

RESEARCH

# Fulfilling the Promise of Palermo? A Political History of the UN Convention Against Transnational Organized Crime

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UNTOC created a legally binding instrument governing international cooperation between law enforcement and judicial authorities to share evidence and pursue international criminal actors, and a framework for countries to update their legislation to be better able to investigate and prosecute such criminals. Its impact as a step-change in the legal framework against transnational organized crime is widely acknowledged. The paper highlights that the UNTOC did in fact bring those anti-drug and anti-crime efforts at the UN closer together, in spite of their different histories and personnel. However, the disparity between the political momentum and achievements of the late 1990s, compared to the Convention's journey since its entry into force in 2003 is stark. Further, the level of coordination amongst all UN processes on drugs and crime issues still leave significant room for improvement. This paper analyses the political history of UNTOC, using an array of newly conducted in-depth interviews with key protagonists to understand their views on its development, subsequent implementation and potential future promise. The paper offers some suggestions on how the international community can move forward its collective efforts on achieving the Convention's aims and thereby fulfilling the promises made in Palermo.

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**Keywords:** organized crime; UN; civil society; multilateral; politics

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## Introduction

2020 marks the 20th anniversary of the signing of the UN Convention Against Transnational Organized Crime (UNTOC). The signing ceremony took place in Palermo, Sicily, the heartland of the Italian Cosa Nostra and the home city of the anti-mafia prosecutor Giovanni Falcone. Falcone was assassinated by organized crime in Palermo in May 1992, only one month after representing Italy at the first ever session of the UN Commission on Crime Prevention and Criminal Justice (CCPCJ) in Vienna. Falcone, along with contemporaries in the Italian and American law enforcement and criminal justice communities, is credited with laying the strategic and intellectual foundations of international cooperation against organized crime, of which the Convention is now the near-universal legally binding framework.

This paper tells the rich history of the UNTOC through a mixture of interviews, literature review, as well as use of official UN documents and archival sources. The interviews conducted for this research represent a novel and compelling addition to policy discussions and the limited academic research available on the topic. The official *Travaux Préparatoires* of the negotiations provide a comprehensive history of the official meetings and decisions that paved the way for the Convention, and provide background on the negotiation positions that were provided by Member States throughout the process. Vlassis provides succinct analysis of how the Convention came into being from his viewpoint within the Secretariat dealing with the negotiation of the UNTOC (Vlassis 2002). Elsewhere Clark places the UNTOC within the historical evolution of legislation and policy against organized crime, providing a legally focussed perspective (Clark 2004). Boister looks at how much and how effectively the instrument is actually being used by law enforcement and criminal justice authorities and practitioners (Boister 2016a). Maclean's commentary on the Convention

provides the in-depth focus on the provisions of the Convention (McClellan 2007). However, the political story of the Convention is missing, as well as how that linked into wider geo-politics and what role specific individuals played in the big moments that led to the Convention's elaboration.

For this paper, the author conducted a broad literature review of UNTOC and surrounding multilateral debates. This was then furthered by extensive primary source research based on publicly available UN documents and interviews with key participants. The oral history presented herein is a new and novel historical-political analysis that sheds much needed light on a largely overlooked area of multilateral cooperation as well as a vital case history in the development of transnational responses to organized crime. These include interviews with some of the leading experts on the UNTOC and its elaboration. The author also took part as a national delegate in three UNTOC Conferences of Parties, including negotiating the Review Mechanism as part of the UK delegation.

Over 30 years have passed since a transnational organized crime (TOC) convention was first suggested. This paper aims to expand our understanding of the legal framework with which Member States now deal, and thereby concepts such as its object and purpose. To do so it is important to understand the complex interplay of people, politics, and policy that created UNTOC. This will ensure it is not understood simply through current political debates and structures, but has a grounding in its historical foundation and overarching ideals.

The paper points to key insights from the history of UNTOC. In particular, that its originators were extremely focussed on the threat that organized crime poses to security, sovereignty, human rights and development. They thereby collaborated to create a new response to those threats within the context of the political and geopolitical space available to them. Decades on, these threats remain and indeed by many measures grow stronger, despite the advances made by the Convention. The paper will highlight how the convention was in many ways a product of favourable multilateral conditions in the 1990s, while the Review Mechanism was in too many ways a victim of unfavourable multilateral and geopolitical conditions in the 2000s.

Further, this study points to the complex role of UN institutional politics. Through its extensive interviews with diplomats and UN officials, past and present, it highlights the political idiosyncrasies of the UNTOC's development and its relation to other treaty systems and regimes, for example the UN drug control system and the UN Convention Against Corruption (UNCAC). It highlights that the disparity between the political momentum and achievements of the late 1990s, compared to the Convention's journey since its entry into force in 2003 is stark. This paper proceeds to make suggestions on how the international community can move forward its collective efforts on achieving the Convention's aims and thereby fulfilling the promises made in Palermo.

### ***Background to the Convention***

It was not inevitable that the international community would conclude a legally binding UN convention on transnational organized crime. As an issue it had only begun to be discussed in relevant international fora in 1975 (Bassiouni & Vetere 1998). By the mid-1990s, there was a growing recognition of the all-pervasive threat to security and sovereignty that organized crime posed, and the idea of a Convention had been discussed in intergovernmental meetings. However, even when the 1994 World Ministerial Conference on Organized Transnational Crime convened in Naples, the delegates could not agree on the need for a new convention (United Nations 1995a). The idea was merely listed as one of the options that the international community should pursue. However, despite initial widespread scepticism in the Western world, pressure for multilateral action was growing, powered by the two countries with the most deeply ingrained history of fighting organized crime and cooperating internationally to do so – Italy and the USA. Italy actively promoted the concept, and once the process began, the USA swung behind it and ensured it was shaped around their preferences. However, for reasons that will be explored in this paper, it was the Government of Poland who made the key step of presenting a draft framework convention to the United Nations General Assembly (UNGA), which later approved the time-limited negotiation process which gave birth to the Convention.

