge when trying to assess the implementation of this legal instrument. ■



IS THE UNTOC IMPLEMENTATION REVIEW MECHANISM WORKING?

KEY FINDINGS

- The UNTOC's Independent Review Mechanism (IRM) is poorly designed, with restricted access for civil society and a lack of transparency, in contrast to Articles 28, 29, 30 and 31 of the convention. It is fundamentally hamstrung by its state-centric nature and lack of political support and financial and human resources. Country reviews are woefully behind schedule and, in the short to medium term, are unlikely to produce useful state-level data on a meaningful scale. Inertia and 'vested interests' are holding back implementation, and reform is not possible in light of current geopolitics and UN leadership. Yet, despite these challenges, the IRM provides a platform for multi-stakeholder exchange.

About the IRM

Twenty years after the adoption of the UNTOC, in 2018, the convention's IRM was adopted, as a peer-review mechanism aimed at supporting states parties to implement the convention and its three protocols. The IRM only began in 2020, after two years of disagreements on its structure, transparency and, especially, funding and access by civil society.⁴³ Largely modelled on the IRM of the United Nations Convention Against Corruption (UNCAC),⁴⁴ it suffers from some of the same drawbacks: a restricted space for civil society and lack of transparency.

IRMs of international treaties may vary in effectiveness, design and transparency, and there are no perfect models, but their importance cannot be overstated – a treaty is devalued if states are not willing to submit themselves to effective review. A recent study concluded that most international treaties do not achieve their intended results due to a lack of effective sanctions and enforcement regimes.⁴⁵

The UNTOC IRM is not an effective sanctions or enforcement regime, given its obvious structural restraints. There is a lack of transparency, civil society engagement, obligatory country visits and resources, as well as an unrealistic timetable in which states are supposed to review the four legal instruments. Nevertheless, experts retain some hope that the mechanism can lead to positive outcomes, provided states parties make best use of the opportunities and engage with the process as openly and inclusively as possible.⁴⁶ Yet, as no country review has been published in the four years since the mechanism was launched, the impact of the UNTOC and its protocols, and state commitment remain unclear.⁴⁷

Experience has confirmed our fears that the UNTOC Review Mechanism is too complex, too slow and unfocused to produce the kind of results we were hoping. And the convention has remained stagnant whereas organized crime has evolved.

YVON DANDURAND, CRIMINOLOGIST AT THE UNIVERSITY OF THE FRASER VALLEY, CANADA, AND A FELLOW AND SENIOR ASSOCIATE OF THE INTERNATIONAL CENTRE FOR CRIMINAL LAW REFORM AND CRIMINAL JUSTICE POLICY

Country reviews woefully behind schedule

As mentioned, the UNTOC IRM is largely modelled on the UNCAC's IRM. It is a peer-review mechanism, led by states and with no obligation to include external contributions, in contrast to Article 28 of the convention itself. Two reviewing countries are randomly assigned to review each state party, one from the same regional group and one from another regional group as the state party under review. The states parties were split into three groups, each of approximately 60 countries and, in 2020, the first cluster (criminalization and jurisdiction) was launched.

However, the country reviews are woefully behind schedule, and none have been concluded. As of May 2024, of the 189 parties participating in the Mechanism, 163 (86%) had nominated their focal points (the governmental officials who coordinate the state's participation in the review), and only 78 (41%) had begun their reviews, meaning 59% have not started.⁴⁸

Of these 78 active reviews, only 35 have got to the stage of preparation of answers to the self-assessment questionnaire; 37 had completed their questionnaires and are at the stage of receiving written feedback; and six (3% of parties) are at the stage of preparing the list of observations. Therefore, still no country has completed their review under the first cluster.

The original timeline agreed by states parties and published by the Secretariat⁴⁹ was for at least 70% of reviews from the first cluster on criminalization and jurisdiction to be finalized and ready to move to the next stage by the end of 2024. In other words, around 134 reviews should be concluded by the end of 2024, whereas only a handful are approaching completion, and some have not even started.

This slow pace highlights issues around political, financial and resource priorities. Funding and budget constraints have had a clear impact on the progress of the mechanism. Interpretation and translation are expensive, while country visits are not compulsory, which means that any country wanting an in-person visit has to find funding for it.⁵⁰

REVIEW PROCESS: KEY FIGURES

- 59% of parties have not started their review process; 41% have begun
- 14% of parties have not nominated a focal point in order to start the review process
- 3% of parties are at the final stage of the review process under the current cluster
- 0% of parties have completed a country review
- 70% of each group of reviewed countries need to complete their first review to move to the next stage

We have been hearing from the Secretariat that the Review Mechanism is facing serious delays. We believe that these delays are at least partially due to a lack of funding: Indeed, with only 4 staff members, the Secretariat cannot provide the assistance that is needed to keep a peer-review mechanism running.

EU STATEMENT TO THE UNTOC WORKING GROUP OF GOVERNMENT EXPERTS ON TECHNICAL ASSISTANCE, 2023
https://www.eas.europa.eu/delegations/vienna-international-organisations/eu-statement-untoc-working-group-government-experts-technical-assistance_en

Inertia and ‘vested interests’ holding back implementation

The process is scheduled to take over 10 years but is certain to take much longer given the delays, which will have unknown administrative and financial implications for both governments and the UN. The official reasons for the slow progress include countries not nominating focal points and changes to focal points and reviewing countries. While these reasons are largely technical, the issues behind them are bigger – and can be understood as a lack of political importance attached to the UNTOC and its implementation, and a subsequent lack of resources allocated to making sure it works properly.

A legitimate question to ask is whether the inadequate implementation of the UNTOC review mechanism can be attributed to criminal elements within states and, therefore, reluctance to be reviewed or investigated.⁵¹ The result of this reluctance, coupled with other states being unwilling to prioritize the issue and allocate adequate resources, is a weak and ineffective mechanism.⁵² The collective lack of commitment has been characterized as a ‘vested interest in inertia’, the consequence of a combination of criminal elements and bureaucrats who are not incentivized or prepared to recognize the scale of the problem and organize themselves to respond, underwritten by a Secretariat unable or unwilling to push for change.⁵³ This lack of action has been described as akin to ‘law-washing’.⁵⁴

With the exception of countries (such as Italy) that have consistently championed the need for an IRM and a small group of other donors who have funded the IRM, this collective inertia or lack of interest ensured an IRM that was state-led, strong on sovereignty and weak on external review. During negotiations, many states, some of whom have genuine organized crime issues, wanted a bolder review mechanism that included independent stakeholders in line with the convention. However, many influential non-western states wanted a more state-led procedure without independent parties and data – and got what they wanted.⁵⁵ At the same time, from the outset, the IRM lost its teeth due to Western states (led by the UK, Japan, Canada and others) not wanting to increase the UN’s regular budget to fund the mechanism, even though this had been done for the UNCAC IRM.⁵⁶

The role of the Secretariat must also be analyzed when assessing the effectiveness of the mechanism on the treaty’s implementation. The UNODC leadership openly called on member states to up their game until the tenure of the Russian diplomat Yury Fedotov as Executive Director.⁵⁷ During the negotiations of the UNTOC IRM, Russia was one of the most engaged delegations, advocating strongly against outside scrutiny in the form of civil society access. Russia’s ecosystem of organized crime⁵⁸ might arguably explain their interest in ensuring state control over the IRM process, but this was something that would never be addressed in the review process.

