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ACRONYMS

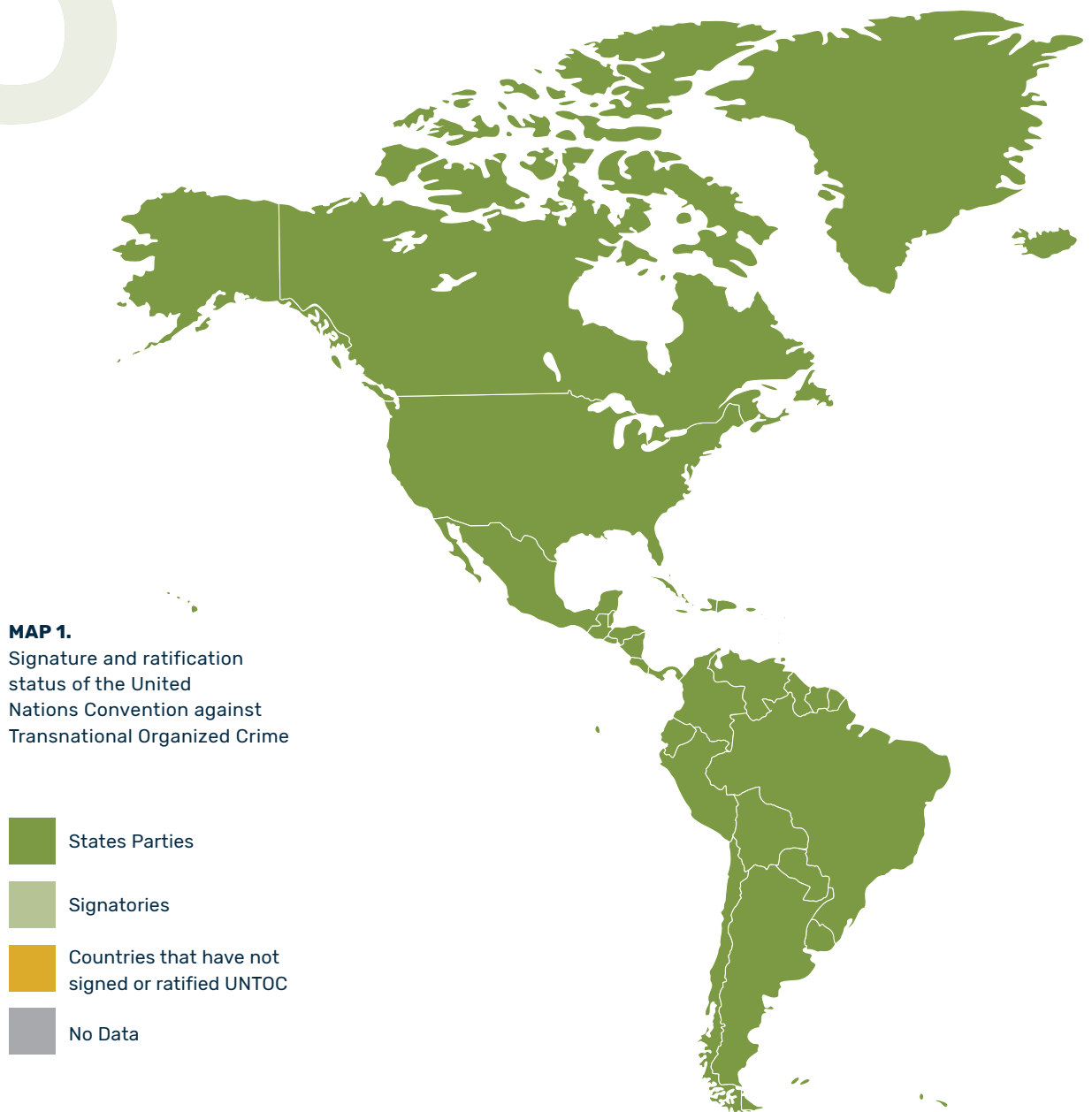
COP-UNTOC Conference of the Parties to the United Nations
Convention against Transnational Organized Crime
FIU Financial intelligence unit
FoMB Financial or other material benefit

MLA Mutual Legal Assistance
SIT Special investigative technique
UNTOC United Nations Convention against Transnational
Organized Crime

