

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 7 | Issue 4

---

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Evaluating International Legal Frameworks and Policy Initiatives for Enhancing Global Cooperation and Capacity Building to Combat Transnational Organized Crime

---

MOHAMMED FARAAZUDDIN<sup>1</sup> AND SAI ESHWAR<sup>2</sup>

## ABSTRACT

*This research critically examines the efficacy of international legal frameworks and policy initiatives aimed at enhancing global cooperation and capacity building to combat transnational organized crime (TOC). Despite the establishment of the United Nations Convention against Transnational Organized Crime (UNTOC) and its provisions for extradition, mutual legal assistance, and law enforcement cooperation, gaps persist in the implementation and effectiveness of these measures. Notably, the dual criminality principle and the complexities surrounding extradition raise questions about human rights protections and the consistency of legal standards across jurisdictions.*

*Furthermore, while the Kyoto Declaration emphasizes the necessity of a multilateral approach, it lacks specific mechanisms for addressing the nexus between financing terrorism and TOC, which complicates enforcement efforts. The role of civil society and the need for targeted capacity building in developing nations remain underexplored, particularly in the context of technical cooperation and resource allocation. This paper seeks to identify these gaps and propose actionable recommendations for strengthening international collaboration, enhancing the capabilities of law enforcement agencies, and fostering public-private partnerships. Ultimately, addressing these deficiencies is crucial for a comprehensive and effective global response to the evolving challenges posed by transnational organized crime.*

**Keywords:** *Mutual Legal Assistance, Organized Crime, Capacity Building.*

## I. INTRODUCTION

The United Nations Convention on transnational organised Crime (UNTOC) lacks a specific delineation of 'transnational organised crime' and does not enumerate the specific criminal activities that fall under this category. This deliberate absence of a rigid description was

---

<sup>1</sup> Author is a student at ICFAI Law School, Hyderabad, India.

<sup>2</sup> Author is a student at Osmania University, Hyderabad, India.

intended to ensure that the UNTOC could be applied more extensively to novel forms of criminality that continually arise due to changing global, regional, and local circumstances.

Article 3 of the convention deals with the scope of its application and forms the basis of understanding what exactly a transnational organised crime is:

*Article 3. Scope of application*

*1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:*

*(a) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and*

*(b) Serious crime as defined in article 2 of this Convention; where the offence is transnational in nature and involves an organized criminal group.*

*2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:*

*(a) It is committed in more than one State;*

*(b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;*

*(c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or*

*(d) It is committed in one State but has substantial effects in another State.*

The UNTOC exclusively addresses crimes of a 'transnational' nature, a term with broad scope. As can be seen in article 3 paragraph 2 this term encompasses not just offenses occurring in multiple states, but also those initiated or overseen in one state but planned or managed in another. Furthermore, it covers crimes committed in one state by groups that operate across multiple states, and offenses carried out in one state that yield significant consequences in another state.

Para 1 of the article has to be viewed as follows:

*1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:*

*(a) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and*

*(b) Serious crime as defined in article 2 of this Convention; where the offence is transnational in nature and involves an organized criminal group.*

The highlighted parts have to be understood in isolation first to understand the paragraph as a whole. Firstly the Convention as per para 1 of article 3 deals with three things

i) Prevention; ii) Investigation; & iii) Prosecution. But the applicability of of the convention over these three areas is not absolute which is made very clear by the use of the phrase *except as otherwise stated herein* which means that subject to the exceptions provided by the convention, it shall apply to the prevention, investigation and prosecution of transnational organised crime.