Of course, Russia is not the only country with a political economy characterized by links and blurred lines between state and criminal actors, but their influence during the implementation period of the UNTOC and the negotiations of the review mechanism should be noted. Egypt was another leading country that objected to civil society being included in the IRM negotiations, and Fedotov’s successor as the UNTOC’s Executive Director, Ghada Waly, is a former minister in the Egyptian government. In this context, understandably, the focus of the Secretariat has been on doing what they can to implement the poorly designed, under-resourced and under-prioritized mechanism, not on advocating or publicly calling out the lack of action on the part of member states. Staff in UNODC are well aware of the problems stemming from a lack of political will but are unable to step beyond their technical mandate.⁵⁹



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The IRM's procedures are set, and so its progress is not going to vastly accelerate in the near future. But that does not mean that the mechanism cannot be a platform for exchanging information and driving forward progress, which has been the case in some of the processes in and alongside the official review mechanism.

Reasons for hope

Not all is doom and gloom. States are making efforts to include civil society in the review process and voluntarily publishing the interim outcomes of their reports. Pakistan, Mexico, Canada, France, Germany, Greece, Kenya, Switzerland and the US have reported consulting with civil society on the completion of their self-assessment questionnaires. Pakistan, Kenya, Mexico and Angola have also engaged with civil society through the implementation of the voluntary pilot initiatives organized by the UNODC. In addition, Canada, US, Kenya, Thailand, Malta, Norway, Germany and Georgia have voluntarily published the responses to their self-assessment questionnaires.⁶⁰

Civil society has also released the first two country reports on the implementation review of the UNTOC:⁶¹

- In 2023, Pakistan's Centre for Governance Research (CGR) released a watershed report about its country's implementation of the UNTOC review process, in partnership with the government, GI-TOC and UNODC.
- In 2022, the International Centre for Criminal Law Reform (CCCLR) produced a report on the UNTOC's implementation and impact in Canada.

Civil society is able to contribute data, experience and lessons learned to the review process via the Constructive Dialogues that are held after the UNTOC working group sessions, which are still closed to non-governmental organizations (NGOs).⁶² The multi-sectoral engagements that have taken place so far in the Constructive Dialogues make it clear that civil society has been, remains and will continue

to be central to the implementation of the review process. GI-TOC has previously spoken of the need for greater transparency and civil society involvement in the country-review processes.⁶³

If this review process is going to take over a decade to complete, now is the time to empower and not exclude civil society who are central to the implementation of the review process. In fact, this is the only way to keep the convention relevant, in spite of the structural defects of the review mechanism, and to ensure that it does not stagnate further to the point of irrelevance, while organized crime continues to evolve and thrive.

A positive development from the Secretariat is the publication of a conference room paper on 'trends and patterns' to form the basis for the 'general review',⁶⁴ which was shared in advance of the Conference of the Parties (COP) to the UNTOC in October 2024, almost a quarter a century after the UNTOC was adopted. This provides some much needed insights from the reviews that have taken place so far, but will not fill the gap required for a comprehensive, given the insufficient data and analysis currently available.

Indeed, in this paper, the Secretariat has only been able to use data from 43 countries, on only their inputs and responses in the context of the first review cluster under the IRM, without having been reviewed by peers. It also states that some answers provided were incomplete or unclear. It is unable to provide more detailed analysis or conclusions beyond general observations that most states analyzed have adopted the mandatory provisions, while a third of those analyzed say that they required technical assistance to better implement the criminalization and jurisdiction chapters of the convention. The Secretariat should be credited for producing analysis based on the limited information available to it, but this lack of information only highlights once again the fundamental challenges faced in attempts to properly analyze the implementation of this convention.



IS UNTOC'S INTERNATIONAL COOPERATION WORKING?

KEY FINDINGS

- Despite almost universal membership of the UNTOC, the world has more safe havens for criminals than ever. The UNTOC alone is not seen by enough states as a solid legal basis for international cooperation on a wide scale. Many countries prefer bilateral or regional agreements to international instruments, and even at times direct enforcement actions across borders. The flexible provisions of the UNTOC on MLA and extradition are not used enough to overcome legal difficulties, such as lack of recognition of dual criminality, which can be a result of the diverse legislation implementing the UNTOC. Lack of transparency and detailed reporting means that a full picture of cooperation cannot be assessed.

Analyzing international cooperation

A holistic analysis is difficult in the absence of country-specific data from the IRM and the lack of information on how UNTOC has been used to facilitate international cooperation in criminal matters. It is not possible to know who is using the convention and how,⁶⁵ as 'no state keeps systematic records of its extradition dealings'.⁶⁶ Therefore, the paper relies on other data, including the UNODC Digest of Cases,⁶⁷ which provides some trends on the use of the UNTOC across different regions and perceptions from experts in the field who suggest that the convention is used more than official records show. The lack of systematized information means that evidence of the UNTOC's use comes from anecdotal and random references to cases rather than centralized number crunching. The Digest attributes the lack of available cases from Africa, Asia and the Pacific, and Eastern Europe to 'different legal systems and traditions' that make it difficult for these areas to report and publish cases.⁶⁸ And yet Professor Schloenhardt, who led the drafting of the Digest of Cases for UNODC, 'was surprised that we were able to find as many cases as we could, through the most unusual channels', noting that there were more cases than anticipated, 'and between countries [...] cross-Atlantic cooperation, and then even these isolated cases involving some African or Asian countries'.⁶⁹



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Preference for regional and bilateral agreements

The Digest reveals significant regional differences in the use of UNTOC, all of which can be attributed to various challenges. The African, Asian, and Pacific regions show an apparently low rate of utilization of UNTOC, often due to administrative and financial challenges that make the complex procedures of UNTOC less attractive than more familiar regional agreements.⁷⁰ The reliance on regional mechanisms indicates a gap in UNTOC's integration. For instance, in 2010, Botswana reported that they had not used the UNTOC as a basis for international cooperation because it was difficult 'to cooperate with states with which it had no bilateral or multilateral treaty'.⁷¹ Furthermore, regional agreements often provide a more convenient framework compared to UNTOC's procedural complexity, and using the UNTOC is less appealing or necessary in regions with other systems already in place.

The position of Asian and Pacific countries is less clear. The Asia-Pacific region does not have comprehensive regional treaties on international cooperation in criminal matters, with the exception of two agreements on mutual legal assistance: one for South Asian nations and one for South-East Asian nations. However, countries such as China and Australia often prefer to rely on regional agreements (e.g. the ASEAN Mutual Legal Assistance Treaty) than to use UNTOC.⁷²

Eastern European countries exhibit a varying degree of utilization of the UNTOC in favour of regional agreements.⁷³ For cases involving states in Western Europe, most Eastern European regions deal with international cooperation in criminal matters through the Council of Europe.⁷⁴

The US, Western European countries and other developed nations (including Canada and Australia) use the UNTOC comparatively extensively, with the US claiming to have used the UNTOC over 1000 times with more than 100 countries by 2020.⁷⁵ However, in some of these cases, other instruments for legal cooperation are used in tandem with the UNTOC. For instance, the US and Brazil show a pattern of using the Organization of American States (OAS) agreements in conjunction with UNTOC⁷⁶ (Brazil used the UNTOC to successfully extradite a Brazilian banker from Monaco⁷⁷). Various cases of cooperation demonstrate that Western European countries use the UNTOC but often prefer

instruments developed by the EU and the Council of Europe due to their detailed procedural frameworks and established track records.⁷⁸

This dual approach, where the UNTOC is used to a certain extent but is often overshadowed by regional instruments, suggests a layered framework of international legal cooperation rather than a sole reliance on the UNTOC. In some countries, 'informal' cooperation also seems to take place. Although cooperation is difficult in Africa and unknown in Central Asia, South East Asia and East Asia, 'there is definitely an exchange of information and exchange of individuals taking place, probably outside of any legal structure. Police from some countries are apparently going into neighbouring countries, arresting them and taking them straight home'⁷⁹. In some cases, people are sent to another country where they are arrested and removed 'without any cooperation from local authorities'.⁸⁰