INTRODUCTION TO THE ORGANIZED CRIME CONVENTION

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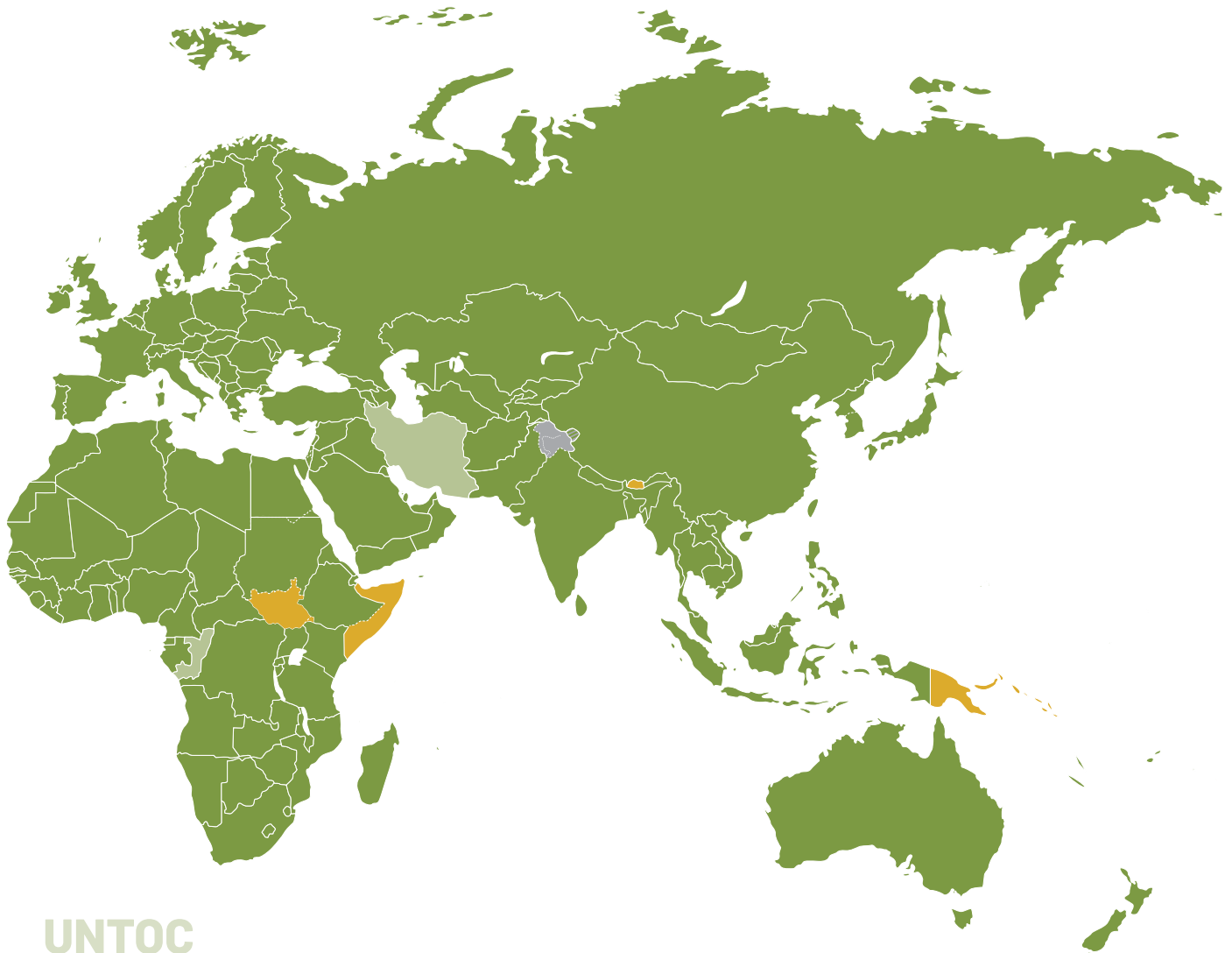
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3.1. *Significance*

The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, is the main international instrument in the fight against transnational organized crime. It opened for signature by Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12-15 December 2000, and entered into force on 29 September 2003.

The Organized Crime Convention is supplemented by three Protocols²¹ which target specific areas and manifestations of organized crime:



UNTOC

Parties: 190; Signatories: 147 as of 1 June 2020

Note 1: The list of States Parties includes 185 United Nations Member States, the Cook Islands, the Holy See, Niue, the State of Palestine and the European Union.

