

A Study on Transnational Organised Crime

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Abstract: *This article discusses transnational organized crimes. Transnational organised crimes are always transnational border offenses. Some of the best examples are migrant trafficking, child and women trafficking, illicit arms trafficking, using women and children for the pornography and more. The word trafficking means illicit transportation of victims. Trading refers to buying and selling. These organized crimes are serious in nature and affect many countries. UNODC have introduced conventions and protocol to control, prevent and prohibit these crimes. These conventions and protocols are explained in detail in this paper. This is a doctrinal and non_ empirical study.*

Keywords: transnational organized crimes.

I. INTRODUCTION

Transnational Organized Crime is organised crime that is coordinated across national borders, involving groups or marketplaces of individuals who plan and execute unlawful economic endeavours in more than one country. These criminal organizations employ systematic violence and corruption to attain their objectives. Drug trafficking, arms trafficking, sex trafficking, toxic waste disposal, materials theft, and poaching are all examples of transnational organized crime.

The United Nations Convention against Transnational Organized Crime (UNTOC, often known as the Palermo Convention) is a multinational treaty against transnational organized crime that was established by the United Nations in 2000. Some of the Transnational crimes against humans are human trafficking, enslavement, servitude, sale of children, child prostitution, child pornography, sex trade, organ trafficking.

II. DEFINITION OF TRANSNATIONAL ORGANISED CRIME UNDER UNDOC

The Convention does contain a definition of 'organized criminal group'. In **Article 2(a)**:

- a group of three or more persons that was not randomly formed;
- existing for a period of time;
- acting in concert with the aim of committing at least one crime punishable by at least four years' incarceration;
- in order to obtain, directly or indirectly, a financial or other material benefit.

The UNTOC covers only crimes that are 'transnational', a term cast broadly. The term covers not only offences committed in more than one State, but also those that take place in one State but are planned or controlled in another. Also included are crimes in one State committed by groups that operate in more than one State, and crimes committed in one State that has substantial effects in another State.

The implied definition 'transnational organized crime' then encompasses virtually all profit-motivated serious criminal activities with international implications. This broad definition takes account of the global complexity of the issue and allows cooperation on the widest possible range of common concerns.

The United Nations Convention against Transnational Organized Crime,2000.

Enacted in the year 2000 and came into force on September 29, 2003. This is the most important international tool to fight against transnational organized crime. The widespread trafficking and violence related with illegal narcotics are dangerous and affect security, sovereignty, human rights, and development. Hence the United Nations combined

UNODC and UNTOC and formed the **United Nations Office on Drugs and Crime (UNODC)** in 1977 to tackle drug trafficking.

Transnational crime and terrorism was earlier considered as individual and domestic responsibility by most of the countries. The increased crime, threat and aggression paved the way for establishment of UNTOC. UNTOC, 2000 makes the member states aware that these crimes can be controlled by **coordination, co-operation and mutual legal assistance**.

The UNTOC has three supplementary protocols (Palermo protocols) namely:

- **The Protocol to Prevent, Suppress, and Punish Human Trafficking, Especially of Women and Children** came into effect on December 25, 2003. It is the first legally enforceable worldwide agreement with an agreed-upon definition of human trafficking.
- **The Protocol Against Migrant Smuggling by Land, Sea, and Air**, came into effect on January 28, 2004. It addresses the rising problem of organized criminal gangs smuggling migrants, often at tremendous risk to the migrants and great profit to the criminals.
- **Protocol Against the Illicit Manufacturing and Trafficking in Firearms.**

By signing this convention the member states agrees to combat these crimes by adopting such offenses in domestic law and enforcing **broad and new extradition mechanisms**. Further, the countries also shall provide legal assistance, legal enforcements and necessary capacity for national authorities.

The UNTOC is the main legal international instrument to fight organized crime, but its efficiency depends on each member's ability to implement the organization's framework.

PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING OF PERSONS (ESPECIALLY WOMEN AND CHILDREN), 2000.