It would seem that UNTOC itself is not seen by states as a solid legal basis alone to enable international cooperation on a wider scale, with states still relying on bilateral and regional instruments to ensure international cooperation.⁸¹ Eduardo Vetere, a former Director of Treaty Affairs at the UNODC and a central figure in the negotiation of the UNTOC, expressed frustration with this situation,⁸² emphasizing that the UNTOC allows states to cooperate when they have no other agreement in place, but surprisingly few do so. Jean-Paul Laborde concurs, seeing the UNTOC's flexibility in this regard as a key strength, with Article 18.7 allowing states to consider the UNTOC as a bilateral treaty.⁸³ Having said that, according to Christopher Ram (part of the Canadian negotiating team for the UNTOC), the international cooperation provisions were intended to set 'minimum standards only, and States are in fact encouraged to go further in bilateral or regional arrangements'.⁸⁴

Cooperation from other states not guaranteed

Being signatories of the UNTOC does not guarantee that countries will be able to cooperate with each other. Some countries have used the UNTOC in cases of extradition but have not heard back from the other country. For instance, in 2009, Lithuania used the convention as the sole basis in a mutual legal assistance request sent to Nigeria but was still waiting for a response a year later.⁸⁵ This shows how the UNTOC may establish a basis for international cooperation, but it cannot work as promised without cooperation from other countries. Furthermore, the UNTOC seems to be more effective when Western states implement it with other states, but not vice versa. 'Ministers and high-level people from Global South governments' say that 'they always knew it [the UNTOC] was going to be a one-way street' – unless it is in the interest of both countries to cooperate, 'they won't even bother to ask' the other country about a case.⁸⁶

Despite the lack of information from country reviews, there are more cases of international cooperation available to analyze than some experts expected. And these cases often come from unexpected corners of the world, as a result of circumstances, such as a chance meeting between individuals from different authorities. Cases also find their way into the media or are sometimes shared with (or found by) the UNODC and other relevant organizations. However, this does not help other countries or researchers seeking to collate and disseminate best practices. What is missing is a standardized way of recording data that would allow lessons learned to be shared beyond the audience involved in the case.

A comprehensive evaluation and review of the efficacy and extent of the UNTOC's implementation is difficult due to the lack of data on how the convention has been applied in domestic legal and justice systems, the lack of transparency, inconsistent reporting standards and sparse data on specific cases where UNTOC was effectively utilized for international cooperation.⁸⁷

The UNTOC actually put some really good tools into the box that we didn't have before and brought into our minds concepts that were there might have been known in some corners of the world, but now they are available universally. I think the main obstacle is, most countries just don't want to use it. Countries have all the extradition mechanisms that you can dream of. They're there, but countries don't do it, or block them or ignore requests. This is not a matter of the law and the tools, and not even law enforcement. It's merely a political decision not to assist in these cases, not to be more proactive on that, because it's not a vote-winning thing.

PROFESSOR ANDREAS SCHLOENHARDT, JULY 2024

What is required for international cooperation?

The Digest of cases and UNODC's own analysis and interviews reveal regional disparities and complex administrative, financial, legal and political challenges in implementing the UNTOC. For international cooperation to be effective, the following circumstances would have to be met, alongside the legislative implementation of the relevant provisions of the UNTOC:

- The UNTOC is needed because other existing bilateral or multilateral agreements do not sufficiently meet the needs of the case – for example, several UNTOC terms provide for convening a diverse range of countries where the offences may have occurred, where suspects may be located and where electronic evidence may be located.
- Requirements for dual criminality are fulfilled, which should be easy for the main offences criminalized by the convention when it is implemented correctly, but which can be challenging partly because of the varying pieces of legislation used to implement the UNTOC's criminalization provisions.
- Domestic safeguards are in place to avoid political misuse of extradition and mutual legal assistance procedures.
- A level of trust exists between the countries and potentially individuals from the bureaucracies.
- The relevant government ministry gives sufficient prioritization to addressing transnational organized crime, or a specific case, compared to other issues.
- Both sides have sufficient funding and (financial and human) resources to process the case in the required time and are able to access translation and other language-based services.
- Both sides have a sufficient level of knowledge of the UNTOC and how it can be used.

If, and when, 70% of the reviews for each group in the first cluster (on criminalization and jurisdiction) are completed, states should turn their focus within the mechanism to international cooperation – for which the criminalization and jurisdiction provisions set the legislative groundwork, but also provide for criminalization of the core offences independently of the transnational element. Under the UNTOC, states should be cooperating with each other to facilitate extradition, joint investigations and mutual legal assistance, all of which to contribute towards the elimination of safe havens for organized criminals.

UNTOC as a platform for working together

The UNTOC IRM is unlikely to produce any outcomes on the implementation of its international cooperation provisions for many years to come. However, that does not mean that the mechanism cannot be used to exchange information and drive progress. The UNTOC could be used as a platform

for working together more generally, as it 'provides a good backdrop for honest discussions about how we can work together (with other countries).'¹⁸⁸

The Secretariat to the UNTOC COP is responsible for organizing and providing briefings and background documents to the COP and all its working groups (on international cooperation, technical assistance, trafficking in persons, smuggling of migrants and trafficking in firearms), as well as the Constructive Dialogue for each working group where civil society is allowed to take part. These meetings provide a valuable platform for engagement between governments and civil society (at the constructive dialogues).

Prosecutor perspective

In an interview for this paper, Shenaz Muzaffer, General Counsel of the International Association of Prosecutors outlined the main challenges in implementing the UNTOC's international cooperation provisions:



Shenaz Muzaffer

- **Lack of resources:** Responding to requests for assistance obviously requires financial, technological and human resources. Significant resource constraints can limit the ability to respond to requests made pursuant to the UNTOC (or to requests made through other channels). This can be coupled with issues around prioritisation – at its simplest, if a law enforcement agency has to make a decision between committing resources to investigating a domestic incident or progressing a request for international assistance, the former is almost always likely to be prioritized.
- **Lack of (or varying levels of) commitment:** Whilst many countries are signatories to the UNTOC, this does not equate to each jurisdiction implementing the UNTOC in a consistent way. Issues such as a lack of political will to prioritize international cases, a reticence to engage with certain jurisdictions, a focus on domestic criminality or a lack of trust may all impact on the effectiveness of the UNTOC.
- **Differing legal frameworks:** Article 18 of the UNTOC requires that MLA shall be afforded to the fullest extent possible under the relevant laws, treaties, arrangements etc. of the Requested Party. Differences between common law and civil law jurisdictions can lead to misunderstandings when seeking assistance, both in relation to evidentiary standards and requirements and procedural requirements. In addition, the procedures required by a particular State – for example, the requirement in some States to send all requests through diplomatic channels – can hugely slow down the provision of assistance. Differing legal frameworks also impact on extradition requests – again, while the UNTOC provides a broad and comprehensive framework for extradition and MLA arrangements and procedures, the way in which states seek to implement them domestically varies significantly, and they do not make full use of the tools available to them in the UNTOC.
- **Language barriers:** As with any formal request for assistance, language barriers can create significant challenges, both in terms of the cost and resources required to interpret often-voluminous requests and supporting documentation, and in relation to the phrasing of the request itself.
- **Imbalance in available technology:** Transnational cases are becoming more complex, frequently involving vast tranches of digital and other material that cannot be properly reviewed by law enforcement without the use of technological and forensic tools. Again, whilst the UNTOC provides the legal framework for the provision of assistance, the practical limitations of a jurisdiction may mean that a request cannot properly be actioned in reality.