Note 2: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (see Section 4.1. of the Toolkit);
- The Protocol against the Smuggling of Migrants by Land, Sea and Air (see Section 4.2. of the Toolkit); and
- The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (see Section 4.3. of the Toolkit).

In the years following the adoption of the Organized Crime Convention, an increasing number of countries has become Parties to it. To date, the Organized Crime Convention is approaching universal adherence with its 190 States Parties (as of June 2020). ²²

The Organized Crime Convention represents a major step forward in the fight against transnational organized crime. It reflects recognition by Member States of the severity of the problems caused by the activities of organized criminal groups and the need to promote and strengthen international cooperation to address them. States that ratify UNTOC commit themselves to taking a series of measures against transnational organized crime, including, inter alia, (a) the creation of domestic criminal offences (participation in an organized criminal group, money-laundering, corruption and obstruction of justice); (b) supporting extradition, mutual legal assistance and law enforcement cooperation; and (c) providing training and technical assistance to develop or improve the capacities required for national authorities.

3.2. Implementation

The Organized Crime Convention is legally binding, which means that the States that ratify it agree to be bound by its provisions and to take the necessary measures to ensure the implementation of their obligations under the Convention.

Importantly, although the Organized Crime Convention explicitly deals with transnational organized crime, the Convention requires each State Party to criminalize certain conduct even if there is no *transnational element*²³ or organized criminal group involved. Pursuant to article 34(2), the offences criminalized in accordance with articles 5, 6, 8 and 23 are to be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group being required elements of the offense (except with respect to the offense of participation in an

	CLUSTER ON CRIMINALIZATION AND JURISDICTION	CLUSTER ON PREVENTION, TECHNICAL ASSISTANCE, PROTECTION MEASURES AND OTHER MEASURES
ORGANIZED CRIME CONVENTION	Art. 2. Use of terms Art. 5. Criminalization of participation in an organized criminal group Art. 6. Criminalization of the laundering of proceeds of crime Art. 8. Criminalization of corruption* Art. 9. Measures against corruption* Art. 10. Liability of legal persons Art. 15. Jurisdiction Art. 23. Criminalization of obstruction of justice	Art. 24. Protection of witnesses Art. 25. Assistance to and protection of victims Art. 29. Training and technical assistance Art. 30. Other measures: implementation of the Convention through economic development and technical assistance Art. 31. Prevention

organized criminal group in article 5).²⁴ In other words, the criminalization must apply equally to domestic crimes and to transnational crimes carried out by an organized criminal group or an individual alone.

The implementation of the Organized Crime Convention may be carried out through new laws, existing laws or amendments of existing laws. Domestic offences that implement the terms of the Convention, whether based on pre-existing laws or newly established ones, will often correspond to offences under the Convention in name and the terms used, but this is not essential.

3.3. Clusters of articles for the purpose of the Review Mechanism

In this section, the Organized Crime Convention is introduced along four clusters of articles:

- Cluster on criminalization and jurisdiction;
- Cluster on prevention, technical assistance, protection measures and other measures;
- Cluster on law enforcement and the judicial system; and
- Cluster on international cooperation, mutual legal assistance (MLA) and confiscation.

This cluster-approach mirrors the structure of the Review Mechanism which is discussed in detail in Part 6 of this Toolkit.

CLUSTER ON LAW ENFORCEMENT AND THE JUDICIAL SYSTEM

Art. 7. Measures to combat money-laundering
Art. 11. Prosecution, adjudication and sanctions
Art. 19. Joint investigations
Art. 20. Special investigative techniques
Art. 22. Establishment of criminal record
Art. 26. Measures to enhance cooperation with law enforcement authorities
Art. 27. Law enforcement cooperation
Art. 28. Collection, exchange and analysis of information on the nature of organized crime

CLUSTER ON INTERNATIONAL COOPERATION, MUTUAL LEGAL ASSISTANCE AND CONFISCATION

Art. 12. Confiscation and seizure
Art. 13. International cooperation for purposes of confiscation
Art. 14. Disposal of confiscated proceeds of crime or property
Art. 16. Extradition
Art. 17. Transfer of sentenced persons
Art. 18. Mutual legal assistance
Art. 21. Transfer of criminal proceedings

* The review of these articles is only for those States Parties to the Organized Crime Convention that are not Party to the United Nations Convention against Corruption (UNCAC).