The Convention took shape in a period of relatively fruitful multilateral cooperation. The end of the Cold War and the era of multilateral cooperation that this inaugurated offered hope that the UN and other bodies could work to address major international issues. For example, the UN embarked on its 'Agenda for Peace' as a way of coalescing its mission post-Cold War to an era of peacebuilding (UN 1992). The 1990s also saw the reshaping of many countries, societies, cultures, ideologies, and economies. It also proved fertile ground for organized criminals who took advantage of opening markets, borders, and societies. With bipolar conflict receding, meanwhile, the USA looked to organized crime as a focus for its foreign policy. USA President Bill Clinton was vocal in encouraging international action against organized crime, including on two occasions at the UN General Assembly (State Department 1995, 1994). USA Presidential Decision Directive NCS-42 declared,

No nation alone can effectively battle these supra-national criminal cartels. They seek as sanctuaries and as targets those nations whose laws or enforcement make them most vulnerable. To counter these forces United States must cooperate with, assist and encourage other nations to join in a unified effort (Clinton Administration 1995).

Although Clinton stopped short of calling for a new international convention, by the end of 1998, two years after the presentation of a draft Convention by the Polish President, the UN General Assembly had established a committee to draft the new UN Convention. Over the next two years, the Committee, under the Chairmanship of the Italian diplomat Luigi Lauriola, completed its elaboration of the Convention. Negotiations overcame, or glossed over, exceedingly difficult issues on definitions, types of crime, and discrepancies between common and civil law systems. The convention was the first legally binding framework to be produced under the auspices of the UN Crime Programme. This was notwithstanding the very relevant and related conventions coming from other parts of the UN, notably the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (United Nations 1988).

Prior to this, work under the Commission on Crime Prevention and Criminal Justice (CCPCJ), its predecessor UN Committee on Crime Prevention and Control, and the UN Crime Congresses, had produced only soft law – guidelines, model laws, and rules on both domestic and transnational issues and responses (UNODC 2006). With the UNTOC, the UN had a legally binding instrument governing international cooperation between law enforcement and judicial authorities to share evidence and pursue international criminal actors, and a framework for countries to update their legislation to be better able to investigate and prosecute such criminals. Its impact as a step-change in the legal framework against transnational organized crime is widely acknowledged (Felsen & Kalaitzidis 2005). Specifically, the Convention:

- (a) defines and standardizes certain terms that are used with different meanings in various countries and circles – ‘organized criminal groups’, ‘transnational’, and certain other terms
- (b) requires states to establish specific offences as crimes
- (c) requires the introduction of specific control measures, such as protection of victims and witnesses
- (d) provides for the forfeiture of the proceeds of crime
- (e) promotes international cooperation, for example through extradition, legal assistance, and joint investigations
- (f) provides for training, research, and information-sharing measures
- (g) encourages preventive policies and measures
- (h) contains technical provisions, such as for signature and ratification

The Legislative Guide also notes that the provisions of the Convention and the Protocols thereto ‘do not all have the same level of obligation’, meaning that some are mandatory, some must be considered by states, and some are optional. It also notes that the Convention was ‘drafted for general purposes’ meaning its wording should be applied to national legal frameworks and circumstances. The Convention does not define transnational organized crime, or organized crime, but does define an ‘organized criminal group’, and a ‘serious crime’, allowing both criminal groups and certain types of crime to be targeted through the implementation of the Convention (UNODC 2004).

### ***From Design to Implementation***

Today, UNTOC has 190 parties, making it an almost universally ratified legal instrument, with its supplementary protocols also achieving high levels of participation. The Trafficking in Persons Protocol has 178 parties, the Smuggling of Migrants Protocol has 149, and the Trafficking in Firearms Protocol has 118. The widespread ratification seems to paint a picture of universality and success. Some had high hopes for what it would achieve, whilst delegates interviewed for this paper recall a sense of realism due to the compromises that had been made. Following the Convention’s adoption, it was not long before cracks began to show, manifested by difficulties in measuring implementation. Addressing the General Assembly in 2000, Ambassador Lauriola cautioned,

The dangers posed by organized crime to the individual citizen and to the international community have rightly risen to the top of the agenda. The first steps have been taken, but we still have a long way to go (Lauriola 2000).

The Convention entered into force in 2003, but it took until 2018 for an Implementation Review Mechanism to be adopted by its parties. That mechanism was launched at the bi-annual Conference of Parties (COP) in 2020 and will be fully operational in 2021. As such, there has been no effective way of measuring and improving implementation, despite early attempts by the UN Secretariat, on the mandate of the COP, to gather information through questionnaires. The COP itself does have a role in discussing implementation, but no systematic way of gathering and disseminating relevant findings. By 2006, Antonio Maria Costa, the Executive Director of the UN Office on Drugs and Crime (the guardian body of the Convention) was already criticising the lack of monitoring and implementation:

The political priority accorded to the Convention and the Protocols is waning. ... Allowing the political priority of the full and effective implementation of these instruments to slip further will have dire consequences for all countries regardless of their level of development. ... It is a matter of seriousness of attitude and credibility of political pronouncements (Costa 2006).

Costa continued these criticisms until the end of his term in 2010, even briefing the UN Security Council on 'patchy' implementation and 'neglect'. This view was reiterated by the then-Secretary General of the UN, Ban Ki-Moon, who at the same meeting called on Member States to 'sharpen' the Convention (UNSC 2010). Costa's successor, Yury Fedotov, initially continued Costa's criticisms. At the 2010 COP, he warned,

...the threat that organized crime poses to international security and development has ballooned to global proportions... The Convention is a powerful tool, but it remains underutilized. [...] To date, we know of only 19 of the 157 States Parties having used the Convention to facilitate international cooperation, including extradition, to fight organized criminal groups (Fedotov 2010).

In 2012, the parties again failed to agree a review mechanism, a development that Fedotov described as 'deplorable' (Fedotov 2012). States finally agreed a review mechanism in 2018. However, as will be discussed below, speed proved glacial while significant compromises bring into doubt its usefulness as a means to measure implementation (Tennant 2019). In the meantime, there is not enough data being generated to understand implementation and impacts (Boister 2016a). Concurrently, the extent and reach of organized crime continues to expand its pernicious impacts on societies around the world. In short, UNTOC may be widely ratified, but there is not enough evidence to show how widely used it is, or that it has disrupted or deterred organized criminals.

### ***The Convention and Criminals***

The pervasiveness of organized crime's links into business, politics, and society finds uncomfortable echoes in the history of the convention itself. The President of the 1994 Naples Ministerial Conference that paved the way to the Convention was Italian Prime Minister Silvio Berlusconi. During the Conference he was embarrassingly named in a corruption investigation (Cowell 1994). This was only two years after the widespread 'mani pulite' or 'clean hands' investigation had begun to uncover widespread political corruption, providing the opening for the media tycoon Berlusconi to win the 1994 election with his new party 'Forza Italia' (Vannucci 2009). Although not convicted on this occasion, Berlusconi was eventually convicted of tax fraud in 2013 (BBC News 2014).