1. This protocol is the worldwide enforceable protocol that has all nationals agreed **definition** on human trafficking.

Article 3 — Use of terms

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age

2. The aim of this definition is to aid the states for the formulation of domestic criminal offenses that effectively supports international prosecution and investigation of human trafficking cases.
3. Another objective of this protocol is to assist and **help victims** of trafficking whose human rights have been violated.
4. The protocol will be implemented by the United Nations Office on Drugs and Crime (UNODC). It assists states with formulating laws, developing comprehensive national anti-trafficking policies, and providing resources to put them in place.
5. The signatories of this protocol are bound to combat trafficking, help and protect victims and providing appropriate cooperation.
6. 4 chapters and 19 articles.

Protocol against the smuggling of migrants by land, sea, and air

- In 2000, the United Nations General Assembly passed the Protocol against the Smuggling of Migrants by Land, Sea, and Air, which supplements the Convention against Transnational Organized Crime. It is also called the **Smuggling Protocol**.
- It addresses the rising problem of organized criminal gangs smuggling migrants, who are often a tremendous risk to the migrants and the migrants act as a great profit to the criminals. A notable accomplishment of the Protocol was the development and agreement on a definition of migrant smuggling for the first time in a global intergovernmental treaty.
- The Protocol strives to prevent and combat migrant smuggling, as well as promote collaboration among States Parties, all while safeguarding the rights of smuggled migrants and preventing the worst forms of exploitation that are common in the smuggling process.
- States Parties who have ratified the Protocol must ensure that migrant smuggling (also known as people smuggling) is criminalized in conformity with the Protocol's requirements and those of the Convention on Transnational Organized Crime.
- People smuggling, unlike human trafficking, is defined by buyer and smuggler permission – a contractual transaction that normally ends upon arrival at the destination site. Smuggling scenarios can, however, devolve into conditions that are best defined as severe human rights violations, with smuggled people facing intimidation, abuse, exploitation, torture, and even death at the hands of smugglers.
- The **International Organization for Migration (IOM)** welcomed this protocol of the Palermo Convention a month after it was adopted. The IOM has taken particular note of the Protocol's emphasis on the need to treat migrants humanely and the necessity for comprehensive international methods to fighting smuggling, including socio-economic measures that address the core causes of migration. Many of the IOM's actions have played a significant role in implementing the protocol.

INTERNATIONAL PROTOCOLS IN RELATION WITH HUMAN TRAFFICKING

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also referred to as the Trafficking Protocol or UN TIP Protocol) is a protocol to the United Nations Convention Against Transnational Organized Crime. It is one of the three Palermo protocols, the others being the Protocol Against the Smuggling of Migrants by Land, Sea and Air and the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime

Type Organized crime; international criminal law Drafted 15 Nov 2000 Signed 12 Dec 2000 Location New York City, United States Effective 25 Dec 2003 Condition 40 ratifications Signatories 117 Parties 180 Depositary Secretary-General of the United Nations Languages Arabic, Chinese, English, French, Russian, and Spanish. The protocol was adopted by the United Nations General Assembly in 2000 and entered into force on 25 December 2003. As of November 2022, it has been ratified by 180 parties.

The United Nations Office on Drugs and Crime (UNODC) is responsible for implementing the protocol. It offers practical help to states with drafting laws, creating comprehensive national anti-trafficking strategies, and assisting with resources to implement them. In March 2009, UNODC launched the Blue Heart Campaign to fight human trafficking, to raise awareness, and to encourage involvement and inspire action.

The protocol commits ratifying states to prevent and combat trafficking in persons, protecting and assisting victims of trafficking and promoting cooperation among states in order to meet those objectives.