UNDERSTANDING THE LANGUAGE OF THE CONVENTION



"EACH STATE PARTY SHALL ADOPT"	Mandatory requirements (Obligation to take legislative or other measures)
"EACH STATE PARTY SHALL CONSIDER ADOPTING" OR "SHALL ENDEAVOUR TO"	Optional requirements (States Parties are urged to consider adopting a certain measure and to make a genuine effort to check its compatibility with domestic legal system)
"EACH STATE PARTY MAY ADOPT/ CONSIDER"	Optional requirements (Measures that States Parties may wish to consider)

3.3.1. Cluster of articles on criminalization and jurisdiction (art. 2, 5, 6, 8, 9, 10, 15 and 23)

Use of terms (art. 2)

The first issue that States had to face when drafting the Organized Crime Convention was the very definition of a *transnational organized crime*. It immediately became clear that attempting to provide a universal definition of this complex phenomenon would have been a futile exercise.²⁵ Organized criminal groups constantly adapt to the changes and shift their activities on the basis of a cost-benefit analysis of available illicit opportunities. Therefore, any attempt to draw up a list of all transnational organized criminal activities would have greatly limited the Convention's potential reach. In article 2 ("Use of terms") States preferred a flexible definition of organized crime that is predicated on four criteria (article 2(a)):

- A structured group of three or more persons;
- The group exists for a period of time;
- The group acts in concert with the aim of committing at least one serious crime;
- Its purpose is to obtain, directly or indirectly, a financial or other material benefit.

The reference to *financial or other material benefit* (FoMB) was intended to exclude groups with purely political or social motives. Yet FoMB was meant to ensure that more than pecuniary benefits can be captured. The interpretation of FoMB should not be limited to financial or monetary gains and may also include other material benefits.

The term *structured group* is to be used in a broad sense, so as to include groups with a hierarchical or other elaborate structure, as well as non-hierarchical groups in which the roles of the members of the group are not formally specified. Article 2(c) defines a "structured group" as "a group that is not randomly

formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.”

The concept of *serious crime* was discussed at length during the negotiation of the Convention. It was eventually agreed to include it and to define it as “the conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty” (art. 2(b)).

Criminalization of participation in an organized criminal group (art. 5)

Article 5 of the Organized Crime Convention requires States Parties to criminalize participation in an organized criminal group and reflects different legal traditions by including both the concept of “conspiracy,” typically found in common law systems, and “criminal association,” predominantly used in countries with civil law traditions. Criminalization of participation in an organized criminal group is designed to target the increased risks to public safety presented by organized criminal groups.

An offence based on the concept of *conspiracy* finds its basis in article 5, subparagraph 1(a)(i):

Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group.

The central elements of this provision are the agreement to commit a crime for the purpose of obtaining a financial or other material benefit.

An offence based on the concept of criminal association is included in article 5, subparagraph 1(a)(ii):

Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:

- A. Criminal activities of the organized criminal group;
- B. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim.

An offence based on article 5, subparagraph 1(a)(ii), adopts a model that attaches criminal liability to intentional contributions to organized criminal groups, not to the pursuit of a preconceived plan or agreement. Under this subparagraph, the accused must have either:

- A. Participated in the criminal activities of the organized criminal group with knowledge of its objectives and general criminal activity or of the group’s intention to commit crimes;
- B. Participated in other activities of the organized criminal group knowing that it will further the goals of the group and with knowledge of the group’s objectives and general criminal activity or of its intention to commit crimes.

Criminalization of the laundering of proceeds of crime (art. 6)

The Organized Crime Convention broadens the scope of application of the offence of money-laundering to cover all serious crimes and the offences covered by the Convention. Under article 6, States Parties are required to criminalize two types of conduct, when committed intentionally:

- A. Conversion or transfer of property, knowing that it is proceeds of crime and with the intention of disguising its origin or to help another person evade the legal consequences of their actions (art. 6(1)(a)(i));
- B. Concealment or disguise of the property, knowing that it is proceeds of crime (art. 6(1)(a)(ii)).

Article 6 also requires States Parties, subject to the basic concepts of their domestic legal system, to criminalize two further types of conduct, when committed intentionally:

- A. Acquisition, possession or use of property, knowing (at the time of receipt) that it is proceeds of crime (art. 6(1)(b)(i));
- B. Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of the laundering of the proceeds of crime (art. 6(1)(b)(ii)).