Further reading of the article takes makes it clear that the convention only applies to:

(a) *The offences established in accordance with articles 5, 6, 8 and 23 of this Convention* which are as follows :

- Article 5. Criminalization of participation in an organized criminal group
- Article 6. Criminalization of the laundering of proceeds of crime
- Article 8. Criminalization of corruption
- Article 23. Criminalization of obstruction of justice

For the purpose of article 5 and 6, the term:

- ‘organized criminal group’ has been defined under article 2(a) as “ a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”
- ‘Proceeds of crime’ has been defined as any property derived from or obtained, directly or indirectly, through the commission of an offence;

(b) *Serious crime as defined in article 2 of this Convention; where the offence is transnational in nature and involves an organized criminal group.*

The sub para (b) of para 1 makes the convention applicable in cases of serious crimes being committed provided the offence is transnational and not restricted to the boundaries of one state and the offence not having any effects in another state, and involves an organized criminal group.

As per article 2(b) of the convention, “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. This means that a serious crime is an offence which is punishable by imprisonment

minimum four years or a more serious penalty such as capital punishment or life imprisonment as per the penal codes or special legislations of the respective countries.

The second requirement is the offence must be transnational in nature. An offence is transnational in nature if:

- (a) It is committed in more than one State;
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) It is committed in one State but has substantial effects in another State.

The third requirement is that the crime must involve an organized criminal group.

The implicit concept of 'transnational organised crime' thus encompasses virtually all serious criminal endeavors driven by profit and bearing international ramifications. This comprehensive interpretation acknowledges the intricate global nature of the issue and facilitates collaboration on an extensive array of shared concerns.

## **II. BACKGROUND**

As stated in Article 1 of the Transnational Organized Crime Convention<sup>3</sup>, we maintain and understand that the legislative intent aims to fulfil the main purpose of promoting cooperation while parallelly striving to prevent and then 'combat' transnational organized crime more effectively. To this extent, it contains a range of measures to enable and facilitate international cooperation between States Parties, including:

- Extradition (article 16)
- Mutual legal assistance (article 18)
- Joint investigations (article 19)
- Law enforcement cooperation (article 27)
- Transfer of sentenced persons (article 17)
- Transfer of criminal proceedings (article 21)

---

<sup>3</sup> G.A. Res. 55/25, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

**(A) Extradition:**

A key mode of international cooperation in relation to transnational organized crime is extradition. As defined by Oppenheim, extradition is the act of handing over an accused or convicted person to the state where they are alleged to have committed a crime or have been convicted, by the state where they are currently located.

Generally, in this formal process, one jurisdiction asks another for the enforced return of a person who is in the requested jurisdiction and who is accused or convicted of one or more criminal offences against the law of the requesting jurisdiction. In the larger context and practise of International Relations, states forge extradition treaties so they can pursue fugitives and other wanted individuals in faraway jurisdictions and this practice, historically builds on a practice dating back to antiquity. Today, extradition has become ever more important given the spread of transnational criminal organizations, including those involved in terrorism, drug trafficking, counterfeiting, and cybercrime.

Extradition, unsurprisingly, remains a pivotal and delicate issue in the realm of international relations between sovereign states. Its significance is amplified by the complexities it introduces, particularly when the accused is transferred to a jurisdiction where the penalties are significantly more severe. This not only raises concerns about the fairness and proportionality of punishment but also has profound implications for the principles of criminal justice, including the protection of human rights, the consistency of legal standards across borders, and the potential for political motivations to influence judicial outcomes. The controversy tends to get further heightened when the legal systems of the involved states differ substantially, potentially undermining the accused's right to a fair trial and due process, thereby challenging the fundamental tenets of justice that are meant to be upheld universally, but when soft tenets of International Law fight against the harsh realities of state practice, the UNTOC seamlessly comes to the rescue.

Very importantly, since no country has an extradition treaty with every country of the world, the UNTOC provides a legal basis, under Article 16 (4)<sup>4</sup>, for extradition in case a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty. A condition for extradition under the UNTOC is that the criminal offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party Article

---

<sup>4</sup> United Nations Convention Against Transnational Organized Crime art. 16(4), Nov. 15, 2000, 2225 U.N.T.S. 209.

16 (1)<sup>5</sup>, namely, that the dual criminality (*or double criminality*) principle is met.