Contents of this protocol

The protocol covers the following:

- Defining the crime of trafficking in human beings; To be considered trafficking in persons, a situation must meet three conditions: act (i.e., recruitment), means (i.e., through the use of force or deception) and purpose (i.e., for the purpose of forced labour)
- "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs... The consent of a victim of trafficking in persons to the intended exploitation set forth [above] shall be irrelevant where any of the means set forth [above] have been used.
- Facilitating the return and acceptance of children who have been victims of cross-border trafficking, with due regard to their safety
- Prohibiting the trafficking of children (which is defined as being a person under 18 years of age) for purposes of commercial sexual exploitation of children (CSEC), exploitative labour practices, or the removal of body parts
- Suspending parental rights of parents, caregivers, or any other persons who have parental rights in respect of a child should they be found to have trafficked a child
- Ensuring that definitions of trafficking reflect the need for special safeguards and care for children, including appropriate legal protection
- Ensuring that trafficked persons are not punished for any offences or activities related to their having been trafficked, such as prostitution and immigration violations
- Ensuring that victims of trafficking are protected from deportation or return where there are reasonable grounds to suspect that such return would represent a significant security risk to the trafficked person or their family
- Considering temporary or permanent residence in countries of transit or destination for trafficking victims in exchange for testimony against alleged traffickers, or on humanitarian and compassionate grounds
- Providing for proportional criminal penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offenses involving trafficking in children or offenses committed or involving complicity by state officials
- Providing for the confiscation of the instruments and proceeds of trafficking and related offenses to be used for the benefit of trafficked persons
- The convention and the protocol obligate ratifying states to introduce national trafficking legislation.

PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA, AND AIR.

The Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organised Crime, was adopted by the United Nations General Assembly in 2000. It is also referred to as the Smuggling Protocol. It is one of the three Palermo protocols, the others being the Protocol to Prevent, Suppress and

Punish Trafficking in Persons, especially Women and Children and the Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition.

The Smuggling Protocol entered into force on 28 January 2004. As of October 2022, the protocol has been signed by 112 parties and ratified by 151.

The Protocol is aimed at the protection of rights of migrants and the reduction of the power and influence of organized criminal groups that abuse migrants. It emphasizes the need to provide migrants with humane treatment, and the need for comprehensive international approaches to combating people smuggling, including socio-economic measures that address the root causes of migration.

The Protocol requires States Parties that have ratified to ensure that migrant smuggling (also called people smuggling) is criminalised in accordance with its terms, and those set out in the Convention on Transnational Organized Crime.

Given the current political priority around people smuggling, it is perhaps surprising that a concerted international focus on defining and responding to migrant smuggling only occurred in the 1990s. This focus followed sharp rises in irregular migration to the United States, and to Europe in the 1980s and 90s. A focus on those who facilitate irregular migration - rather than migrants themselves - was seen as a critical element of any response. The resulting legal framework was the Protocol against the Smuggling of Migrants by Land, Sea and Air (Migrant Smuggling Protocol), that supplements the parent instrument, the United Nations Convention against Transnational Organized Crime.

The Migrant Smuggling Protocol does not provide a complete or self-contained legal regime but instead exists as part of a "dense web of rights, obligations and responsibilities drawn not just from the Protocol and Convention but also from the law of the sea, human rights law, and refugee law.

Unlike human trafficking, people smuggling is characterized by the consent between customer and smuggler - a contractual agreement that typically terminates upon arrival in the destination location. However, smuggling situations can nonetheless in reality descend into situations that can best be described as extreme human rights abuses, with smuggled migrants subject to threats, abuse, exploitation and torture, and even death at the hands of smugglers.

INTERNATIONAL ORGANISATION FOR MIGRATION

Established in 1951, IOM is the leading **intergovernmental organization** in the field of migration and works closely with governmental, intergovernmental and non-governmental partners. With 175 member states, a further 8 states holding observer status and offices in over 100 countries, IOM is dedicated to promoting humane and orderly migration for the benefit of all. It does so by providing services and advice to governments and migrants.

IOM works to help ensure the orderly and humane management of migration to promote international cooperation on migration issues, to assist in the search for practical solutions to migration problems and to provide humanitarian assistance to migrants in need, including refugees and internally displaced people.