Criminalization of corruption (art. 8-9)

The provision on corruption in the Organized Crime Convention was the subject of considerable debate largely due to the fact that corruption is in itself a very broad and complex issue. Given that it is one of the ways organized criminal groups penetrate political, economic and social structures worldwide, thus making illegal activities less likely to be detected and disrupted, States Parties eventually agreed to include a provision on corruption in the Organized Crime Convention but with the understanding that the Convention would not address the matter in a comprehensive manner.²⁶

Article 8 (“Criminalization of corruption”) of the Organized Crime Convention requires States Parties to criminalize the giving or receipt of bribes by its domestic public officials (art. 8 (1)(a)(b)), along with participation as an accomplice in such offences (art. 8(3)), and to consider criminalizing such conduct when it involves a foreign public official or an international civil servant (art. 8 (2)).

Article 9 (“Measures against corruption”) contains some general requirements regarding anti-corruption mechanisms that States Parties must put in place in order to implement the Convention. For instance, it requires that States Parties take measures to ensure effective action by domestic authorities in the prevention, detection and punishment of corruption of public officials, including measures to enable domestic anti-corruption authorities to act independently.

Liability of legal persons (art. 10)

Organized crime is frequently committed through or under the cover of legal entities. Organized criminal groups have used corporations, businesses, charitable organizations or other legal persons to commit serious crimes. The Organized Crime Convention recognizes the indispensable role of legal persons in this

regard and requires that States Parties create criminal, civil or administrative liability, and accompanying sanctions, for legal persons that participate in serious crimes involving an organized criminal group or in the offenses covered by the Convention.

Jurisdiction (art. 15)

Transnational organized crime frequently impacts more than one State. Accused persons may be present in one jurisdiction, but their crime may have impacts on other jurisdictions. There is a need to reduce or eliminate jurisdictional gaps and ensure that no serious crime is ever left unpunished wherever it took place. In situations where a criminal group is involved in several States which may have authority over the group's actions, article 15 lays out the jurisdictional principles governing the Convention.

Article 15(1) of the Organized Crime Convention requires States Parties to assert jurisdiction over the offences established in accordance with the Convention when they are committed:

- In their territory ("territoriality principle");
- On board of a ship flying their flag ("flag principle");
- On board of an aircraft registered under their laws ("flag principle").

States Parties must also assume jurisdiction to prosecute offences covered by the Convention that occur outside of its territory and where the accused person is present in their territory and where they do not extradite such person on the ground that he or she is one of its nationals (art. 15(3)).

A State Party is permitted but not required under article 15(2) to establish jurisdiction over the four offenses of the Convention when committed against one of its nationals, or by one of its nationals or residents (art. 15(2)(a)). Permissive jurisdiction is likewise proposed over the offenses of participation in an organized criminal group or money laundering, as defined in the Convention, where they are committed outside a State's territory with a view to the commission of certain conduct within its territory (art. 15(2)(c)(d)). Article 15(3) further requires a State Party to establish jurisdiction when it refuses to extradite an offender for offenses covered by the Convention solely because the person is one of its nationals.

Finally, the Organized Crime Convention obliges States Parties to consult with other States Parties which are investigating or prosecuting the same offence with a view to coordinating their actions (art. 15(5)).

Criminalization of obstruction of justice (art. 23)

Organized criminal groups maintain or extend their income, power and influence by attempting to undermine justice mechanisms. Violence threats and intimidation are often used to obstruct the course of justice, such as by causing someone to provide or present false evidence, give false testimony or to prevent witnesses from coming forward in the first place.

Obstruction of justice is incorporated in the Organized Crime Convention to protect the integrity of systems of justice, particularly criminal justice processes. Article 23 requires that States Parties criminalize the

use of physical force, threats or intimidation, or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence. It also requires the criminalization of the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official.

3.3.2. Cluster on prevention, technical assistance, protection measures and other measures (art. 24, 25, 29, 30 and 31)

Protection of witnesses and victims (art. 24-25)

Important to ensuring the successful investigation and prosecution of the offences covered by the Organized Crime Convention, including those committed in connection with organized criminal groups, is the ability to provide effective protection for witnesses as well as support and protection to victims.

The protection of witnesses is included in article 24 of the Convention. This provision is intended to protect witnesses in criminal cases from possible retaliation or intimidation, such as by providing them with physical protection (e.g., security or relocation) and requiring witnesses to testify in a way that ensures their safety (e.g., allowing witnesses to testify via video-conference at the trial; sealing records of the trial; using voice distortion or facial disguise).