In recognition of the principle *aut dedere aut judicare* (*extradite or prosecute*), Article 16 also states that a State Party that denies an extradition request on the ground that the alleged offender is its national shall submit the case for domestic prosecution. In doing so, it shall ensure that the decision to prosecute and any subsequent proceedings are conducted with the same diligence as a serious domestic offence and shall cooperate with the requesting State Party to ensure the efficiency of the prosecution.

### **(B) Mutual legal assistance**

dealt with under Article 18 of the Convention, also plays a key role in international cooperation. Mutual assistance in criminal matters is a process by which States, most importantly, seek and provide assistance in gathering evidence for use in criminal cases; execute searches, seizures and freezes; effect service of judicial documents; provide information, evidentiary items and expert evaluations and examine objects and sites. Authorities may need the help of other States concerning the investigation, prosecution or punishment of criminals who have allegedly committed crimes of transnational character. Article 18 states that States Parties must afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention.

Article 18 paragraphs 6 and 7 provide information on how to proceed when mutual legal assistance treaties are already in place. Generally, the mutual legal assistance provisions of the Convention shall not affect any obligations arising from pre-existing or future mutual legal assistance treaties. Furthermore, article 18 paragraph 7 states that, if States Parties are not bound by a treaty, then paragraphs 9–29 (which cover all facets of a mutual legal assistance request) apply. If the States Parties are bound by a treaty, then the provisions of the treaty apply, unless the States Parties agree to apply paragraphs 9–29. States Parties are urged to apply those paragraphs if they contribute to more effective mutual legal assistance.

The Convention allows States to refuse mutual legal assistance under certain conditions (article 18 (21)). However, the article makes clear that assistance cannot be refused on the grounds of bank secrecy (article 18 (8)) or for offences considered to involve fiscal matters (article 18 (22)). Article 18 (3) states the purposes for which mutual legal assistance may be requested. Most importantly those are: taking evidence or statements from persons; effecting service of judicial documents; executing searches, seizures and freezing; examining objects and sites, among

---

<sup>5</sup> Ibid, para \_\_

others.

The Convention includes provisions on a number of other mechanisms to facilitate international cooperation. As stated in article 27 for example, States Parties are required to work closely with one another in terms of law enforcement (police-to-police cooperation) or consider the establishment of joint investigative bodies (article 19), when necessary. Also, States Parties may consider the transfer of criminal proceedings when in the interest of the proper administration of justice (article 21) or the transfer of a sentenced person to their territory, in order that they may complete their sentence there (article 17).

Pursuant to General Assembly resolution 76/181, the Commission on Crime Prevention and Criminal Justice held the first thematic discussion on the implementation of the Kyoto Declaration in November 2021. The Kyoto Declaration came out of the Fourteenth United Nations (UN) Congress on Crime Prevention and Criminal Justice and was adopted by consensus in Kyoto on 7 March 2021. Member States recommitted to a multilateral approach in preventing and combating crimes and promoting the rule of law and reaffirmed that the United Nations Office on Drugs and Crime (UNODC) is the leading UN entity supporting them in this approach.

The Declaration amongst others emphasizes the importance of making the best possible use of relevant international instruments and of strengthening legislation, international cooperation, criminal justice responses and law enforcement efforts aimed at dealing with transnational organised crime, corruption and money-laundering linked to such crimes, and illicit financial flows derived from such crimes, while acknowledging the need to deprive criminals of proceeds of crime. It further highlights the need to strengthen capacity among relevant agencies and personnel in order to combat wildlife crime.

Clause 75 of Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law<sup>6</sup>: Towards the Achievement of the 2030 Agenda for Sustainable Development brings in a new angle and states that the parties to the declaration shall:

*“Identify, analyse and counter any existing, growing or potential links, in some cases, between the financing of terrorism and transnational organised crime, illicit drug-related activities, money-laundering, kidnapping and hostage-taking with the aim of raising funds including by demands for ransom, and extortion, to prevent and tackle financial and logistical support to terrorism in all its forms and manifestations and prevent terrorists from acquiring weapons, in*

---

<sup>6</sup> Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law, ¶ 75, Mar. 7, 2020, U.N. Doc. A/RES/74/266 (2020).