The IOM Constitution recognizes the link between migration and economic, social and cultural development, as well as to the right of freedom of movement.

IOM works in the four broad areas of migration management:

- Migration and development
- Facilitating migration
- Regulating migration
- Forced migration.

IOM activities that cut across these areas include the promotion of international migration law, policy debate and guidance, protection of migrants' rights, migration health and the gender dimension of migration.

TRAFFICKING IN PERSONS FOR THE PURPOSE OF REMOVAL OF ORGANS

This toolkit deals with trafficking in persons for the purpose of organ removal, as defined by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, (Trafficking in Persons Protocol), supplementing the United Nations Convention against Transnational Organized Crime (Organized Crime Convention).

Terms like 'organ trafficking', 'illegal organ trade', 'transplant tourism', 'organ purchase' and others are often used interchangeably with trafficking in persons for the purpose of organ removal, even where they would not refer to the

same phenomenon. Any conduct described by such terms will only be within the scope of this toolkit, if it meets the definition provided by the Trafficking in Persons Protocol.

According to Article 3(a) of the Trafficking in Persons Protocol ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.

Trafficking in persons for the purpose of organ removal is not a new phenomenon. Over the years, the crime has received significant attention from media, NGOs, academia and also from international and regional actors such as the Special Rapporteur on trafficking in persons, especially in women and children and the Special Representative and Co-ordinator for Combating Trafficking in Human Being Organisation for Security and Co-operation in Europe. The issue was also taken up at the UN Economic and Social Council and the General Assembly, which, e.g., in 2013 adopted resolutions that inter alia request UNODC to collect and analyze information on trafficking in persons for organ removal and encourage Member States to provide to UNODC evidence-based data on patterns, forms and flows of trafficking in persons, including for the purpose of the removal of organs respectively.

This toolkit aims to provide both a general overview of trafficking in persons for the purpose of organ removal and specific tools to assist concerned actors with assessing the phenomenon. The structure of the toolkit reflects this two-pronged approach in that its first part seeks to inform about the context in which trafficking in persons for organ removal can take place, the relevant legislative framework and international guidance, actors and modi operandi as well as good practice responses. The second part has very specific questionnaires that aim to allow for a better understanding of and a more systematic collection of data on the crime.

CoE Convention against Trafficking in Human Organs. This is, currently, the most notable standard-setting instrument to prevent and combat trafficking in human organs by providing for the criminalization of related acts, protecting the rights of victims and facilitating national and international cooperation on the issue. “Trafficking in organs” covers a range of illicit practices associated with the removal of organs from living or deceased donors including:

- (i) Removal of organs without free, informed and specific consent;
- (ii) Removal of organs for financial gain or comparable advantage;
- (iii) Implantation or other use of illicitly removed organs;
- (iv) Preparation, preservation, storage, transportation, transfer, receipt, import and export of such illicitly removed organs;
- (v) Illicit solicitation or recruitment of organ donors or recipients; and
- (vi) Offering and requesting of undue advantages to or by healthcare professionals or officials with a view to performing or facilitating such removal or implantation and other use.
- vii) Attempting to commit or aiding or abetting the commission of any of these criminal acts.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY.

The Protocol was adopted by the **United Nations General Assembly in 2000 and entered into force on 18 January 2002.** As of October 2022, 178 states are party to the protocol.

According to the preamble, the protocol is intended to achieve the purposes of certain articles in the Convention on the Rights of the Child, where the rights are defined with the provision that parties should take "appropriate measures" to protect them. Article 1 of the protocol requires parties to **protect the rights and interests of child victims of trafficking, child prostitution and child pornography, child labour and especially the worst forms of child labour.**

The remaining articles in the protocol outline the standards for international law enforcement covering diverse issues such as jurisdictional factors, extradition, mutual assistance in investigations, criminal or extradition proceedings and seizure and confiscation of assets as well. It also obliges parties to pass laws within their own territories against these practices "punishable by appropriate penalties that take into account their grave nature."