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- **Changing nature of transnational crime:** The UNTOC is now almost 25 years' old. Since its inception, organized transnational crime has grown exponentially, and technological advances mean that criminals are now committing crimes in ways and on a scale which was not necessarily foreseen at the time that the UNTOC was drafted. The effect is that the domestic framework for MLA and extradition in many jurisdictions has not developed at the same pace as criminal activity – for example, many jurisdictions do not contain provisions that would permit the freezing and seizing of virtual assets and cryptocurrency. Even if the UNTOC framework is in place, it does not mean that a request for assistance can always be actioned if domestic procedures do not permit it. ■



IS UNTOC WORKING AGAINST CRIMINAL MARKETS?

KEY FINDINGS

- The Global Organized Index reveals what is going on with criminal markets around the world, which the UNTOC was set up to fight back against. It shows us that criminal markets are more pervasive and complex, and have evolved, outpacing the lack of evolution in the UNTOC. But the success of transnational organized crime does not necessarily mean that the UNTOC has failed, as it is not possible to isolate the impact of the convention on criminal markets. It is clear that adherence to UNTOC can be seen to enhance countries' international cooperation scores under the Index, and therefore their resilience scores.

The GI-TOC's Organized Crime Index

The previous sections have demonstrated that assessing the technical impact of the UNTOC is difficult due to gaps in data and a lack of detailed, systematized information. But it is worth remembering that the convention was ultimately set up to prevent and counter transnational organized crime – to disrupt criminal markets and the power of organized crime. One way of directly assessing impact in this more fundamental context is to look at the changes in the nature of transnational organized crime since the convention was adopted. This can be done to some extent through analyzing the linkages between levels of international cooperation and criminality, using the GI-TOC's Organized Crime Index, which measures levels of criminality and resilience (i.e. the state's capacity to absorb and respond to organized crime) in all 193 UN member states. Although no measurement device can provide a complete picture, it is the most relevant tool available at the moment, and can give us some initial insights of use for the purposes of this paper. One of the indicators of resilience is international cooperation, which refers to 'a country's supranational structures and processes of interaction, policymaking and concrete implementation to respond to organized crime'. This includes the ratification and implementation of international treaties, and the effectiveness of mutual legal assistance regimes, extradition processes, transfer of sentenced prisoners and cross-border asset confiscation.

The Index specifically includes the ratification of UNTOC and the UNTOC IRM as part of its analysis of international cooperation but does not analyse the UNTOC in isolation in the country profiles. The 2023 Index scores for international cooperation, criminality and resilience are used to assess the impact of UNTOC's implementation on criminal markets at a global level. The Index data covers the period 2018–2023 for African countries and 2020–2023 globally.

To provide a representative overview, a regionally diverse group of countries were selected. Second, the choice for specific states was closely related to the findings from the literature. From analysis of the Digest of Cases, it became apparent that the position of many Asian-Pacific, African and Latin American countries regarding the implementation of the UNTOC was difficult to analyze. For this reason, it became increasingly relevant to examine the Global Organized Crime Index for countries' levels of international cooperation and criminality.

Linkages between international cooperation, criminality and resilience

According to the GI-TOC Index, there is a weak correlation between criminality and resilience because 'the relationship between resilience and criminality is not as linear as intuition might suggest' due to several factors that determine 'the dynamics between criminality and resilience'.⁹⁰ In contrast, the Index finds that 'strong international cooperation indicates high state resilience to organized crime'.⁹¹ Therefore, countries with high levels of international cooperation through policies and structures, such as the UNTOC, should have 'higher state resilience to organized crime'.⁹²

The Index 2023 shows no trend between international cooperation and criminality for countries in the regions of Oceania, Americas, Europe, Asia and Africa. Figure 1 shows that there is no correlation between countries' levels of criminality and whether their engagement in international cooperation mechanisms is advanced or not.

However, more of a trend emerges when international cooperation is plotted against resilience to organized crime (see Figure 2), with increased international cooperation showing greater state resilience to organized crime. This graph shows that having international cooperation mechanisms in place, such as being a party to the UNTOC, increases countries' resilience scores under the Index.

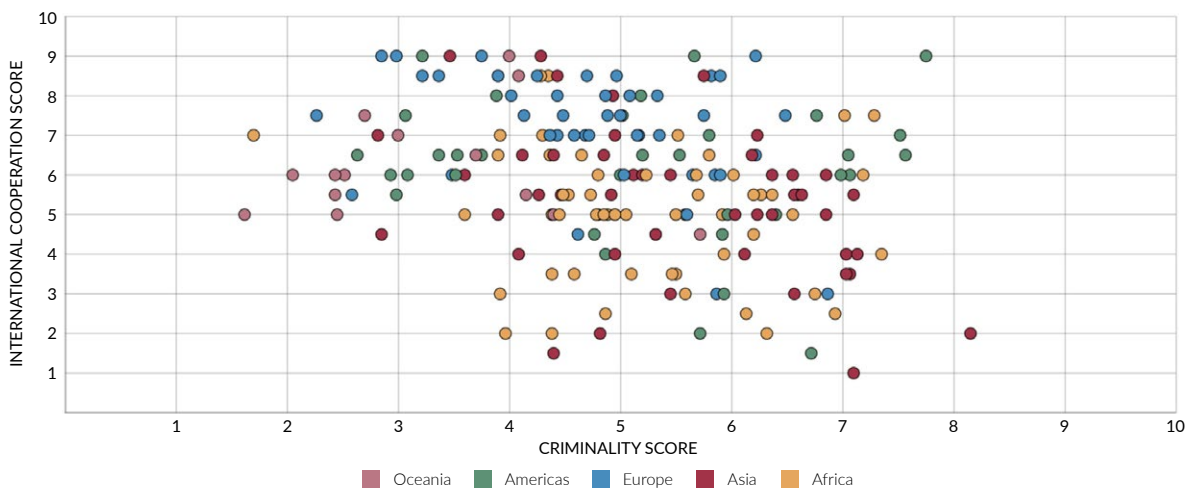


FIGURE 1 Relationship between international cooperation and criminality.

SOURCE GI-TOC, Organized Crime Index 2023, ocindex.net.

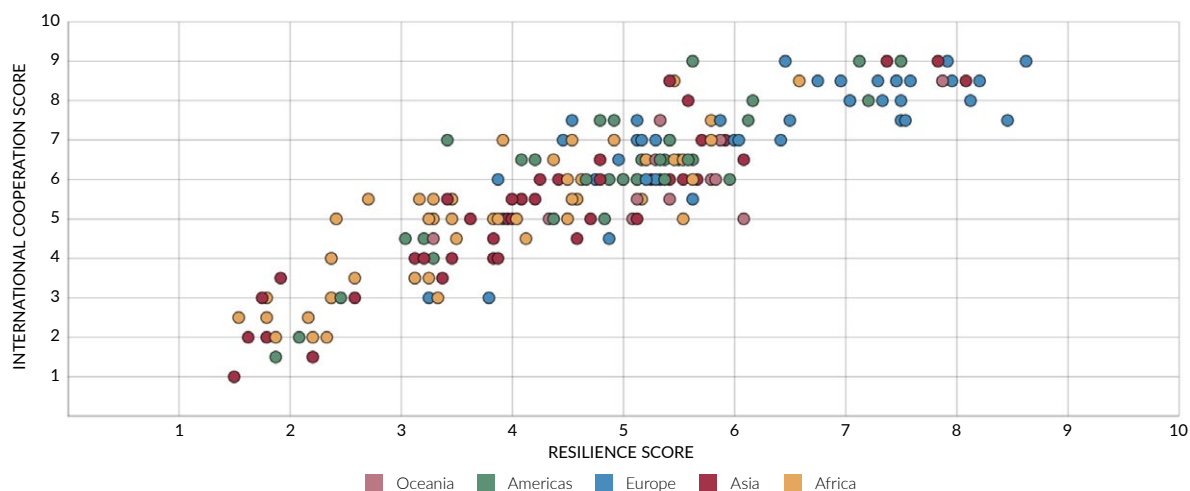


FIGURE 2 Relationship between international cooperation and resilience.