Article 25 elaborates a series of measures to aid the victims of transnational organized crime. States Parties must take appropriate measures within their means: to assist and protect them, particularly in cases of threat of retaliation or intimidation (art. 25(1)); to provide them access to compensation and restitution (art. 25(2)); and, subject to domestic law and in a manner not prejudicial to the rights of the defence, to enable their views to be considered during criminal proceedings (art. 25(3)).

Training and technical assistance (art. 29)

In accordance with article 29, States Parties of the Organized Crime Convention have a positive obligation, to the extent necessary, to initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by the Convention.

States Parties shall also assist one another in planning and implementing research and training programmes designed to share expertise and, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern.

Other measures: implementation of the Convention through economic development and technical assistance (art. 30)

This article requires States Parties to participate in international cooperation and contribute to the strengthening of the capacity of developing countries and countries with economies in transition to

prevent and combat transnational organized crime. Such actions may include the provision of financial and material assistance (art. 30(b)) and the provision of technical assistance (art. 30(c)).

Prevention (art. 31)

Despite prevention being a prominent feature that cuts through the entire Organized Crime Convention, article 31 details some specific practical measures which States Parties can employ to deter transnational organized crime. The first of these measures imposes an obligation on the States Parties to prevent transnational organized crime through the development and evaluation of national projects, as well as by establishing and promoting best practices and policies (art. 31(1)). Among other measures urged are cooperation with private industry (art. 31(2)(a)), promotion of the development of professional standards and codes of conduct (art. 31(2)(b)), prevention of the misuse by organized criminal groups of public administration processes, including tender procedures and licensing for commercial activity (art. 31(2)(c)); and prevention of the misuse of legal persons by organized criminal groups (art. 31(2)(d)). Public awareness campaigns dedicated to the threats posed by transnational organized crime (art. 31(5)) and collaboration among States Parties and relevant regional and international organizations (art. 31(7)) are also recommended as preventive measures.

3.3.3. Cluster on law enforcement and judicial systems (art. 7, 11, 19, 20, 22, 26, 27 and 28)

Measures to combat money-laundering (art. 7)

The activities of organized criminal groups are directed at the accumulation of wealth through illegal means. In order to enjoy proceeds of crime, the illegal origin of such assets must be concealed. The Organized Crime Convention promotes intolerance for money-laundering. In article 7, requirements for domestic regulatory and supervisory policies for banks and non-bank financial institutions are set forth, along with guidance for cooperation and the exchange of information at the national and international levels to investigate suspected money-laundering activity.

Pursuant to article 7, States Parties must adopt and integrate into their financial infrastructure procedures to identify customers, keep effective records and report suspicious transactions to national authorities. States Parties must impose customer identification (“know your customer”) and suspicious transaction reporting requirements (art. 7(1)(a)). They must also ensure that specialized financial intelligence units (FIUs) are created to exchange information with foreign counterparts (art. 7(1)(b)).

Prosecution, adjudication and sanctions (art. 11)

Article 11 identifies a series of considerations for States Parties in pursuing prosecutions relating to offenses within the scope of the Organized Crime Convention. More specifically, it requires that States Parties: (a) ensure that offences covered by the Convention are subject to adequate sanctions that take the gravity of each offence into account (art. 11(1)); (b) endeavour to ensure that any discretionary powers relating to the

prosecution of accused persons are exercised to maximize the effectiveness of law enforcement measures and with due regard to the need to deter the commission of such offences (art. 11(2)); (c) take appropriate measures to ensure the presence of defendants at criminal proceedings (art. 11(3)); (d) ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by the Convention when considering early release or parole (art. 11(4)); (e) establish, where appropriate, long domestic statute of limitation periods for the commencement of proceedings for offences covered by the Convention, and a longer period where the alleged offender has evaded the administration of justice (art. 11(5)).

Joint investigations (art. 19)

The Organized Crime Convention emphasizes that international law enforcement cooperation between two or more States may prove more effective than efforts of a single State in the investigation of crime, especially in complex cases. Under article 19, States Parties are required to consider concluding bilateral or multilateral agreements or arrangements for the establishment of joint investigative bodies, while ensuring that the sovereignty of the State Party in whose territory a joint investigation is to take place is fully respected.