Perhaps even more troubling for the UNTOC was the 2010 conviction in Palermo of Marcello Dell'Utri for mediating between the Sicilian Mafia and the Milan business elite from 1974–1992 (Deutsche Welle 2014). A close associate of Berlusconi; they worked together to establish Forza Italia, and he ran the advertising for Berlusconi's media empire at the time of the Naples conference in 1994. The uncomfortably close links to criminal actors also permeated the Conference's signing ceremony in Palermo, with allegations that the conference centre built for the ceremony had been built by the mafia (Willan 2000). This highlighted as hubris the claims made at the beginning of the conference by the Executive Director of the UN Drug Control Programme (UNDCP), Pino Arlacchi, that Cosa Nostra was on the verge of defeat (Paoli 2007). His comments earned a public rebuke from the sisters of Giovanni Falcone, who published an open letter to the Italian President in a major Italian newspaper (Paoli 2007), merely cementing an air of controversy around the birth of the Convention. It is worth noting that the Convention does not attempt to address or acknowledge the links and dynamics between organized crime and the state or 'shadow state' (Decoeur 2018; Rose 2020). There is, however, one unwitting support that organized criminals gave to the Convention. According to Gioacchino (Gino) Polimeni, who accompanied Falcone to the first CCPCJ in 1992, the murder of Falcone

by the mafia stiffened the resolve of the Italian system more than ever to ensure that a Convention had to be agreed.<sup>1</sup>

### ***Evaluating the Genesis of the Convention***

The short period in which the Convention was elaborated, negotiated, and adopted was conducive to its successful completion, but it was by no means inevitable. Rather, the completion of the Convention was, in part, built on the foundation of a long evolution of discussion and consensus building in international fora. But public opinion, politics (including geo-politics), and personal interventions and connections before and during the 1990s proved crucial.

Moves made by Italy, the USA and Poland (at different stages) were decisive and enabled the rest of the world to engage and eventually support the Convention. The political impetus was powered forward by the twin engines of the Italian state and its anti-mafia judicial establishment, on the one side, and the USA administration and its law enforcement and judicial community on the other. Both countries had a long experience with mafia infiltration into their economies and societies, and Italy was still suffering from the violent campaign of mafia terrorism against those who threatened its power, culminating in the murder of Falcone. Driven by a common determination to work across borders to tackle common enemies, the operational and political partnership between the USA and Italy on anti-mafia cases was already bearing fruit in the 1980s (FBI 2012). In a ceremony marking the 20th anniversary of the death of Italian judge Falcone, the then-FBI Director Robert Mueller said, of US-Italian cooperation: 'Those friendships have set the standard for global cooperation among law enforcement' (FBI 2012). But the Italians proved more forward-leaning on a Convention than the Americans, who took longer to get behind the idea.

On the international stage, since the fourth UN Crime Congress in Kyoto in 1970, organized crime was recognised as a threat. The fifth Congress in Geneva included the issue as an agenda topic five years later. By the seventh UN Crime Congress, held in Milan in 1985, the international community more clearly recognised the importance of organized crime as a threat, as expressed in the 'Milan Plan of Action' which recommended the launch of a 'major effort to control... and eventually eradicate the destructive phenomenon of ... organized crime', and an entire resolution dedicated to organized crime at the Congress (United Nations 1986).

From then on, UN documents began to reflect the challenge of organized crime. These were taken a step further by an unpublished – 'lost' – UN Committee 'Declaration' of 1990, which was drafted by an expert-constituted (but Government-nominated) UN Committee on Crime Prevention and Control, prior to its abolition and replacement by the CCPCJ. The document was drafted under the Committee's last chairman, Dušan Cotič, who also served as Vice President of Yugoslavia's Supreme Court. Another instrumental figure was Ronald L. Gainer, nominated by the US Government and serving as the US Associate Deputy Attorney General. The lost Committee Declaration highlighted the growing impacts of organized crime, and called for a new Convention to drive the UN's response (Vetere 2012). Its publication was reportedly blocked by the chief of the UN Office in Vienna, Dame Margaret Anstee, on account of its provocative language and the lack of unanimity among Committee members. The lost document was entitled 'World Wide Crime and the Responsibility of the International Community: A Declaration on the End of Complacency' (Vetere 2012). The issues highlighted and proposed remedies deeply resonate with contemporary UN language but were seemingly ahead of their time.

The expert committee's clarion call was not wholly taken up, nor during the following few years, despite the progress made in strengthening the UN Crime Programme and the creation of the CCPCJ (United Nations 1991). The ninth UN Crime Congress in Cairo did in fact adopt a resolution entitled 'International instruments, such as a convention or conventions against organized transnational crime' (United Nations 1995b). It did not commit to a new instrument, but kept the process of consultation moving. Despite this recognition of the threat and need to discuss potential international instruments, there was initially strong scepticism, especially in Western world. Sources interviewed for this paper reported the UK, USA, Belgium, and Canada as particular sceptics, despite apparent enthusiasm of some of their own practitioners and experts. It seemed the Western world was not ready to turn its understanding of the threat of organized crime into concrete multilateral action, and was not willing to support major initiatives at the UN level, which would have required a very high level political will to spend financial and political capital.

Matti Joutsen, a Finnish delegate involved in the key negotiations noted:

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<sup>1</sup> Private discussions.

In the early 1990s the West was very much against the idea of a Convention, which they saw as a waste of resources, and not something that the UN should be getting involved in. Others around the world were also sceptical.<sup>2</sup>

But by the end of the decade rising public awareness made the idea of a Convention more acceptable to key sceptical countries. Ambassador Luigi Lauriola, in his address on the adoption of the Convention by UNGA in 2000, noted,

... it was this emerging political will, driven by newspaper headlines and public opinion, that was the catalyst that gave decisive impulse to the search for a global response... In the final analysis, it was this will that animated our work and forged the good faith of participating states and the talent of their representatives into an instrument able to overcome successive obstacles as they arose (Lauriola 2000).