*compliance with obligations under applicable international law”*

Therefore, it is imperative that there is a nexus that exists to sufficiently break the paradox of the relationship between financing of terrorism and transnational organized crime.

**(C) Capacity Building:**

Capacity-building is defined as the process of developing and strengthening the skills, instincts, abilities, processes and resources that organizations and communities need to survive, adapt, and thrive in a fast-changing world.

Today, organized crimes threaten all countries. When one considers that the billions of dollars which are circulated by these crime groups exceed the annual budget of developing countries it is clear that they not only threaten security, but they can also damage a country’s economic and social development. It is also clear that most countries cannot deal with cross-border organized crimes without cooperation. Combatting organized crime groups can be accomplished only by employing a multi-dimensional strategy and international cooperation. However, the type of combat strategy required differs from country to country due to accompanying problems such as: a country’s insufficient legislative framework, limited capacity and insufficiency of the police force in terms of personnel, budget, and substructure, lack of coordination among the responsible institutions, insufficient numbers of contact persons for international combat purposes, and lack of qualified or educated personnel.

To improve the ability to combat the problem of organized crimes; international institutions and organizations are carrying out considerable research in order to guide, support and assist in capacity building of the enforcement system of various countries.

The Anti-Organized Crime and Law Enforcement Unit within the AntiTrafficking Section of UNODC provides technical assistance to the law enforcement agencies of the member states in order to help them enhance their capacity in the area struggle against drug trafficking and organized crime. To this end, the Unit has organized and oversaw many anti-organized crime and counter-narcotics projects. The AntiOrganized Crime and Law Enforcement Unit analyzes the Annual Report Questionnaires that are submitted by Member States and prepares regular reports. UNODC benefits from these reports to pinpoint trends global drug trafficking and to make future forecasts for effective strategies.

In accordance with UNODC Strategy 2025<sup>7</sup>, Member states pledged to Strengthen cooperation between criminal justice systems and other sectors of government and civil society to effectively

---

<sup>7</sup> United Nations Office on Drugs and Crime, *Strategy 2025: Making the World Safer from Crime, Drugs and Terrorism* (2020), <https://www.unodc.org/unodc/en/strategy/strategy2025.html> (last visited Aug. 20, 2024).

prevent and respond to violence and crime and reduce vulnerabilities. It can be drawn from the said pledge that the civil society too has to play a major role when it comes to prevention of crime. It is also to be noted that civil society organizations in general have played a very important role in acting as a helping hand to both the society and governments across the globe. Hence the delegates are also advised to explore in detail this very aspect of civil society participation during the committee sessions and come up with suggestions and debate upon the ways in which the role of civil society organizations can be enhanced through capacity building to combat the problem of transnational organised crime. It is important in this regard to acknowledge UNODC Civil Society Team which facilitates, active and meaningful participation of civil society in intergovernmental sessions of the CCPCJ, the UN Congress on Crime Prevention and Criminal Justice<sup>8</sup>, and the Conference of the Parties to UNTOC.

Through projects “Stakeholder Engagement for the United Nations Convention against transnational organised Crime (UNTOC), its Review Mechanism and Related Activities” and “Public-private partnerships: Fostering engagement with the private sector on the implementation of the UN Convention against transnational organised Crime (UNTOC) and its Trafficking in Persons Protocol”, UNODC Civil Society Team works to prepare and improve effective partnerships between NGOs, academia and private sector with a view to supporting Member States in a successful implementation of the UNTOC and constructive engagement in the Review Mechanism in line with UNTOC COP Resolution 9/1<sup>9</sup>.

