



LEGISLATIVE GUIDES FOR THE IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOL THERETO



UNITED NATIONS OFFICE ON DRUGS AND CRIME
DIVISION FOR TREATY AFFAIRS

**LEGISLATIVE GUIDES FOR THE
IMPLEMENTATION OF THE
UNITED NATIONS CONVENTION
AGAINST TRANSNATIONAL
ORGANIZED CRIME
AND THE PROTOCOLS THERETO**



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(b) Expert group meeting on the legislative guides for the implementation of the United Nations Convention against Transnational Organized Crime and for the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, held in Paris from 18 to 20 November 2002. The meeting was organized by the United Nations Office on Drugs and Crime, in cooperation with the Government of France;

(c) Expert group meeting on the legislative guides for the implementation of the United Nations Convention against Transnational Organized Crime and for the implementation of the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, held in Courmayeur, Italy, from 6 to 8 December 2002. The meeting was organized by the United Nations Office on Drugs and Crime, in cooperation with the International Scientific and Professional Advisory Council, and was supported by the Government of Italy;

(d) Expert group meeting on the legislative guides for the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, held in Monte Carlo, Monaco, on 5 and 6 September 2003. The meeting was organized by the United Nations Office on Drugs and Crime, in cooperation with the Government of Monaco.

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Foreword

Aim of the legislative guides

The main purpose of the legislative guides contained in the present publication is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime (the “Organized Crime Convention”, General Assembly resolution 55/25, annex I), and its supplementary Protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the “Trafficking in Persons Protocol”, Assembly resolution 55/25, annex II), the Protocol against the Smuggling of Migrants by Land, Sea and Air (the “Migrants Protocol”, Assembly resolution 55/25, annex III) and the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (the “Firearms Protocol”, Assembly resolution 55/255, annex).

While the guides have been drafted chiefly for policy makers and legislators in countries preparing for the ratification and implementation of the Convention and its Protocols, they also aim at providing a helpful basis for bilateral technical assistance projects and other initiatives that will be undertaken as part of international efforts to promote the broad ratification and implementation of the Convention and the Protocols thereto.

The guides have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options. As the guides are for use primarily by legislative drafters in countries preparing for the ratification and implementation of the Convention and its Protocols, not every provision of each instrument is addressed. The major focus will be on those provisions which will require legislative change and/or those which will require action prior to or at the time the Convention and its Protocols become applicable to the State party concerned.

The guides lay 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 guides do not cover articles that do not contain legislative implementation obligations.

Those involved in the negotiation of the Convention and its Protocols were well aware of the need for flexibility, as well as consistency and a degree of harmonization, at the international level. In this spirit, the guides list items that are mandatory or optional for States parties and relate each article and provision to other regional or international instruments and to examples of how States with different legal traditions have implemented the Convention and the Protocols thereto.

It should be noted that the guides are not intended to provide definitive legal interpretation of the articles of the Convention and its Protocols. The content is not authoritative and, in assessing each specific requirement, the actual language of the provisions should be consulted. Caution should also be used in incorporating provisions from the Convention and its Protocols verbatim into national law, which generally requires higher standards of clarity and specificity so as to permit enforcement in courts of law. It is also recommended that drafters check for consistency with other offences and definitions in existing domestic legislation before relying on formulations or terminology used in the Convention and the Protocols thereto.

The United Nations Office on Drugs and Crime is available to provide assistance in implementing the Convention and its Protocols. The Office is based in Vienna and can be contacted by telephone at +(43)(1) 26060-4534 or 4281 or e-mail at crimeconventions@unodc.org. The text of the Convention, the Protocols thereto and other relevant information can be obtained at the web site of the Office, at http://www.unodc.org/unodc/en/crime_cicp_convention.html.

Aims of the Convention and its Protocols

In a context of growing concern about organized criminal groups and criminal operations that cross national borders, an increasing number of countries have been considering and adopting new laws, measures and strategies to deal with the problem. When offenders, victims, instruments and products of crime are located in or pass through several jurisdictions, the traditional law enforcement approach, focused at the local level, is inevitably frustrated. When the types of transnational crime and the number of criminal groups seem to be increasing, no country is immune and States

must therefore turn to assist each other in the fight against sophisticated and harmful offences. When rapid advances in technology and the remarkable cross-border mobility of people, capital and commodities are taken advantage of by clever criminals acting either alone or, more dangerously, with additional associates, law enforcement must not fall behind. When criminals can generate extraordinary profits from their illicit enterprises and move and hide them from the authorities, the international community falls victim in many ways.

