

The use of the United Nations Convention
against Transnational Organized Crime as
legal basis for international cooperation –
challenges and potential in the light of the
experience of Italy

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A key feature of the Palermo Convention: the enhancement of international cooperation

A) At an informal level, mainly between:

- law enforcement authorities
- witness protection authorities
- financial intelligence authorities

B) At a formal level, mainly between judicial authorities, with specific reference to:

- mutual legal assistance
- extradition
- seizure and confiscation of proceeds of crime

The development of international judicial cooperation is not only a technical issue

It is also a matter of:

- a) mutual trust
- b) fruitful meeting and comparison between legal cultures, with a view to harmonization of legislations, where appropriate and necessary
- c) common commitment, based on shared values

This is a significant lesson that can be drawn from the original aim and the subsequent implementation of the Palermo Convention

- 12 December 2000 - High-level signing conference of the United Nations Convention against Transnational Organized Crime, Palermo, Italy. Left to right: Secretary-General Kofi Annan; Mr. Carlo Azeglio Ciampi, President of Italy; and Dr. Thomas Klestil, President of Austria, meeting before the opening of the conference. (Photo Credit: UN Photo/Eskinder Debebe)



The Secretary-General Address at the opening of the Signing Conference for the UNTOC - Palermo, 12 December 2000: This signing conference for the United Nations Convention against Transnational Organized Crime is evidence of the will of the international community to answer a global challenge with a global response (...) .If the enemies of progress and human rights seek to exploit the openness and opportunities of globalization for their purposes, then we must exploit those very same factors to defend human rights, and defeat the forces of crime, corruption, and trafficking in human beings



The added value of the Palermo Convention for international judicial cooperation: a collection of cases from Italy, starting from Sicily



Enhancing cooperation on execution of non-conviction based confiscation in other States: a leading case.

- In 2018 the Tribunal of Catania ordered the seizure and confiscation of assets of very high value belonging to an important entrepreneur, who was considered as an external participant in a mafia-type association.
- This judicial decision applied patrimonial prevention measures, which can be included in the category of non-conviction based confiscation (or in-rem confiscation).
- A non-conviction based confiscation is applied following a trial relating to assets, which does not need a conviction as a prerequisite; the prototype of this model is represented by civil forfeiture, widespread in common law countries.
- The system of patrimonial prevention measures has received a significantly positive assessment by the European Court of Human Rights, based on the acknowledgment that this form of confiscation falls in the margin of appreciation of the States in regulating the use of assets in accordance with the general interest, particularly in the context of a policy aimed at combating the phenomenon of organised crime.
- Among the assets for which the Court of Catania ordered the seizure and confiscation, there were some bank accounts located in countries outside the European Union
- The request for the execution of the order to seize the aforementioned bank accounts abroad was based on Article 18 of the Palermo Convention, in addition to the provisions of the Strasbourg Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Pending cases of international judicial cooperation in 2018 based on the Palermo Convention

- An **outgoing letter rogatory** was issued by an Italian District Anti-Mafia Prosecutor in criminal proceedings for the alleged offence of criminal association with transnational character and acting with a mafia-like method, aimed at running an illegal betting collection network, made up of a large number of companies with official headquarters in tax havens, also including trust companies, all directly or indirectly linked to the persons under investigations, belonging to a mafia-type association. Its aim was allegedly the non-traceability of the bets placed and of the proceeds obtained, thus evading the payment of taxes, with the consequent making of illicit profits for a total amount exceeding 650 million euros and the additional advantage of the obstacle to the identification of the origin of the profits, the laundering of which was thus facilitated.
- The letter rogatory – based both on Article 12 of the UNTOC and on the EU Framework Decision 2003/577/JHA of July 22, 2003 – concerns firstly the execution of the order of seizure of the assets of one of the aforementioned companies, based in a foreign State, as well as of the bank accounts registered in the name of the persons under investigation in the same State; secondly, the freezing of all the documents relating to the aforementioned company; and finally, the ascertainment of the possible presence of other assets or property registered in the name of the persons under investigation.
- Another outgoing letter rogatory concerns the execution of the order of seizure of the assets of two other companies allegedly related to the aforementioned criminal association, which are based in a third State.