This view is shared by some of those interviewed for this report. A former lead official on UNTOC in South Africa, Peter Gastrow suggests:

Drug trafficking had begun to take off due to the huge profits involved. Governments were ready for the international implications of tackling such activity, but there were not enough provisions for extradition, Mutual Legal Assistance, etc. There was a realisation that it was not only drugs, but also all kinds of other contraband. Some countries were learning how to deal with it, like USA with RICO. Meanwhile, drug traffickers were growing increasingly powerful. It became clear that a comprehensive instrument was needed due to the internationalisation of organized crime, and the growth in the power of drug smugglers. It became a threat that justified governments to sell the notion to their public that action had to be taken. The idea of a convention became politically feasible.<sup>3</sup>

According to Jean-Paul Laborde, who serviced the Ad-Hoc Committee as part of the UN Secretariat, the growth of organized crime in central and eastern Europe played a role in increasing the public awareness, and therefore momentum:

The Convention came about due to the importance of the mafia in Italy, but also due to the growth of organized crime in Eastern and Central Europe after the fall of the Berlin Wall, which hugely increased opportunities and mobility for organized criminal groups.<sup>4</sup>

Former UN official Ugi Zvejkic iterates this point and highlights the transnational dimensions of their expansion following the fall of the Berlin Wall:

Inspiration came from US and Italian legislation, due to their experience with organized crime. Their experts were dominant in the drafting of the legislation. Developing countries were less interested as organized crime was less well understood and only beginning to emerge in Eastern Europe and Russia. But it soon became clear that Organized Criminal Groups from those regions were invading Europe and the USA, which no doubt increased awareness and pressure on governments to do something.<sup>5</sup>

Antonio Balsamo, an anti-mafia judge from Palermo, notes the importance of Italy's experience.

There was definitely a very strong commitment in the 1990s to tackle organized crime. This was due to the mafia terrorism that was ongoing from the 1970s to the early 1990s, culminating in the Capaci bombing that killed Falcone. The Italian authorities had decided it was no longer possible to co-exist with the mafia. The mafia had become isolated from society, having previously been a key part of Sicilian society. They came to be regarded as pure criminals, and were marginalised. After

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<sup>2</sup> Joutsen, M, Interview by the author, August 2020.

<sup>3</sup> Gastrow, P, Interview by the author, July 2020.

<sup>4</sup> Laborde, J-P, Interview by the author, July 2020.

<sup>5</sup> Zvejkic, U, Interview by the author, July 2020.

Capaci the mafia adopted a so-called submersion strategy, and there was a different atmosphere, and new laws against organized crime were adopted.<sup>6</sup>

The Italian and US legal experiences are widely acknowledged as the inspirations for the Convention. In particular the 1970 Racketeer Influenced and Corruption Organizations Act (RICO) in the USA, and the Italian criminalisation of being part of a mafia-type organization, served as replicable models (Boister 2016b). Furthermore, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the 1988 Convention), the first international legal instrument specifically aimed at Transnational Organized Crime, provided inspiration due to its comprehensive provisions on criminalisation and international cooperation against drug traffickers and money laundering.

### ***The Role of Political Leadership***

Public awareness and political space were growing, and those involved had some models to build on, but political and personal interventions and interactions proved key. Building on Italian leadership in hosting the Naples World Ministerial Conference, the Polish Government took the initiative that kick-started the process through the General Assembly. Włodzimierz Cimoszewicz had served as a Vice Chairman of the Naples World Ministerial Conference in 1994, while also serving as Deputy Prime Minister and Justice Minister of Poland. He went on to serve as Prime Minister of Poland from February 1996 to October 1997. During his brief premiership his Minister of Justice Leszek Kubicki and Minister of Foreign Affairs, Dariusz Rosati, with the support of members of the UN Secretariat in Vienna,<sup>7</sup> submitted a draft framework Convention to the UN General Assembly. This initiated the process which culminated in the adoption of the Convention only four years later. Poland's President, Aleksander Kwasniewski, presented the Convention in his high-level statement to UNGA on 24 September 1996:

Poland is a country that has struggled over centuries for its own freedom and that of others. We have finally achieved well-earned greatness and the benefits of democracy. However, our nation is also paying a heavy toll for those benefits: open frontiers and increased migration of people pose threats to the security and wellbeing of my compatriots. Organized crime distorts the image of democratic societies on a national, regional and global plane. To combat it, we need the solidarity of all States, and a concerted effort by all of us.

[...]

I am convinced that only a worldwide effort under United Nations auspices has any prospect of stopping these crimes, which threaten democratic freedoms and democracy itself. Poland believes, therefore, that the time has come to make a concerted international effort to agree on, and accede to a comprehensive legal instrument: a convention designed to enhance cooperation between States and facilitate the work of law enforcement agencies in fighting transnational organized crime (United Nations 1996).

The General Assembly subsequently began the process of consultation in March 1997 (Vlassis 2002). Arguably, without Cimoszewicz's involvement, further demonstrated by his personal support of the December 1996 International conference on illicit trafficking in stolen vehicles in Warsaw, organized by the UN Crime Prevention and Criminal Justice Division, which he opened as Prime Minister (United Nations 1997), and his short-lived elevation to Prime Minister at a key moment, the Convention might not have come to fruition. Certainly not within the same timeline, and with the same momentum. A French delegation at the 1998 Warsaw meeting even proposed naming the Convention 'The Warsaw Convention', and it was suggested at one point that the signing ceremony should be held in Warsaw rather than Palermo.<sup>8</sup>

Dimitri Vlassis, a key figure throughout the history of the UNTOC, the UNCAC, and the UN Crime Programme more generally, emphasises the importance of the Polish intervention in establishing the ad

<sup>6</sup> Balsamo, A, Interview by the author, July 2020.

<sup>7</sup> Dr Krzysztof Koziół-Poklewski was instrumental in addressing the interest of the UN Secretariat to consider taking up the idea of launching the work on the draft convention by the Polish authorities. Prof. Emil W. Pływaczewski (University of Białystok, Białystok, Poland) was involved in drafting Poland's Ministry of Justice justification of the text originally destined for the consideration of the UN Commission on Crime Prevention and Criminal Justice, but eventually submitted to the General Assembly.

<sup>8</sup> Private conversation with a former member of the UN Secretariat.

hoc committee by the UN General Assembly (United Nations 2000a). This move, he continued, by '[t]he Assembly also lay to rest the uncertainty and uneasiness that surrounded the endeavor by manifesting the collective political will of all States to tackle conceptual and political problems and find commonly acceptable solutions' (Vlassis 2002).