In 2019 the UNODC Civil Society Unit launched a project Stakeholder Engagement for the Implementation of the UN Convention against transnational organised Crime (UNTOC), “SE4U” in short. The project fosters collaboration between governments and non-governmental stakeholders through training, information sharing<sup>10</sup>, dialogue at the international level, and national engagement opportunities. One of the main key components of the SE4U project is its focus on training. The project facilitates capacity-building initiatives designed to enhance the capabilities of both governmental and non-governmental stakeholders in implementing the UNTOC framework. Training programs cover a wide range of topics, including legal and technical aspects of combating transnational organized crime, best practices for information

---

<sup>8</sup> UNODC Congress on Crime Prevention and Criminal Justice, <https://www.unodc.org/unodc/en/crimecongress/about.html> (last visited Aug. 20, 2024).

<sup>9</sup> UNCCPCJ Resolution 9/1, Establishment of the Mechanism for the Review of the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto (Apr. 27, 2000).

<sup>10</sup> This aspect of the project is vital for overcoming the fragmentation often seen in international crime-fighting efforts. Authors are of the view that effective information sharing leads to more coordinated and strategic responses to criminal activities, leveraging the expertise and resources of various actors, (UNODC, Stakeholder Engagement for the Implementation of the UN Convention Against Transnational Organized Crime, <https://www.unodc.org/unodc/en/organized-crime/SE4U.html> (last visited Aug. 20, 2024)).

sharing, and strategies for effective stakeholder engagement

While it is necessary to focus on capacity building of civil society organizations, the need for capacity building with respect to developing and least developed states and their law enforcements systems must remain a priority. This is where the United Nations crime prevention and criminal justice programme comes into picture and specifically covers the aspect of technical cooperation capacity.

### **III. CONCLUSION**

The global community faces a formidable challenge in the form of transnational organized crime. This menace, manifesting in various insidious forms such as drug trafficking, human trafficking, arms smuggling, and money laundering, poses grave threats to national security, economic stability, and the rule of law. To effectively combat these transnational criminal enterprises, a robust framework of international cooperation is imperative.

The UNCCPCJ should emphasize the importance of striking a balance between security measures and safeguarding individual rights. The gray area to explore remains on the monitoring mechanisms established to ensure that member states' efforts remain within the boundaries of international human rights norms and principles. This includes tracking illicit financial flows, freezing and confiscating criminal assets, and cooperating with international financial institutions to prevent money laundering and corruption. Delegates are expected to have a thorough understanding of the same.

An often overlooked dimension of transnational organised crime is its impact on victims. A comprehensive strategy should prioritize victim-centric approaches, ensuring access to justice, protection, and support for victims.

The UNCCPCJ can champion the creation of victim assistance funds, along with specialized tribunals or courts to address their grievances. Simultaneously, addressing the socioeconomic root causes of TOC is crucial.

Initiatives for, including but not limited to poverty alleviation, education, and community development are known to undercut the appeal of criminal enterprises.

States must act in concert, sharing responsibilities and adhering to the principles enshrined in international law. Law enforcement agencies worldwide must collaborate seamlessly, exchanging information and coordinating their efforts to dismantle these criminal networks. Mutual legal assistance and extradition treaties should be expeditiously implemented to bring perpetrators to justice and confiscate illicit proceeds.

It is equally vital to recognize the inextricable link between the rule of law and development. By strengthening legal frameworks and institutions, nations can foster environments conducive to sustainable growth, human rights protection, and good governance. These endeavors are intrinsically connected to the broader goals of the international community as outlined in the 2030 Agenda for Sustainable Development.

While progress has been made, particularly through the efforts of the United Nations Office on Drugs and Crime, the evolving nature of transnational organized crime demands a continuous and adaptive response. Governments, intergovernmental organizations, and civil society must work in tandem to develop innovative strategies, share best practices, and allocate adequate resources to this pressing global issue.

Ultimately, the eradication of transnational organized crime requires a comprehensive and concerted global effort. By reinforcing international cooperation, strengthening the rule of law, and fostering a culture of accountability, the world can aspire to a future free from the scourge of these illicit activities.

\*\*\*\*\*