Political processes, democratic institutions, social programmes, economic development and human rights are all undermined by the wealth of organized criminal groups and the influence they can wield. Also at stake is the integrity of the financial system, particularly in parts of the world awash with the proceeds of crime. Victims and witnesses feel intimidated and doubly victimized if justice is not done. The message conveyed is that certain crimes do actually pay, even when the offenders are caught if they are then sanctioned by inadequate penalties.

Bilateral, regional and global agreements and arrangements reflect the realization that transnational crimes can be addressed effectively only through collaboration of law enforcement agencies from the States involved or affected. While ad hoc arrangements, mutual legal assistance treaties and extradition treaties may bear positive results in some instances, the complexities of the legislative and procedural framework within and across jurisdictions sometimes prevent those arrangements and treaties from being sufficient to respond to the current challenges. International conventions on specific offences, such as trafficking in drugs, terrorism, corruption and money-laundering, have paved the way for further coordination of efforts and stronger collaboration between States.* The most pressing need, however, is for a more integrated and synchronized approach, with effective enforcement mechanisms. Such an approach must be espoused as widely as possible.

The Convention is the response of the international community to the need for a truly global approach. Its purpose is to promote cooperation, both for the prevention of and for the effective fight against transnational organized crime (art. 1 of the Convention). It seeks to enlarge the number of

*For example, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the Inter-American Convention against Corruption and the International Convention for the Suppression of the Financing of Terrorism. Many more bilateral, regional and international instruments are cited throughout the guides and are listed in the sections on information resources.

States that take effective measures against transnational organized crime and to forge and strengthen cross-border links between States. It respects the differences and specificities of diverse legal traditions and cultures, while at the same time promoting a common language and helping to remove some of the existing barriers to effective transnational collaboration.

While the Organized Crime Convention focuses essentially on offences that facilitate the profit-making activities of organized criminal groups, the three Protocols supplementing the Convention target certain types of organized criminal activity requiring specialized provisions.

The Trafficking in Persons Protocol has three basic purposes: the prevention and combating of trafficking in persons; the protection and support of victims of trafficking; and the promotion of cooperation between States parties (art. 2 of the Trafficking in Persons Protocol).

The Migrants Protocol aims at preventing and combating the smuggling of migrants, as well as promoting cooperation among States parties, while protecting the rights of smuggled migrants (art. 2 of the Migrants Protocol).

The purpose of the Firearms Protocol is to promote, facilitate and strengthen cooperation among States parties in order to prevent, combat and eradicate the illicit manufacture of and trafficking in firearms, their parts and components and ammunition (art. 2 of the Firearms Protocol).

Article 37, paragraph 2, of the Convention provides that, in order to become a party to a Protocol supplementing the Convention, a State or regional economic integration organization must also be a party to the Convention. The provisions of all the Protocols to the Convention are to be interpreted together with the Convention, taking into account the purpose of the specific Protocol (art. 37, para. 4). However, these provisions of the three Protocols are binding on States parties only if they are parties to the Protocols as well.

Disclaimer

The legislative guides have been prepared by the United Nations Secretariat in response to the request of the General Assembly to the Secretary-General to promote and assist the efforts of Member States to become States parties to the United Nations Convention against

Transnational Organized Crime and the Protocols thereto. They are not intended to provide analysis or interpretative commentaries beyond the extent necessary directly to assist national legislators, legislative drafters and other appropriate officials in their efforts to develop the legislative and other measures needed for each country to become a party to these instruments. The interpretation of the instruments, as well as the exercise of any discretion set out in any provision thereof, is a matter for the States parties themselves, individually and in the context of the conference of the parties to each instrument. For authoritative information about the content of each provision, the appropriate official text should be consulted. Interpretative information on some provisions was provided to the General Assembly by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime and can be found in the report of the Ad Hoc Committee on the work of its first to twelfth sessions (A/55/383 and Add.1-3).*

*The *travaux préparatoires* of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime will be issued as a United Nations publication at a later date.