Eduardo Vetere, a key UN Secretariat figure throughout the history of the UNTOC, agrees with the importance of the UNGA resolution,

By the time that the Convention was being negotiated, there was an overwhelming majority in favour of it. Despite the challenging issues and the lack of support from some, the UNGA resolution unusually gave a named chairman and a two-year cut-off point, which gave the negotiations the momentum that they needed. The strong support was also expressed at the intergovernmental workshops held in Buenos Aires, Dakar, and Manila.<sup>9</sup>

Despite the general consensus on moving forward, delegates and officials interviewed for this report describe a lack of consensus on the precise nature of the Convention, the definition of (transnational) organized crime, and the other issues that should have been included in it. Certainly, the sense of clarity and urgency proclaimed in the unpublished report of the UN Crime Committee, or the speech of the Polish President to the General Assembly were not widespread positions. But once the General Assembly agreed in 1998 to commence a two-year time-limited negotiation period, with a named chairman (Italian Ambassador Lauriola), the negotiations seemed to pick up a momentum of their own, even it is was not clear what the Convention would look like.

Joutsen describes the effect of the Polish intervention:

Once Poland made its move it gained its own momentum, and the UNGA approved it. And then the process went surprisingly quickly. However, ... [e]ven at the Warsaw expert meeting (in 1998), it was not clear what was being dealt with. There were unfocussed discussions and nothing comprehensive was on the table. The lack of agreement on the definition of organized crime was one example; this remained a vexing issue which was brought up at just about every session during the negotiations.<sup>10</sup>

It is important also to recognise the importance of key figures in the Secretariat. They often provided the intellectual and procedural support to the Italians, the only delegation dedicated to a Convention from the outset. According to interviewees, the actions of figures, especially Eduardo Vetere and Dimitri Vlassis, ensured that the vision of the Convention was kept alive during the difficult years of diplomacy. And during the negotiations themselves other names are usually mentioned, supporting Vlassis as the Secretary of the Committee, for example Jean-Paul Laborde and Christopher Ram. Together they ensured that the proponents of the Convention were equipped and substantively able to move forward at the key moments. Within the bubble of the Vienna-based negotiations, and wider interventions in the UN system, the importance of Secretariat manoeuvres, the Polish intervention, and the subsequent approval of UNGA is clear. But these moves did not take place solely within that bubble. To understand more about how these moves were possible, one needs to take a step back and look at the bigger geo-political picture.

### ***Politics and Geopolitics***

Ugi Zvekic, working on these issues throughout this period, says:

The Convention was negotiated in the golden era of international cooperation after the fall of the Berlin Wall, and the political climate was positive and an important factor in getting a new treaty.<sup>11</sup>

As Zvekic points out, the key steps were taken between the fall of the Berlin Wall and the September 11 terrorist attacks. This period saw seismic changes in societies across the former Soviet bloc, transforming economies and everyday life for the populations concerned, as well as organized crime. The 1990s were a key period in the progress of European integration, with the creation of the European Union in 1993, followed by enlargement, further integration, and the introduction of the Euro common currency in 1999.

<sup>9</sup> Vetere, E. Interview by the author, August 2020.

<sup>10</sup> Joutsen, M, Interview by the author, July 2020.

<sup>11</sup> Zvekic, U, Interview by the author, July 2020.

This period also saw the EU taking organized crime more seriously, and not just viewing it as an 'Italian' problem. Europe had opened up societies and borders, creating further opportunities for transnational criminal activity (Vlassis 2002). It also saw a high point of US multilateralism under the Presidency of Bill Clinton (1993–2001), and a shifting of policy priorities away from containing the Soviet threat and towards addressing transnational crime as a security threat (Felsen & Kalaitzidis 2005). In addition, with the collapse of the Soviet Union and the Presidency of Boris Yeltsin (1991–1999), Russia and the West were increasing multilateral cooperation, including on organized crime issues. The favourable multilateral environment was well demonstrated by the 1998 adoption of the Rome Statute, which established the International Criminal Court in the same five-year period as the adoption of UNTOC and the UNCAC (ICC 2011). The eventual decline of the golden era and onset of new tensions came to haunt the Convention's implementation in later years, as we shall see with the drawn-out process of the negotiations of the review mechanism.

### ***Progress through the UN system***

In 1990, the eighth UN Crime Congress took place in Havana. Upon the recommendations of the expert-constituted UN Committee on Crime Prevention and Control, the Congress paved the way for the creation of the UN CCPCJ and the UN Crime Programme. This was later formally agreed at the Ministerial Conference in Versailles in 1991. The report of the Congress also called for a Convention or other legal instrument to structure that programme (United Nations 2002, 1991). In 1992 the UN General Assembly established the CCPCJ. This replaced the Committee, meaning intergovernmental decision making had superseded the expert-led system. The UN drugs and crime-focussed offices and programmes in Vienna were soon merged as the UN Office for Drug Control and Crime Prevention 1997 (UNDCP, which became the UNODC in 2002). However, agreement on the normative dimension of a convention remained elusive, with several more years before Member States agreed to commence official negotiations.

In 1995, the ninth Crime Congress in Cairo asked the CCPCJ to take forward the idea of a convention by soliciting views from governments. It also proposed some elements that could be included. The CCPCJ responded by setting up a working group to consider Member States' views, while the Commission and other relevant bodies continued to discuss without resolution. In 1996, the Polish Government draft was submitted, and the UNGA asked Member States for their views on the draft text. In 1997 the UNGA recommended setting up an intergovernmental group of experts, which met for the first time in Warsaw in February 1998 and agreed on a list of options for what could be included in such an instrument. An informal ad-hoc committee on drafting met in Buenos Aires in September, before being formalised by the General Assembly in December. The ad-hoc committee went on to meet officially for the first time in January 1999 in Vienna. It held a total of 12 sessions between then and January 2001 (United Nations 2000b).

During this period, the ad-hoc committee agreed on the text of the Convention (July 2000), the text of the protocols on human trafficking and migrant smuggling (October 2000), the text of the protocol on firearms trafficking (February 2001), and finally the draft Rules of Procedure for the Convention's Conference of Parties. In November 2000, the UN General Assembly adopted the Convention and its protocols on human trafficking and migrant smuggling. The Convention was opened for signature at a high-level signing ceremony and conference held in Palermo in December 2000. The Convention entered into force on 29 September 2003 (United Nations 2000b).

### ***The Innovations and Uncertainty of UNTOC***

The Statement of Purpose says the Convention aims 'to promote cooperation to prevent and combat transnational organized crime more effectively' (United Nations 2000b). It is clear that the Convention marked a step change in UN work on crime, giving a legal framework on transnational criminal issues, instead of the previous soft law experience aimed mainly at guidance on domestic crime prevention and criminal justice measures.

