



Tool 1.5 Implementing the United Nations Convention against Transnational Organized Crime and the Protocols thereto

Overview

This tool explains how a State becomes a party to the Organized Crime Convention and its Protocols and elaborates on the relationship between these instruments of international cooperation. It also recommends sources of further information on implementation of the Convention and its Protocols.

Most forms of trafficking, including trafficking in persons, are generally carried out across borders and cannot be addressed without joint international efforts and international cooperation. It is important that all States wanting to work together to combat human trafficking become parties to the United Nations Convention against Transnational Organized Crime and its supplementary Trafficking in Persons Protocol and Migrant Smuggling Protocol.

The steps required to bring national legislation into compliance with these international instruments may be quite complex, depending on the current state of national law. The United Nations Office on Drugs and Crime (UNODC) has prepared legislative guides to inform and facilitate that process. Technical assistance may also be available from UNODC. This tool introduces the *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (United Nations publication, Sales No. E.05.V.2) and provides information on how to seek technical assistance.



A State must be a party to the Convention in order to become a party to the Trafficking in Persons Protocol

Article 37, paragraph 2, of the Organized Crime Convention provides that, in order to become a party to one of its protocols, a State must first be a party to the Convention. The provisions of any protocol to the Convention are to be “interpreted together with this Convention, taking into account the purpose of that protocol” (art. 37, para. 4). However, the provisions of a particular protocol are binding on the States parties only if they are parties to that protocol as well.

Article 1 of the Trafficking in Persons Protocol and article 37 of the Organized Crime Convention establish the following basic principles governing the relationship between the two instruments:

- *No State can be a party to the Protocol unless it is also a party to the Convention.* The language permits simultaneous ratification or accession, but a State is not subject to any obligation under the Protocol unless it is also subject to the obligations of the Convention.

- *The Convention and the Protocol must be interpreted together.* In interpreting the various instruments, all relevant instruments should be considered and provisions using similar or parallel language should be given generally similar meaning. In interpreting a protocol, the purpose of that protocol must also be considered, which may modify meanings applied to the Convention in some cases.
- *The provisions of the Convention apply to the Protocol, mutatis mutandis.* This means that, in applying provisions of the Convention to the Protocol, minor modifications of interpretation or application can be made to take account of the circumstances that arise under the Protocol, but that modifications should not be made unless necessary, and then only to the extent necessary. This general rule does not apply where the drafters have specifically excluded it.
- *Protocol offences shall also be regarded as offences established in accordance with the Convention.* This principle, which is analogous to the mutatis mutandis requirement, is a critical link between the Protocol and Convention. It ensures that any offence or offences established by a State in order to criminalize trafficking in human beings, as required by article 5 of the Trafficking in Persons Protocol, will automatically be included within the scope of the basic Convention provisions governing forms of international cooperation, such as extradition (art. 16) and mutual legal assistance (art. 18). It also links the Protocol and Convention by making applicable to Protocol offences other mandatory provisions of the Convention. In particular, as discussed further in chapter III, on criminalization, of the legislative guide for the implementation of the Convention, obligations under articles 6 (criminalization of the laundering of proceeds of crime), 10 (liability of legal persons), 11 (prosecution, adjudication and sanctions), 12 to 14 (confiscation), 15 (jurisdiction), 16 (extradition), 18 (mutual legal assistance), 20 (special investigative techniques), 23 (criminalization of obstruction of justice), 24 to 26 (witness and victim protection, and enhancement of cooperation with law enforcement authorities), 27 (law enforcement cooperation), 29 and 30 (training and technical assistance) and 34 (implementation of the Convention) apply equally to the offences established in the Protocol. Establishing a similar link is therefore an important element of domestic legislation to implement the Protocol.
- *The Protocol requirements are a minimum standard.* Domestic measures may be broader in scope or more severe than those required by the Protocol, providing that all the obligations specified in the Protocol have been fulfilled.

Recommended resources

Legislative guides of the United Nations Office on Drugs and Crime

The legislative guides are available from UNODC to assist States seeking to ratify or implement the Organized Crime Convention, the Trafficking in Persons Protocol, the Migrants Protocol and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/255, annex).

While they are directed chiefly at policymakers and legislators in States preparing for the ratification and implementation of the Convention and its Protocols, the legislative guides also provide a helpful basis for bilateral technical assistance projects and other initiatives to promote the broad ratification and implementation of these important legal instruments.

The legislative guides accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options. However, as the guides are for use primarily by drafters of legislation, not every provision of the Convention and its Protocols is addressed. The focus is on those provisions that require legislative change and/or those requiring action prior to or at the time the Organized Crime Convention or one of its Protocols becomes applicable to the State party concerned.

The legislative guides lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address; they also provide a range of options and examples that national drafters may wish to consider as they develop legislation to implement the Convention and its Protocols. The guides do not cover the provisions of the Convention and Protocols that do not contain legislative implementation obligations.



The legislative guides are available on the UNODC website, at:
www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html



The text of the Organized Crime Convention and the Protocols thereto, and other relevant information can also be obtained on the UNODC website, at:
www.unodc.org/unodc/en/treaties/CTOC/index.html

Annotated Guide to the Complete United Nations Trafficking in Persons Protocol

The annotated guide is a Global Rights publication which advocates for the Trafficking in Persons Protocol to be reflected in national legislation and policy in a way that meets international human rights standards.



The annotated guide is available at:
www.globalrights.org/site/DocServer/Annotated%20Protocol.pdf

Combating Human Trafficking in Asia: a Resource Guide to International and Regional Legal Instruments, Political Commitment and Recommended Practices

A resource of the Economic and Social Commission for Asia and the Pacific, this 2003 United Nations publication sets out the international and regional legal framework (including instruments on slavery, labour, migration and gender) for combating trafficking in persons, obligations and recommendations, an analysis of instruments, obligations and recommendations, as well as case studies and examples of best practice.



The resource guide is available at:
www.no-trafficking.org/content/training_manual/training.htm