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- An **outgoing letter rogatory** was issued by an Italian District Anti-Mafia Prosecutor in criminal proceedings for the alleged offences of drug trafficking, smuggling of foreign manufactured tobacco products, and fraudulent transfer of values.
- The investigations carried out on drug trafficking led to the seizure of a large amount of cocaine, transported by means of a helicopter.
- The owner of the helicopter was then placed under further investigation, which led to his arrest while committing the offence of aggravated smuggling, because he was caught in the act of driving the car escorting a truck on which a substantial quantity of contraband cigarettes was found.
- Further investigations revealed that the arrested person had not only the aforementioned car, but also two other cars at his disposal; and that all the three cars were registered in the name of another company located in a different EU Member State (from now on, “the foreign company”). The foreign company had leased them to an Italian company, which in turn had leased them to another Italian company, which, without any contract, had finally delivered them to the person under investigation. The analysis of these steps revealed many and significant anomalies, also represented by the violation of the contractual subleasing ban and by the substantially fictitious nature of the two Italian companies; as well as the huge debt that the first of these two companies had with the foreign company, which, however, had continued to lease over a hundred cars, many of which were found to be used by several convicted offenders.
- The letter rogatory – based both on the UNTOC and on the European Convention on Mutual Assistance in Criminal Matters - concerns the acquisition of a copy of the documents of the foreign company, the identification of its relevant members, and the collection of banking and financial information.

Pending cases of international judicial cooperation in 2018 based on the Palermo Convention

- An **incoming letter rogatory** was issued by the judicial authority of another State in proceedings brought against a group of foreign citizens, on the assumption that they had established a criminal association operating on the whole European territory and involved in the commission of the so-called RIP DEAL scams.
- The letter rogatory - based on the UNTOC, as well as on the European Convention on Mutual Assistance in Criminal Matters and on the Convention on laundering, search, seizure and confiscation of the proceeds from crime - concerns on the one hand the acquisition of a copy of the documents of parallel proceedings in Italy, and on the other hand the identification of the user of an Italian mobile phone, together with the acquisition of his criminal record and the transmission of information about any ongoing investigations for similar facts.
- The letter rogatory was sent to the Italian Prosecutor's Office for execution

Pending cases of international judicial cooperation in 2018 based on the Palermo Convention