Special investigative techniques (art. 20)

Article 20 of the Organized Crime Convention endorses the use of special investigative techniques (SITs), such as controlled delivery, electronic surveillance and undercover operations. SITs are methods for gathering information that are applied by law enforcement officials for the purpose of detecting and investigating crimes and suspects without alerting the target persons. The techniques are especially useful when dealing with sophisticated organized criminal groups because of the dangers and difficulties inherent in gaining access to their operations and gathering information and evidence for use in prosecutions. Since SITs frequently require the cooperation and collaboration of multiple law enforcement agencies in different countries, international cooperation is essential to facilitate such operations. Use of these techniques at the international level is to be regulated by the States involved through general or case-specific agreements or arrangements.

Establishment of criminal record (art. 22)

Members of transnational organized criminal groups operate throughout the world and may commit offences in the jurisdictions of different States. The Organized Crime Convention urges States Parties to consider adopting measures enabling an offender's previous conviction in one State to be taken into consideration in another State Party's subsequent criminal proceeding relating to offences covered by the Convention.

Measures to enhance cooperation with law enforcement authorities (art. 26)

Article 26 provides for measures to encourage persons who have participated in an organized criminal group to cooperate with the authorities in investigations or prosecutions. Such persons may be called "collaborators of justice" or "informants." The measures include forms of leniency or immunity from prosecution and protection. The ability to provide effective protection to persons who are or have been members of an organized criminal group and who wish to cooperate with law enforcement authorities is

critical and can be enabled through witness protection programmes. Importantly, this article also envisages that States Parties consider arrangements with one another to apply inducements to informants located in one State who can assist an investigation of organized criminal activity in another State (art. 26(5)).

Law enforcement cooperation (art. 27)

Article 27(1) establishes the scope of the obligation of States Parties to cooperate with one another. The general obligation to cooperate is not absolute. Rather, it is to be conducted in a manner consistent with domestic legal and administrative systems. Subject to this general limitation, States Parties are to strengthen the channels of communication among their respective law enforcement authorities (art. 27(1)(a)); undertake specific forms of cooperation in order to obtain information about persons, the movements of proceeds and instrumentalities of crime (art. 27(1)(b)); provide to each other items or quantities of substances for purposes of analysis or other investigative purposes (art. 27(1)(c)); promote exchanges of personnel, including the posting of liaison officers (art. 27(1)(d)); exchange information on a variety of means and methods used by organized criminal groups (art. 27(1)(e)); and conduct other forms of cooperation for the purposes of facilitating early identification of offences (art. 27(1)(f)).

Collection, exchange and analysis of information on the nature of organized crime (art. 28)

The collection and exchange of information are essential to developing a sound, evidence-based policy on preventing and responding to transnational organized crime. Consolidated information on emerging trends in organized crime is indispensable for setting goals, allocating resources and evaluating results. Article 28 of the Organized Crime Convention recommends that States Parties, in consultation with their scientific and academic communities, collect data and examine the characteristics and trends in organized crime.



3.3.4. Cluster on international cooperation, mutual legal assistance and confiscation (art. 12, 13, 14, 16, 17, 18 and 21)

Confiscation and seizure of proceeds of crime (art. 12)

Criminalizing the activities from which significant illegal profits are generated does not always effectively punish or discourage criminal organizations. Even if they are arrested and convicted, in certain instances, criminals will be able to enjoy their illicit earnings. The Organized Crime Convention requires States Parties to take practical measures to keep offenders from financially profiting from their crimes through confiscation. Article 12 of the Convention requires States Parties to establish regulatory regimes that provide for the identification, freezing, seizure and confiscation of illicitly acquired assets. Effective frameworks for international cooperation are also required to allow countries to initiate foreign freezing and confiscation orders.

International cooperation for purposes of confiscation (art. 13)

Article 13 sets forth procedures for international cooperation in confiscation matters. These are important measures because criminals frequently seek to hide proceeds and instrumentalities of crime in more than one jurisdiction in order to hinder law enforcement efforts against them. A State Party that receives a request from another State Party is required, under article 13 of the Organized Crime Convention, to take measures to identify, trace and freeze or seize proceeds of crime for the purpose of confiscation. Such requests are to follow the general mutual assistance procedures specified in article 18 of the Convention.