SOURCE GI-TOC, Organized Crime Index 2023, ocindex.net.

There are also mitigating factors that influence individual country trends, as the following examples explain.

Although Uzbekistan has ratified most of the relevant treaties regarding international cooperation in matters of organized crime (including the UNTOC), its efforts tend to be undermined by ‘corruption and insufficient institutional capacity’, resulting in a low international cooperation and resilience score.⁹³

Colombia and Brazil have higher resilience scores than Uzbekistan, having ratified most international treaties for cooperation, and undertaken cooperation with key partners.⁹⁴ Nonetheless, despite high scores for international cooperation and relatively good resilience scores, both countries have high criminality scores demonstrating the relative resilience of organized criminal and corrupt networks in these countries despite the sophisticated legislation and active cooperation with other countries.

Argentina’s scores are more balanced, with a relatively low criminality score and a similar resilience scores to Brazil and Colombia. Argentina engages actively in international cooperation, focusing on financial and drug-related crimes, and has made notable progress through legal reforms and participation in international treaties. However, challenges in enforcement and practical application persist.

The US has a high level of cooperation, as the current administration has increased the level of cooperation, and a high resilience score. However, its criminality score remains average, indicating that even high levels of international cooperation still need more national criminality prevention to have a more full effect of these agreements.⁹⁵

Algeria and Tunisia have mid-range scores for criminality, international cooperation and resilience. Both countries have ratified relevant international treaties, including UNTOC, and have engaged in regional cooperation efforts, but the impact of these efforts is moderate. For example, Algeria’s

It [the UNTOC] 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 VLASSIS (DRAFTING THE UNTOC, IN WILLIAMS AND VLASSIS (EDS), *COMBATING TRANSNATIONAL CRIME: CONCEPTS, ACTIVITIES AND RESPONSES*, LONDON: ROUTLEDGE, 2001

engagement in international cooperation is often hampered by bureaucratic inefficiencies and political challenges, while Tunisia struggles with resource limitations and political instability, which hinder effective enforcement of international agreements.⁹⁶

Nigeria's situation provides a stark contrast to those two North African countries, with a high criminality score and a strong international cooperation score. The country participates actively in international treaties and collaborative efforts to combat organized crime, as seen in its significant role in regional initiatives and partnerships with international bodies. However, despite these efforts, the country has pervasive corruption, extensive drug trafficking networks, and other organized criminal activities. The resulting average resilience score demonstrates the complexity of translating international cooperation into tangible reductions in criminal activity.

South Africa has a high criminality score and an average-to-high international cooperation score. The country's proactive stance in international cooperation through regional bodies like the African Union is notable. However, challenges, such as resource constraints and domestic legal issues, limit the full implementation of international agreements. This is reflected in the high levels of organized crime, driven by factors such as corruption, gang activity, and economic disparities, resulting in an average resilience score – although this is high in comparison to African counterparts.

The Index results show that having no or little international cooperation, of which UNTOC forms a key part, has an impact on a state's criminality and resilience scores, but, conversely, high levels of international cooperation do not necessarily mean organized crime will be reduced.

This is admittedly a somewhat crude way of analyzing the impact of the UNTOC, especially as organized crime is significantly more challenging and complex than it was when the convention was adopted. At the same time, however, it can be deduced that being party to UNTOC may help enhance state resilience through international cooperation, but this does not necessarily follow through into disrupted criminal markets from the data from the Index. When more data is available, including through the review mechanism, this data and experience will be easier to isolate. Then there should be a better understanding of the extent to which being party to UNTOC has or has not disrupted organized crime.



CROSS-CUTTING GAPS AND CHALLENGES

KEY FINDINGS

- The UNTOC's implementation is siloed from that of the UNCAC and the wider UN system, limiting the impact of both conventions. An antidote to corruption and state involvement in organized crime is transparency and a strong society, which is reflected in the UNTOC. But the way that states have chosen to implement the UNTOC (through the IRM) shuts out civil society, which is mirrored in many countries where civil society activities are restricted. The resultant lack of external scrutiny undermines 'forgotten' articles of the UNTOC related to collection of information, training and technical assistance.
- The UNTOC does not provide for international cooperation on all forms of organized crime (although it does provide for criminalization of four core offences); cooperation can be triggered only when there is a transnational element to the crime; and there is limited consensus on how to address the criminal markets not specifically mentioned in the UNTOC, such as cybercrime and environmental crime.

The UNTOC contains some built-in rights (e.g. of the defendant and protection of witnesses), but there is no guarantee that the same safeguards will be included in domestic legislation. The UNTOC's implementation is susceptible to human rights abuses by authoritarian regimes, and so human rights need to be central to the international community's wider response to organized crime.

This section looks at some of the cross-cutting and structural challenges to achieving the effective implementation of the convention.

State actors in organized crime and civil society's role

Over the past two to three decades, one of the most important shifts in the global criminal economy has been the involvement of states or state actors⁹⁷ in criminal activities. The convention did not envisage state actors being involved in transnational organized crime activities, and negotiators understandably skirted the issue or framed it as one of corruption, which was covered by adopting UNCAC in 2003, shortly after the adoption of the UNTOC.⁹⁸



Photo: GI-TOC

However, in many countries around the world, criminal actors have infiltrated the state. According to the GI-TOC, state actors are now the dominant group that facilitate and enable criminal markets.⁹⁹ The intersection between state involvement in criminal activity and geopolitical competition is perhaps a powerful (and under considered) reason why the UNTOC has not led to a reduction in criminal markets. It means that the key institutions meant to implement the UNTOC provisions have been weakened in many places. Indeed, as already highlighted, a weak UNTOC IRM may be the result of the criminal penetration of states and of states fearing exposure or scrutiny.

The most important antidote to corruption and state involvement in organized crime is transparency and challenge from a strong civil society. Civil society, which includes NGOs, media, individual experts, political parties, trades unions and academia, is a crucial mechanism for providing independent information and assessments of both compliance and abuses. The alternative is the current approach of the UNTOC IRM, where states assess either themselves or each other without independent input, and the crucial ingredients of transparency and independent unbiased research are restricted.

This shutting out of civil society in all its multiple forms from the UNTOC is mirrored in the closing of spaces for civil society actors concerned about organized crime at national and community level. As has been consistently reported by the GI-TOC, many states are systematically restricting civil society actors who work to uncover organized crime. On the ground, this means arresting and killing activists and journalists.

Globally, the restricted model of the UNTOC IRM not only cuts out civil society from the main debates, removing a vital source of independent information, and makes honest discussion on the UNTOC almost impossible to have in the official meetings. In the meetings that civil society actors

can attend, they are not allowed to mention specific countries, which seems an odd way to analyze the implementation of the convention.

This lack of external scrutiny effectively undermines the following important but 'forgotten' articles of the UNTOC:

Article 28: Collection, exchange and analysis of information on the nature of organized crime

Currently, contrary to the wording of the article, which provides for consultation with the 'academic and scientific communities', only information produced by member states and the UN is considered at meetings. Any information from NGOs, academia and others can only be discussed if tabled by a member state. This article was intended to ensure that states had access to the latest data on organized crime, and specifically provides for a role for civil society.¹⁰⁰ The rules and procedures of the IRM have precluded this article from having its intended effect by excluding civil society from many parts of the IRM, and restricted the type of information that they can provide.¹⁰¹

Article 29: Training and technical assistance, and Article 30: Other measures: implementation of the Convention through economic development and technical assistance

These articles are weakened by the lack of external information shared that should be shared under Article 28. Article 29 is designed to ensure that states have guidance on how to implement the convention's provisions through training one another.¹⁰² And Article 30 acknowledges the societal impacts of organized crime, and how implementing the convention contributes to the building of strong societies.¹⁰³ Training and technical assistance are directed by donor priorities and recipient country requests, not the IRM because of the absence of country reviews. There is also no facility for ensuring that countries most in need of attention are able to access the appropriate support.