The negotiations also overcame key political and substantive issues, that in less favourable circumstances could have derailed the process. For example, it was never clear whether terrorism or corruption would be dealt with specifically. In the end terrorism was not included, despite strong advocacy led by Turkey, Spain, and Egypt. Corruption is included, but, more importantly, the negotiations gave birth to the process that produced the UNCAC – a key achievement of the UNTOC in its own right, and for some commentators a development that has overshadowed the UNTOC. Whilst heavily based on the UNTOC, the UNCAC has more well-developed provisions on prevention than the primarily law enforcement and international legal cooperation focus of the UNTOC.

Definitions of organized crime proved difficult and were avoided. Instead, offences or types of offences are described, giving the Convention a large degree of flexibility for States to apply it to their own settings

and legislation. Another key achievement is the way in which the Convention allows both common and civil law jurisdictions to apply the same provisions; for example, the Convention caters for both conspiracy type offences from common law and the Italian association offence from civil law. Most commentators agree that it gave many countries the basis of legislation for the criminalisation of organized criminal activity and tools to enhance international cooperation in criminal matters, such as with extradition and Mutual Legal Assistance (MLA).

Gino Polimeni, a former Italian judge and later international affairs delegate from the Italian Ministry of Justice, argues a main benefit of UNTOC is its flexibility as well as its utility for countries lacking in legislation and/or networks of bilateral and multilateral cooperation treaties. Polimeni claims that the Convention has globalised the Italian approach to tackling organized criminal groups, rather than attacking specific crimes:

The Convention essentially takes the Italian approach to these issues. As Falcone said, it does not matter what type of criminal group you are dealing with, you have to use the criminal justice system to destroy it.<sup>12</sup>

Jean-Paul Laborde highlights a main benefit of UNTOC as facilitating transnational cooperation between prosecutors and judges.

The Convention has facilitated prosecutors speaking to each other about Transnational Organized Crime, and there is an increased knowledge, including amongst judges, of how to use international cooperation in criminal matters. Overall, it gives the tools and means to tackle organized crime for criminal justice systems around the world. Prosecutors are using it, even though its political visibility is low.<sup>13</sup>

Tom Burrows, the Senior Counsel for Multilateral Affairs from the US Department of Justice, strongly reiterates this view:

I would say it was a game changer. First, the criminalization requirements caused more than 100 countries to adopt legislation criminalizing the crimes set forth the protocols: trafficking in persons, migrant smuggling, falsifying travel documents, and trafficking in firearms, as well as the main convention: participating in a organized criminal group or conspiracy to commit serious crimes. For countries that require dual criminality for cooperation, the criminalization requirements were critical. UNTOC also created binding obligations between (now) 190 countries for international cooperation; previously many of the 190 had no binding MLA relationship between them.<sup>14</sup>

But this prosecutors' perspective is not shared by some delegates from the time. Joutsen says,

We weren't sure how this would work on a global scale, and as such we didn't think it would be a game-changer globally. We anticipated that the bulk of the work of our practitioners would remain within the framework of the bilateral and multilateral conventions that we already had in place; certainly, this was the case in Europe.<sup>15</sup>

Peter Gastrow, the South African Rapporteur of the ad-hoc committee, describes his mixed feelings at the time:

Agreeing the Convention did not feel like a momentous occasion, although it did feel serious. Quite powerful countries were still not that convinced that organized crime needed to be tackled at an international level. In any case, the US continued with the development of its overseas presence, and its pursuing criminals outside of its jurisdiction, increasing its network of agents and presence in embassies around the world.<sup>16</sup>

<sup>12</sup> Polimeni, G, Interview by the author, August 2020.

<sup>13</sup> Laborde, J-P, Interview by the author, July 2020.

<sup>14</sup> Burrows, T, Email interview by the author, August 2020.

<sup>15</sup> Joutsen, M, Interview by the author, August 2020.

<sup>16</sup> Gastrow, P, Interview by the author, July 2020.

He continues:

Law enforcement cooperation has definitely improved amongst ‘like-minded’ countries, but cooperation between developed and developing countries has definitely declined, due to a lack of trust. In fact, since the Convention was adopted, the gap between developing and developed countries has widened.<sup>17</sup>

Others describe some challenges that exist in the flexibility of the UNTOC, including its lack of sanctions or a body monitoring implementation.

### ***Evaluating Progress, or Lack Thereof***

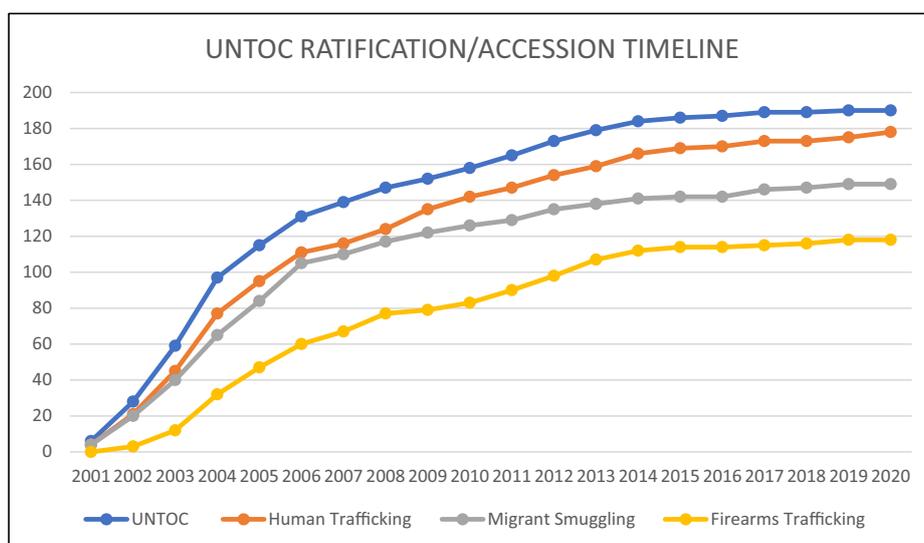
The Convention is a success based on the metric of ratification (**Figure 1**). With 190 parties it is almost universally ratified. Monaco was the first, on 5 June 2001. The most recent was Palau, in 2019. It took the USA until 2005 to ratify, and even longer for Italy who did not become a Party until 2006.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the human trafficking protocol) enjoys similar levels of ratification at 178 parties. The Protocol against the Smuggling of Migrants by Land, Sea and Air (the migrant smuggling protocol) has 149 Parties. The least adhered to UNTOC instrument is the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (the Firearms Protocol) which has 118 Parties, the first of which was Mali, who ratified May 2002. Several prominent countries have not become parties, including the UK, which signed the Protocol in 2002, but despite never expressing a clear position why, has never ratified and whose full accession will now become more difficult as it leaves the European Union (which is itself a Party). Despite participating actively in the UNTOC CoP Working Group on the Protocol, the USA has never signed the Convention due to its domestic politics, but did at one point come close to acceding to it (United Nations 2003).