Definitions

The Protocol requires parties to prohibit the sale of children, child prostitution and child pornography. Article 2 defines the prohibition:

Sale of children – Any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.

Child prostitution – Use of a child in sexual activities for remuneration or any other form of consideration.

Child pornography – Any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

The Convention generally defines a child as any human being under the age of 18, unless an earlier age of majority is recognized by a country's law.

CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN PERSONS AND OF THE EXPLOITATION OF THE PROSTITUTION OF OTHERS.

This protocol came into force on 25 July 1951, consisting of 28 Articles. The aim of this protocol is to punish any person who, to gratify the passions of another Procure, entices or leads away, for purposes of prostitution, another person, even with the consent of that person and Exploits the prostitution of another person, even with the consent of that person.(article1)

Article 9 states that:

In States where the extradition of nationals is not permitted by law, nationals who have returned to their own State after the commission abroad of any of the offences referred to in articles 1 and 2 of the present Convention shall be prosecuted in and punished by the courts of their own State. This provision shall not apply if, in a similar case between the Parties to the present Convention, the extradition of an alien cannot be granted.

Preamble of this protocol: Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community, Whereas, with respect to the suppression of the traffic in women and children, the following international instruments are in force:

International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic, as amended by the Protocol approved by the General Assembly of the United Nations on 3 December 1948.

International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, as amended by the above-mentioned Protocol.

International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947.

International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age, as amended by the aforesaid Protocol.

Whereas the League of Nations in 1937 prepared a draft Convention extending the scope of the above-mentioned instruments, and Whereas developments since 1937 make feasible the conclusion of a convention consolidating the above-mentioned instruments and embodying the substance of the 1937 draft Convention as well as desirable alterations.

ROLE OF INTERPOL

Sexual abuse and exploitation, trafficking, forced labour and abduction: these are just some of the dangers faced by children around the world today. At INTERPOL, we work to address those crimes that have an international dimension. To help trace missing children, we issue Yellow Notices, while our human trafficking experts work alongside member countries to rescue child victims of trafficking and forced labour.

Sexual abuse and exploitation

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DOI: 10.48175/568



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The global reach and anonymity of the Internet have greatly facilitated the distribution of child sexual abuse material, and access to it. Offenders can now produce, exchange and even direct live video of children – even babies - being abused. They can also come into direct contact with children via social networks and chat functions in games or apps.

The priority of our Crimes Against Children unit is to:

identify and rescue young victims of sexual abuse;

block access to child sexual abuse material;

prevent sex offenders from traveling abroad to abuse children or escape justice.

SLAVERY AND SERVITUDE

Slavery convention signed on 1926

II. CONCLUSION

The tale of how the UNTOC was negotiated is one of triumph against adversity. The necessity to combat organized crime was elevated to the top of the worldwide political agenda, and tangible actions were implemented as a result of the efforts of individuals engaged. It undoubtedly established a framework of legal measures that have been incorporated into national legislation, as well as international cooperation provisions that have been used to pursue organized crime figures.

The UNTOC is a vast, inventive, and forward-thinking legal document that includes provisions for video testimony for witnesses, long before the COVID crisis prompted widespread usage of video conferencing. It's adaptable enough to new and evolving crimes, as well as criminal gang behaviour. The three additional Protocols have also raised the profile of the concerns and enhanced international efforts to combat them, particularly in the case of human trafficking. However, sufficient comprehensive information has not been gathered or analysed in this regard.

Over the last two decades, transnational organized crime has emerged as a major threat to global security, with clear ties to international terrorism. In light of this, India attaches considerable importance to the Convention and Protocols, hoping that their entrance into force will reflect worldwide resolve to combat the global and cross-border scourge of terrorism.

By taking this important step, the government has demonstrated its commitment to the Convention's object and purpose, as well as our desire to join as Parties to this comprehensive global instrument that addresses a wide range of illegal activities, advocating international and national action to combat money laundering, illegal firearms sales, smuggling, and trafficking.