Under the current arrangements of the IRM, state officials who want to improve their government's responses are hampered by a process that shuts out challenges and accountability, while state actors who are involved in organized crime are able to avoid scrutiny.

Although the UNTOC's prevention provisions are voluntary and therefore lack teeth, Article 31, on prevention, has a relevant paragraph (5), which says that states 'shall endeavour to promote public awareness regarding the existence, causes and gravity of the threat posed by transnational organized crime'.¹⁰⁴ The restricted nature of the IRM again impedes effective implementation of this public- and transparency-focused article.

Do the UNTOC and UNCAC work together?

The links between organized crime and corruption are well understood, including within the existing framework that governs the international responses, such as in Articles 8 and 9 of the UNTOC on corruption and measures against it. Corruption is one of the main enablers of organized crime, while revenues generated from illicit economies fuel corruption – GI-TOC uses the term 'organized corruption' to highlight the deep and growing links between the two phenomena.¹⁰⁵

Article 8 of the UNTOC requires states to criminalize corrupt acts, i.e. acts that are transnational and organized. Indeed, the UNTOC negotiators deemed the problem of corruption so important that they agreed to begin negotiating the UNCAC immediately after the adoption of the UNTOC, which in many ways overshadowed the UNTOC in subsequent years.¹⁰⁶ Although set up to address different issues, both conventions share similarities:

- The inclusion of 'laundering of proceeds of crime', 'obstruction of justice' and 'corruption: bribery of public officials (national, foreign and international)'.
- Provisions related to the prevention and combatting of money laundering; liability of legal persons; prosecution, adjudication and sentencing; seizure and confiscation; joint investigations; special investigative techniques (e.g. controlled delivery); protection of witnesses and reporting persons.
- Provisions for international cooperation, in particular related to extradition, mutual legal assistance, transfer of sentenced persons, transfer of criminal proceedings, and law enforcement cooperation.
- Implementation review mechanisms, with the UNCAC mechanism being adopted first and used as a model for the UNTOC mechanism.
- No formal role for civil society within the IRM and lack of access to bring data and evidence directly to the conference body, which runs contrary to the spirit and letter of both conventions (Article 28 of UNTOC and Article 61 of UNCAC).

Despite these similarities, the conventions lead separate lives. They operate under separate conference bodies, maintain different secretariats and have their own IRMs, which may be similar in design but are neither coordinated nor related to each other). Exacerbating this lack of coordination is the UNCAC's higher profile and political engagement, and better funded programme of work. In addition, the UNCAC has a whole chapter devoted to asset recovery, which is lacking in the UNTOC and therefore deprives it of a key financial element need to respond to money laundering. The lack of coordination and exchange between the two bodies results in a deeply unstrategic and uncoordinated approach to tackling the phenomena of organized corruption.

UNTOC and emerging threats

The UNTOC is not subject-specific, as negotiators opted to promote an 'open-ended' approach to addressing specific markets.¹⁰⁷ States parties are able to trigger the application of the convention by criminalizing conduct under their domestic law with a penalty of a term of imprisonment of at least four years or a more serious penalty, and to supplement the convention with additional protocols.

Although three additional protocols to the UNTOC were negotiated when it was adopted,¹⁰⁸ over the past decade, two criminal markets – cybercrime and environmental crime – have emerged as global threats. They demonstrate two different approaches taken by the international community to address criminal markets not explicitly covered by the UNTOC and its protocols.¹⁰⁹

Cybercrime and a new treaty

Since the 2000s, cybercrime has increased in reach and scale, and is considered a 'great accelerator' of TOC.¹¹⁰ However, despite the growth of cybercriminal markets and the use of internet as a facilitator for other criminal activities, states have struggled to develop a global response to the phenomena.¹¹¹

From the start of the millennium, when the UNTOC (2000) and the Council of Europe (Budapest) Cybercrime Convention (2001) were adopted, international debate on cybercrime went through a period of inertia until 2010, when Russia attempted to get support for a new UN treaty at the 12th UN Crime Congress.¹¹² However progress in addressing cybercrime coherently was hindered as states had different perspectives on the role of cyberspace in society and could not agree on the boundaries for cooperation on cybercrime.¹¹³

In October 2016, delegates in Vienna discussed the need for a treaty and established the Expert Group Meeting (EGM) to Conduct a Comprehensive Study on Cybercrime to develop norms and

parameters for cooperation on cybercrime matters.¹¹⁴ States were not sure whether a new instrument was needed to address cybercrime or whether existing instruments such as the UNTOC and the Budapest Convention were sufficient. Those states calling for a new legal instrument on cybercrime argued that the UNTOC did not provide sufficient scope for cooperation on this issue and that the Budapest Convention was inappropriate because its negotiating process did not involve all global actors – therefore, it did not reflect concerns about national sovereignty, particularly in relation to cross-border access to information and electronic evidence.¹¹⁵

After some years of disagreements, in December 2019, the UN General Assembly approved Resolution 74/247 (by 79 votes to 60, with 33 abstentions), which allowed for the establishment of an open-ended ad hoc intergovernmental committee to develop a new universal instrument. In January 2022, a formal negotiation process began and culminated in August 2024 with the adoption of a new UN cybercrime treaty, which still awaits formal adoption at the UN General Assembly by the end of 2024. The polarized negotiation process was due to lack of a common vision on cybercrime and diverse priorities, with some countries wanting the treaty to help them build domestic capacity to counter cybercrime, and others wanting to be able to cooperate on a specific set of core cyber-dependent crimes, and others expecting improved cooperation on electronic evidence on all crimes. The awkward political compromise reached will have to be revisited in the coming months and years, to see if a practical and useful platform for cooperation can be created through the new treaty.

Environmental crime and a fourth UNTOC protocol

Over the past 20 years, environmental crime has also grown considerably due to, among others, instability and conflict in places with abundant natural resources, urbanization and resource scarcity, and expanding consumer markets.¹¹⁶ While environmental markets are diverse, ranging from natural mineral resources to flora and fauna, it was global awareness of environmental crime resulting from large-scale illegal wildlife trade¹¹⁷ that prompted the adoption of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) – the main international instrument to regulate legal and sustainable trade in species.

Since the adoption of CITES, outcome documents and resolutions have been passed by various UN bodies, including the General Assembly, Economic and Social Council (ECOSOC), Commission on Crime Prevention and Criminal Justice (CCPCJ), the Conference of the States Parties to the UNCAC and the UNTOC COP, demonstrating political agreement about the need to respond to the trafficking of fauna and flora globally.¹¹⁸ In 2021, the NGO End Wildlife Crime began a campaign for the UNTOC to have a fourth 'Protocol on the illicit trafficking of wildlife' and proposed a draft text.¹¹⁹ In the same year, member states adopted a resolution, tabled by Peru, Kenya and Angola, at the CCPCJ that ignited a discussion about adding a protocol to the UNTOC to address any gaps in the current international legal framework for preventing and combatting illicit trafficking in wildlife.¹²⁰ At the UNTOC COP 11, the working groups on international cooperation and technical assistance held a joint discussion on crimes affecting the environment and reiterated the invitation to states to provide their views on a new protocol dedicated to illicit trafficking in wildlife.¹²¹

Supporters of the protocol (or in some cases protocols), which include Peru, Kenya, Angola, Costa Rica, Gabon and Brazil, believe that a new legal framework would offer alternative and novel ways to frame and respond to the threat of environmental crime in its various forms.¹²² For non-supporters, such as the United States, a new protocol would distract from the real issues with the current framework, i.e. lack of enforcement and lack of resources for implementation. From this standpoint, a new protocol or

protocols could also increase the burden of reporting and attendance at meetings without necessarily improving the UNTOC's effectiveness at the macro level.