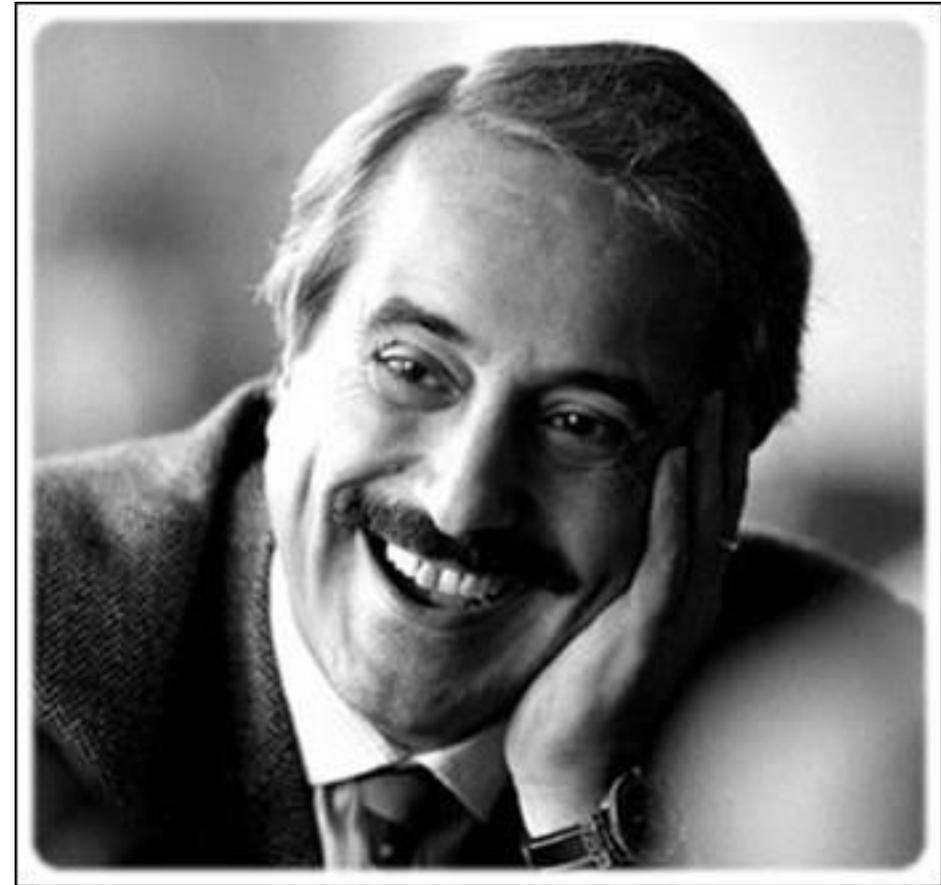
- An **incoming letter rogatory** was issued by the judicial authority of another State in money laundering proceedings, following airport checks on a passenger, who was found in possession of bank cheques for a total amount of around 10 million euros, payable to an Italian citizen residing in the same foreign State.
- The request - based exclusively on the UNTOC – is firstly aimed at the acquisition of the criminal record of the beneficiary of the cheques; secondly to the acquisition of information on companies, businesses, foundations or associations in which the person in question has an interest; thirdly, the setting up of a joint investigation team.
- The letter rogatory was sent to the Italian Prosecutor's Office for execution.

A very innovative way of implementing the Palermo Convention

- It is worth noting the importance of the first bilateral deployment to the Palermo and Catania Prosecution offices for a period of 12 months of a Nigerian senior Federal Prosecutor from the Nigerian Ministry of Justice, facilitated, and supported, by UNODC.
- Meaningfully, this prosecutor was deployed on the basis of article 18, paragraph 13 of the Palermo Convention.
- Such a development has successfully demonstrated the effectiveness of the legal tools provided by the Palermo Convention.
- This project, funded by the Netherlands and Italy, aims to address properly the phenomenon of smuggling of migrants, strictly connected with human trafficking.
- The Nigerian Prosecutor has been embedded in the prosecution offices of Palermo and Catania, where many cases of smuggling of migrants by sea are prosecuted, starting in February 2018 and rotating every 2 months between each prosecution office.
- Moreover the Prosecutor has been engaged in the transmission of investigation materials aiding the Nigerian law enforcement in the arrests and prosecution of the Italian trafficking gang counterparts.
- The Nigerian prosecutor supports the legal cooperation of Italian and European prosecution offices with Nigeria directly, and with West African countries also through WACAP.
- She has been able not only to see how prosecutors tackle criminal networks based abroad, and what is needed to support these prosecutions, but also to provide the Italian magistrates with an in-depth knowledge of the social roots of these criminal phenomena.

The Palermo Convention: a great legacy of Giovanni Falcone

- As highlighted by Dimitri Vlassis (a person that we all will never forget), the starting point for the initiatives that led to the Palermo Convention was the inaugural session of the CCPCJ, in which Giovanni Falcone participated, leading the Italian delegation, in April 1992, just one month before his tragic death.
- In his last public address at an international forum, he explained why more international cooperation was a must, and launched the idea of a world conference to lay the foundations for such cooperation.
- When we talk about the Palermo Convention, we talk about the legacy of Giovanni Falcone, as underlined by the UNODC Executive Director.



23 May 1992: the Capaci massacre



As Giovanni Falcone himself said, people come and go; but their ideas remain and continue, walking on the legs of others.