Disposal of confiscated proceeds of crime or property (art. 14)

Article 14 addresses the final stage of the confiscation process—the disposal of confiscated assets. To the extent permitted by its domestic law, the requested State Party must consider returning confiscated proceeds to a requesting State Party for use as compensation to crime victims or restoration to legitimate owners (art. 14(2)). This article provides that a State Party may also consider concluding an agreement or arrangement whereby proceeds may be contributed to intergovernmental bodies, such as the United Nations, to fund technical assistance activities under the Convention or shared with other States Parties that have assisted in their confiscation (art. 14(3)(a)(b)).

Extradition (art. 16)

Extradition is a formal and, most frequently, treaty-based process leading to the return or delivery of fugitives to the jurisdiction in which they are wanted in relation to criminal activities. The extradition obligation of the Organized Crime Convention applies to persons sought for offences which are punishable under the domestic laws of both the requesting and the requested State Party (art. 16(1)). This dual criminality requirement will automatically be satisfied with respect to the offences established

in accordance with the Convention, since all States Parties are obliged to criminalize them. With respect to requests relating to offences that constitute serious crimes, there is no obligation to extradite unless the dual criminality requirement is fulfilled.

Transfer of sentenced persons (art. 17)

Article 17 is dedicated to the transfer of sentenced persons which is a specific form of international cooperation. Under this provision of the Organized Crime Convention, States Parties may consider entering into bilateral or multilateral agreements or arrangements to enable the transfer to their territory of incarcerated persons who have been convicted abroad for offenses covered by the Convention in order that they may complete their prison sentences in their countries of nationality.

Mutual legal assistance (art. 18)

Promoting consistent criminal justice responses at the national level helps to make international cooperation easier and faster. Multilateral and regional treaties serve this purpose. In the Organized Crime Convention, article 18 is devoted to mutual legal assistance (MLA), in which States Parties are obligated to afford each other the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offenses within the scope of the Convention, provided that the State Party seeking assistance demonstrates that it has reasonable grounds to suspect that the offense is transnational in nature and involves an organized criminal group. These provisions apply in the absence of another treaty between the Parties concerned.

The article sets forth that States Parties may, albeit they are discouraged to, decline to render MLA on the ground of an absence of dual criminality (art. 18(9)). They may not, however, decline to render MLA on the ground of bank secrecy pursuant (art. 18(8)).

Article 18 establishes certain modern procedures for mutual assistance. For instance, it includes a requirement for States Parties to designate central authorities to handle requests and either execute them or transmit them to the competent authorities for execution (art. 18(13)).

Transfer of criminal proceedings (art. 21)

Under article 21, States Parties are required to consider transferring to one another the criminal proceedings for the prosecution of an offence covered by the Organized Crime Convention in cases where several jurisdictions are involved with different aspects of a pattern of transnational organized criminal conduct.

3.4. UNTOC and “emerging” crimes

At its 4th session held in October 2008, the COP-UNTOC deliberated on the issue of emerging forms of crime, such as cybercrime, trafficking in cultural property and environmental crime (e.g., trafficking in forest products, including timber and wildlife).²⁷ At the same session, the COP-UNTOC adopted its decision 4/2, entitled “Implementation of the Provisions on International Cooperation of the United Nations Convention against Transnational Organized Crime,” which stressed that the Organized Crime Convention as a global instrument with near-universal ratification could offer the broadest scope of cooperation to address not only existing but also emerging forms of transnational organized crime.²⁸

In 2010, at the COP-UNTOC 5th session, an expert consultation on the use of the Organized Crime Convention in combating emerging forms of crime was held. The outcome document of this meeting reiterated that the Organized Crime Convention applies to all “serious crime,” where the offence is transnational in nature and involves an organized criminal group. This interpretation “ensures that the scope of the Convention is wide enough to encompass traditional, emerging and future forms of crime and that international law enforcement and judicial cooperation efforts can be triggered in relevant investigations and prosecutions.”²⁹ The report of the COP-UNTOC of its 5th session identified cybercrime, trafficking in cultural property, environmental crime, piracy, organ trafficking, and fraudulent medicine as emerging crimes of concern and acknowledged the importance of developing adequate legislative and operational responses in order to prevent and combat “emerging” (and “re-emerging”)³⁰ forms of crime.³¹



RECOMMENDED RESOURCE

Legislative Guide for the United Nations Convention against Transnational Organized Crime and the Protocols thereto

The main purpose of this publication is to assist States seeking to ratify or implement the Organized Crime Convention and its Protocols. It lays out the basic requirements of the Convention and the





Protocols thereto, as well as the issues that each State Party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols.

The publication can be downloaded at:

<https://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html>