In criminal justice spaces, the recommendation across several UN resolutions, including at the 112th UNTOC COP 2022 leans towards a high-level encouragement to make 'crimes that affect the environment' serious crimes as defined by the UNTOC, in order to facilitate international cooperation.¹²³ The topic will be revisited at the COP in October 2024 through a resolution on environmental crimes tabled by France, Peru and Brazil.¹²⁴

Benefits and shortcomings

It is not completely clear why the international community chose different approaches to these two criminal markets, which are not explicitly covered by the UNTOC.

For cybercrime, a new treaty was negotiated with the main justification being the need for increased international cooperation because of the inapplicability of the UNTOC's systems (and the lack of universal coverage of regional mechanisms), given the cross-border nature of cybercrime and specific challenges related to the use of information and communication technology for criminal purposes. These include obtaining evidence, access to cross-border data, slow mutual assistance processes and differences in legal statutes.¹²⁵ However, the reality is that cross-border investigations are frequently hampered by political power struggles, bilateral disputes, a lack of transparency in responses, a lack of resources and disagreements over human rights issues. These realities are of concern for the future of global collaboration on cybercrime and cross-border investigations.¹²⁶

In the case of environmental crime, the debate appears to centre on the lack of criminalization of environmental-related offences, in particular illegal wildlife trade, and the lack of harmonization of legal systems for penalizing such offences. One solution proposed is a protocol or protocols that address environmental-related offences as serious crimes under the UNTOC. However, the UNTOC does not provide states with specific standards for criminalizing conducts in accordance with its text, which makes fulfilling the dual criminality requirement for cooperation and legal harmonization hard to achieve.¹²⁷ The serious crime threshold is also problematic, as it disregards the variety of ways in which crime is penalized under domestic laws, while the UNTOC does not oblige states parties to amend their penalties to certain offences that become more of a threat.¹²⁸

It is difficult to say which approach – additional protocol or new treaty – is better. Protocols are intended to make the UNTOC applicable to new and emerging forms of transnational organized crime. Therefore, a protocol uses existing machinery for international cooperation and technical assistance, whereas a new treaty could be seen as duplication of efforts. Indeed, negotiating a full new treaty could be challenging in the current geopolitical turmoil and mounting distrust – this is very different from the favourable circumstances in the 1990s when the UNTOC was negotiated and later adopted with the remarkable buy-in of almost all member states.¹²⁹

The option of additional protocols will always bring up the question of the effectiveness of UNTOC's framework and limited law enforcement actions against crime. The slow pace of the review and lack of transparent and independent oversight hinder a concrete analysis of the convention's actual impact and lead to no scrutiny or compulsory public follow-up on commitments.

A new protocol (or protocols) would not be sufficient in itself to dismantle a criminal market. After all, the existing protocols have not been able to dismantle other criminal markets already addressed – human trafficking, human smuggling and firearms trafficking – which are all thriving. The UNTOC's

scope for international cooperation is limited to transnational organized crime and therefore only criminalizes organized crime activity that occurs across borders.¹³⁰ It also touches on a fraction of (not all) criminal markets¹³¹ and excludes violence, intimidation and corruption within the threshold of serious crime. This leaves potential gaps in applying the UNTOC both to address criminal markets and to protect victims and persons affected by crime.

Fundamentally, both options – an additional protocol or a new treaty – are suppressive instruments and, therefore, punitive in essence. The application of either option has the potential to cause human rights concerns, as the next section explores.

UNTOC and human rights

Traditionally, crime control instruments do not provide states with clear human rights protections.¹³² This is because such instruments are designed to criminalize conducts of international concern (normally due to the transnational elements involved in the offence) and provide legal assistance to states to combat such crimes.¹³³ Hence, their primary concern is national security and crime control, with human rights considerations usually relegated to secondary importance.

The UNTOC is no different. Although human rights considerations were part of the negotiations,¹³⁴ the convention does not contain robust references to specific rights, reflecting the primary concern of controlling crime and the fact that it was negotiated by consensus.¹³⁵ The convention established a plethora of obligations for states to apply in their domestic law in relation to substantive crime (organized crime, corruption and laundering offences), as well as expansive law enforcement and state powers to execute legal assistance, including extradition, mutual legal assistance and special investigative techniques, all of which raise concerns related to the rights of liberty, property and fair trial, among others.

The UNTOC has some built-in human rights guarantees,¹³⁶ in particular related to procedural rights and safeguards in penal cooperation. Its provisions on the rights of the defendant and protection of witnesses and victims are a welcome step forward compared to previous instruments for addressing crime, such as the drug conventions under the international drug control regime. The UNTOC negotiations showed some awareness of the convention's potential impact on human rights, which is reflected in the protocols related to trafficking in persons and smuggling of migrants. Both these protocols have 'saving clauses', meaning that nothing in the protocols should affect states' obligations under international law, including human rights law.¹³⁷

However, the UNTOC's explicit human rights protections do not go very far, which raises concerns for the convention's implementation, especially in relation to mainstreaming human rights in domestic legislation and political commitment to human rights.

Mainstreaming human rights when passing laws that implement the UNTOC is extremely relevant to promoting the rule of law.¹³⁸ The UNTOC has a substantial impact on the formulation of new criminal law and penal cooperation rules, which are set internationally but implemented domestically, away from human rights oversight.¹³⁹ The expectation is that states will incorporate human rights guarantees when designing policies and laws to combat crime, which is not self-evident, and that states will have the same understanding of what human rights guarantees are and similar policies. Nevertheless, the UNODC has made efforts to support the mainstreaming of gender and human rights in implementing the UNTOC.¹⁴⁰

The UNTOC's reliance on references to domestic legislation is an attempt to accommodate the legal systems of member states to the international framework. This approach weakens human rights protection, as there is no guarantee that safeguards will exist at the same level across the different domestic legal systems. A practical shortcoming is that inadequate safeguards may impede the likelihood of cooperation. The requested state might reject cooperation on the basis of insufficient rights protection if the state seeking extradition of a suspect does not provide sufficient procedural guarantees.

Another concern is the lack of political will to commit to human rights. During negotiations of resolutions or new standards related to criminal justice, many governments have opposed references to human rights standards and principles, arguing that these would supersede state sovereignty and national criminal justice frameworks.¹⁴¹ In the same vein, human rights advocates may argue that this approach diminishes the role of human rights laws in protecting against states and governments that violate rights.¹⁴² However, this traditional separation is becoming outdated, as the pursuit of crime is increasingly subject to human rights oversight, and serious human rights violations have been attributed to organized criminal groups.¹⁴³

There is a need to recognize the centrality of human rights to the work of the international community and to the response against global challenges, such as organized crime. The UNTOC, including the COP, is a useful platform for ensuring that efforts to prevent and counter crime are also embedded in a human rights framework, which will make the instrument more, not less, effective. Furthermore, while the human trafficking protocol addresses the rights of victims, the convention itself is weak on victims in general, which provides a cross-cutting challenge to this key part of addressing organized crime, which is often forgotten as the instrument focuses primarily on how to prosecute perpetrators.

How to fulfil the promise of Palermo?

The promise of the Palermo Convention is still something that brings together civil society, governments, academia and the UN around a common framework for preventing and countering organized crime. It has been used by many countries to do exactly that, and that should be celebrated. It has achieved almost universal adherence, which again is no mean feat. But the ambition of governments and the international community collectively has waned, in the context of a fragmented geopolitics, and competing priorities. Organized crime has not waned in its ambition and enthusiasm to exploit and profit at the expense of governments and communities the world over. In the meantime, the convention is getting old, and a realistic understanding of the impact it is having remains out of reach. International engagement around the convention is stagnant and snail-paced. This report has laid out a range of complementary key findings, which help us understand how we have got to this point.