Strong accession metrics needs to be evaluated cautiously, including how countries are implementing it and its impact on organized crime. Both questions are extremely difficult to answer, especially before the launch of the Implementation Review Mechanism.

Those interviewed for this paper were of the general view that the Convention is not understood or utilized enough, or that it is impossible to find out how much it is really being used or its impact. Balsamo says that even Italy could make better utilisation:

Certainly, there is room to improve the knowledge about UNTOC and to fully realize its potential. In this regard, enhancing judicial training could make the difference. The Italian judiciary recently adopted guidelines with UNTOC included, but there needs to be wider dissemination and



**Figure 1:** Status of ratification of UNTOC and its Protocols. Source: UNODC.

<sup>17</sup> Gastrow, P, Interview by the author, July 2020.

learning from the pilot experiences, such as those in Catania where seizures have been made using UNTOC, to show how we can tackle mafia operating outside the EU. This could serve as the basis for judicial training.<sup>18</sup>

One current member of the UN Secretariat interviewed, with experience of working with UNTOC says:

Overall, the UNTOC is underutilised. The question of electronic evidence is not dealt with either in UNTOC as the challenge didn't exist to that degree 20 years ago. In general, several existing provisions of UNTOC remain underutilized, liability of legal persons being one of them. In terms of liability of legal persons, the technological advancements have brought along important developments, raising difficult legal questions. One of those difficult questions is to what extent online intermediaries (such as social media) should be held liable when they unintentionally facilitate activities carried out by organized criminal groups when they have knowledge of such activities.<sup>19</sup>

In 2016 Neil Boister, in one of the few studies on the implementation of UNTOC, analysed the use of the international cooperation provisions of UNTOC. He found that there is no source of consolidated information on law enforcement cooperation that uses UNTOC, and that there is insufficient information as to whether UNTOC is increasing trust and information amongst law enforcement agents (Boister 2016a). On extradition and Mutual Legal Assistance, he finds some interesting data, such as a higher level of use amongst Western countries, primarily the USA, and increasing reliance on it by others, for example in Asia, primarily China, but concludes there is not enough macro-level information available and that '[o]verall, the incidence of the use of the UNTOC as the sole basis for extradition and mutual legal assistance still appears to be low' (Boister 2016a). Boister looks forward to the Implementation Review Mechanism to shed more light as well as on whether any of this cooperation is having any tangible impact on organized criminal activities around the world.

The UNODC Research and Analysis Branch undertakes regular studies on the issues covered by the Protocols of the UNTOC. It has published four Global Reports on Trafficking in Persons, as mandated by the UN General Assembly in 2010 (United Nations 2010), which presents data and trends on the prevalence and nature of trafficking in persons through the analysis of data provided by Member States. Using a similar model, it published its first Global Report on the Smuggling of Migrants in 2018, and a first Global Study on Firearms Trafficking in 2020, following an initial study on firearms trafficking in 2015 (United Nations n.d.). The mandate and findings of the Smuggling of Migrants and the first firearms trafficking study were contested by some Member States, with the USA particularly critical of the firearms study. Importantly, these studies do not attempt to analyse the implementation by Parties of the legal instruments concerned. In addition, the UNODC published in 2012 a digest of organized crime cases to gather data on national experiences in fighting organized crime, including where the use of UNTOC has been relevant (UNODC 2012). However, it cannot act as a global analysis of implementation or compliance. It is worth noting that the UNODC-hosted Sharing Electronic Resources and Laws on Crime (SHERLOC) platform gathers case law and hosts a Central Authority Database. But as it is currently constituted it cannot act as an overarching statistical analysis of the implementation of the Convention, although it will have a key role in information management throughout the Review Mechanism.

At the level of legislative compliance, the implementation of UNTOC across Africa was investigated by the EU-funded ENACT programme in 2018. This research found that organized crime laws across Africa are not keeping up with the standards of UNTOC:

At the time that the UNTOC came into force, organised crime was not high on the list of priorities for Africa, and African states played a limited role in the finalisation of the convention. Today, however, the UNTOC has been ratified by the majority of African states [...] it seems that while Africa has little problem in developing organised crime legislation, these laws fall short of meeting the UNTOC considerations. Crime type-specific legislation is particularly lacking in meeting these definitions, compared to their 'general organised crime' law counterparts. On the other hand, criminal market-specific laws/provisions don't necessarily need to achieve that if they fall under the purview of other market-focused international instruments (Adal 2018).

<sup>18</sup> Balsamo, A, Interview by the author, July 2020.

<sup>19</sup> Private conversations with members of the UN Secretariat.

This point is in fact of primordial importance in understanding the Convention's impact. There appears to have been no comprehensive study on the incorporation of UNTOC terms into domestic legislation. The reason this is important is because of the prerequisite principle of dual criminality that the incorporation of these terms has for any future successful international legal cooperation, such as extradition and mutual legal assistance; that is, the criminalisation provisions must be implemented to allow the international cooperation provisions to work properly. And without understanding the extent of the actual implementation of the criminalisation provisions of the Convention it is impossible to evaluate the resultant international cooperation attributable to the Convention.

To improve awareness of UNTOC, domestic legislation, training, and transnational networks, UNODC has led initiatives to build networks and cooperation between prosecutors, such as the West African Network of Central Authorities and Prosecutors (WACAP). WACAP notes that in 2013, 13 years after its adoption,

there was a general lack of knowledge of the process of international cooperation and there was no direct contact between national prosecutors and law enforcement officers. Also, most of the countries had not yet established central authority units for sending and receiving MLA requests (United Nations 2020).