- Ratifying the UNTOC should lead to tangible legislation, but often this is not the case. Legislation varies significantly across countries, and these legislative variations (and how they are understood) can impede or slow down international cooperation. In addition, there is no central mechanism for reporting on how countries implement the UNTOC in their legislation, and data is patchy and dispersed, making collection and analysis difficult.
- The UNTOC's IRM is poorly designed, with restricted access for civil society and a lack of transparency, in contrast to Articles 28, 29, 30 and 31 of the convention. It is fundamentally hamstrung by its state-centric nature and lack of political support and resources. Country reviews are woefully behind schedule and, in the short to medium term, are unlikely to produce useful state-level data on a meaningful scale. Inertia and 'vested interests' are holding back implementation,

and reform is not possible in light of current geopolitics and UN leadership. Yet, despite these challenges, the IRM provides a platform for multi-stakeholder exchange.

- Despite almost universal membership of the UNTOC, the world has more safe havens for criminals than ever. The UNTOC alone is not seen by enough states as a solid legal basis for international cooperation on a wide scale. Many countries prefer bilateral or regional agreements to international instruments, and even at times direct enforcement actions across borders. The flexible provisions of the UNTOC on MLA and extradition are not used enough to overcome legal difficulties, such as lack of recognition of dual criminality, which can be a result of states not implementing correctly the legislative provisions of the UNTOC. A lack of transparency and detailed reporting means that a full picture of cooperation cannot be assessed.
- The Global Organized Index reveals what is going on with criminal markets around the world. It shows us that criminal markets are more pervasive and complex, and have evolved, outpacing the UNTOC. But the success of transnational organized crime does not necessarily mean that the UNTOC has failed, as it is not possible to isolate the impact of the convention on criminal markets. It is clear that adherence to the convention can be seen to enhance countries' international cooperation scores under the Index, and therefore their resilience scores.
- The UNTOC's implementation is siloed from that of the UNCAC and the wider UN system, limiting the impact of both conventions. An antidote to corruption and state involvement in organized crime is transparency and a strong society, which is reflected in the UNTOC. But the way that states have chosen to implement the UNTOC (through the IRM) shuts out civil society, which is mirrored in many countries where civil society activities are restricted. The resultant lack of external scrutiny undermines 'forgotten' articles of the UNTOC related to collection of information, training and technical assistance.
- The UNTOC does not provide for international cooperation on all forms of organized crime (although it does provide for criminalization of four core offences); cooperation can only be triggered when there is a transnational element; and there is limited consensus on how to address the criminal markets not specifically mentioned in the UNTOC, such as cybercrime and environmental crime.
- The UNTOC contains some built-in rights (e.g. of the defendant and protection of witnesses), but there is no guarantee that the same safeguards will be included in domestic legislation. The UNTOC's implementation is susceptible to human rights abuses by authoritarian regimes, and so human rights need to be central to the international community's wider response to organized crime.

Therefore, ratification of the UNTOC should no longer be regarded as an achievement in isolation, but rather as a starting point, especially as analysis of its implementation remains difficult. The UNTOC is one of many building blocks needed to tackle transnational organized crime. Other building blocks include:

- Being able to call out and push back against state involvement in illicit economies – including putting in place effective safeguards and actions against corruption.
- Promoting values that ensure an open society, freedom of the media and civil society, and strong and independent institutions – as included in SDG 16.
- Protecting victims, whistle-blowers, witnesses and other reporting persons – as provided for in the UNTOC (but again, this is difficult to analyse owing to lack of data, sanctions and incentives in the review process).
- Understanding and supporting the role that defenders of human rights and the environment play on the front line against organized crime – including where there is state complicity.

Ultimately, there is a need to shift our understanding of the UNTOC, from being an end in itself to being part of an arsenal of required responses. This also means a conceptual shift from states being the ultimate judges of whether or not UNTOC is being implemented properly to understanding where the UNTOC is working (or not), using that analysis to work towards more effective implementation. It means providing extra support to the review mechanism, but also realizing where the review mechanism will fall short, where data will be lacking, and what can be outside of the convention's existing structures to achieve the convention's aims.

In a practical sense, it is about working towards these broader objectives in the following ways:

Recommendations for the international community

- Enhance political attention to the UNTOC IRM, to address its slow pace, while also increasing financial resources, to improve its ability to carry out its functions.
- Establish an independent research and monitoring centre under UN auspices to gather and disseminate the latest information and analysis on organized crime and UNTOC's value, free of state influence and interference.
- Open up discussions on UNTOC implementation that go beyond legalistic approaches, and consider varied and new data to understand where and how UNTOC has had an impact on criminal markets, through multistakeholder Track 1.5 processes.
- Introduce critical evaluation into the UNTOC implementation discussions and encourage member states to speak up when they see problems, and to open themselves up to scrutiny.
- Call out where a state is involved in organized crime and, therefore, unable to credibly carry out a self-assessment of its UNTOC implementation.
- Empower and fund independent institutions to carry out civil society-led shadow reviews (at the country, regional or thematic levels) that go beyond the legal assessments that form the basis of the official UNTOC reviews, to assess the impact of state efforts, including their use of the UNTOC, on transnational organized crime.
- Bring together data sources into a global transnational organized crime monitoring mechanism that includes data from civil society and academia, together with the official UNTOC reviews, so that impact can be judged based on holistic information.

Undoubtedly, the UNTOC has value and utility in enhancing state resilience to organized crime, but what cannot be deduced is exactly how valuable and useful it is in disrupting criminal markets. In some ways, the UNTOC's key benefit is its flexibility, which has ensured its relatively smooth negotiation and high ratification rate. However, its flexibility is also a challenge, making it difficult to measure how its provisions are being implemented and how it is being used in international cooperation. Coupled with the state-centric monitoring process, without sanction or incentive, this flexibility has fundamentally hamstrung institutional efforts to properly assess its impact.

Nevertheless, with more political effort and will, enhanced academic and civil society involvement and inputs, and ultimately better and more independent data, analysis and engagement, our collective chances of finally achieving the promise of Palermo can still be within reach.



NOTES

- 1 See Global Organized Crime Index, GI-TOC, 2023, <https://globalinitiative.net/initiatives/ocindex/>; The global illicit economy, GI-TOC, 2021, <https://globalinitiative.net/analysis/global-organized-crime/>; Intersections: Building blocks of a global strategy against organized crime, 2024, <https://globalinitiative.net/analysis/global-strategy-against-organized-crime-intersections/>.
- 2 Global Organized Crime Index, GI-TOC, 2023.
- 3 UNODC, UNTOC ratification status page, <https://www.unodc.org/unodc/en/treaties/CTOC/signatures.html>.
- 4 Under the shadow: Illicit economies in Iran, GI-TOC, 2020, <https://globalinitiative.net/analysis/under-the-shadow-illicit-economies-in-iran/>.
- 5 Chiara Gentili, Countering the arms race in Somalia, GI-TOC, 2024. <https://globalinitiative.net/analysis/arms-trafficking-somalia-ocindex/>.
- 6 Ian Tennant, The promise of Palermo, GI-TOC, 2020, <https://globalinitiative.net/analysis/the-promise-of-palermo-untoc/>.
- 7 Neil Boister, The cooperation provisions of the UN Convention against Transnational Organized Crime: A 'toolbox' rarely used?, *International Criminal Law Review*, 2016, 16, 39–70; Olwethu Majola and Darren Brookbanks, Measuring the treatment: the UNTOC in Africa, ENACT, 2022, <https://enactafrica.org/research/research-papers/measuring-the-treatment-the-untoc-in-africa>.
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