Since then, WACAP has ensured central authorities have been established in several countries across the region and claims to have facilitated 167 instances of international cooperation (United Nations 2020). A similar network in South East Asia is now also being discussed. Brazil, meanwhile, has been highlighted by others as another country where UNTOC has been used in high-profile cases.<sup>20</sup>

Gary Balch, General Counsel of the International Association of Prosecutors, agrees that UNTOC has been an important development, but argues that its use is dependent on each jurisdiction's existing network of treaties, and how well-developed prosecutors' international networks are,

Those countries with strong domestic legislation and a rich architecture of bi-lateral treaties and agreements are likely to pursue requests directly through bi-lateral channels. In some regions, assistance can be pursued through regional structures – EU Eurojust is an obvious example. [...] Lack of trust can be a barrier to MLA when the process involves jurisdictions with significantly different political, judicial, or legal systems. The importance of personal connections and trust cannot be overestimated. Both are essential to overcome operational hurdles. Prosecutorial functions are not exercised in a silo and in their work, prosecutors must manage complex overlapping relationships with domestic and international colleagues.<sup>21</sup>

Meanwhile, the lack of centralised information on implementation is a by-product of the lack of an Implementation Review Mechanism, but also slowing political momentum following the Convention's entry into force. In the early years of the Conference of Parties (COP), the UN Secretariat did attempt to gather and disseminate information on the use and implementation of the Convention. At the second and third COPs in 2005 and 2006, analytical reports were published (United Nations 2005). Indeed, the third COP in 2006 was when the Executive Director of UNODC, Antonio Maria Costa began to complain to Member States about the lack of political priority and information being received from States Parties. By the fourth COP in 2008, no such report was published.

At the opening session of the 2007 CCPCJ, Costa continued in this vein, claiming that the Convention's 'teeth are only starting to nibble on extradition, mutual legal assistance and cross-border judicial cooperation' (United Nations 2007). He included the same arguments in his briefing the UN Security Council on the Convention in 2010. UNTOC

was a twenty-first century solution to a twenty-first century problem. Yet, one-third of Member States, including some major countries, had not yet ratified it. Implementation was patchy. There was no review mechanism, and some of its protocols were neglected (United Nations 2007).

Since then, ratification has improved, but it remains impossible to comprehensively analyse implementation, and the review mechanism is still only due to begin its operations in 2020. The time it took to negoti-

<sup>20</sup> Private conversations with members of the UN Secretariat.

<sup>21</sup> Balch, G, Email interview by the author, August 2020.

ate the review mechanism is evidence that the political priority of the Convention had waned. The UNTOC had overcome exceedingly difficult legal and political issues, but negotiating its review mechanism proved an almost impossible barrier. In the meantime, the same diplomatic community in Vienna negotiated the UNCAC, signed in 2003 in Mérida, Mexico, and its Review Mechanism was agreed by the end of the decade.

Mexico became a key protagonist of efforts to agree an UNTOC Review Mechanism in subsequent years. The substantive stumbling blocks were the funding model, the role of civil society, the nature of the peer review and the primacy of its intergovernmental nature. The details of these disagreements have been analysed elsewhere (Rose 2020), with the twin issues of budget and civil society clearly plaguing efforts. The combination of factors that allowed the Convention to be negotiated in the first place seemed absent.

Politicians and diplomats did not feel external pressure to act. There was no overwhelming groundswell of Member State support, and it remained reliant on key supporters like Italy (supported by France) and Mexico. Geopolitics were also not favourable. According to Peter Gastrow:

9/11 pushed Counter-Terrorism (CT) to the top of the international agenda – the public didn't care as much about TOC, which is not as directly threatening as terrorism. CT got the money and attention, and there was not any pushback against that. TOC was just kept ticking over, and there was no political risk in governments not taking action. No one understands TOC in the same way as terrorism, therefore terrorism responses will always be in more demand. Importantly, the US directed its attention to terrorism and convincing others to adopt measures on terrorism.<sup>22</sup>

A serving member of UNODC staff agrees:

Terrorism has become more important due to populism. Terrorism is very visible, and terrorists want publicity. Organized Criminal Groups want to operate under the radar. The public see the risk of terrorism being greater, but actually the opposite is true in terms of risk. And politicians follow the public mood.<sup>23</sup>

Eduardo Vetere agrees:

The enthusiasm and momentum for the Convention was frustrated by 9/11. Countries became completely consumed by their new interest in terrorism.<sup>24</sup>

But this was not the only factor. Jean-Paul Laborde, who went on to become Executive Director of the UN Counter-Terrorism Executive Directorate counters that the adoption of the UNCAC was a prime impetus in the declining interest in the UNTOC:

After the adoption of the UNTOC, its political importance was suspended almost immediately due to the adoption of UNCAC, which only covers a portion of TOC. It is attractive and sexy because it allows politicians to claim credit for catching individual corrupt politicians or officials. The media also only concentrates on UNCAC and the politicians that are caught, meanwhile TOC continues to grow. The UNTOC is too deep into the real criminality, but corruption campaigns are good for politics and fashionable. It is easier and less dangerous to fight corruption, rather than TOC. The risks of taking on TOC are higher, due to the different levels of violence concerned.<sup>25</sup>

Eduardo Vetere also believes that the UN itself made a strategic mistake in this period by splitting the Secretariats of the UNTOC and the UNCAC, with Dimitri Vlassis leaving the world of UNTOC and heading up the Secretariat for the UNCAC. Vetere continues that had the Secretariat remained together, UNTOC would not have been left behind and would have benefitted from the momentum around UNCAC. This view is shared by other former and current UNODC staff interviewed. In addition, because the negotiation of the UNCAC followed so quickly the UNTOC process, members of the Secretariat and national delegates switched their focus to the new negotiation process, thereby taking institutional knowledge and capacity away from the UNTOC process.

<sup>22</sup> Gastrow, P, Interview by the author, July 2020.

<sup>23</sup> Private conversations with members of the UN Secretariat, July 2020.

<sup>24</sup> Vetere, E, interview by the author, July 2020.

<sup>25</sup> Laborde, J-P, Interview by the author, July 2020.

This internal lack of coherence and coordination has been exacerbated by the proliferation of organized crime mandates across the UN, outside of the scope of the UNODC (Walker & Reitano 2019). Whilst TOC has been increasingly picked up by the Security Council, including at periodic thematic discussions related to the Convention, this has not resulted in an increased profile or momentum for the UNTOC in general. It has, however, resulted in new activity related to the Trafficking in Persons Protocol.

Ugi Zvekic gives a broader range of factors, related to the changing geo-political conditions. For example, 'The financial crisis of 2008 further dampened interest amongst Member States in UNTOC. In addition, Russia and the US became less willing to take part in negotiation and compromise with each other in international affairs.'<sup>26</sup> The UK also led a small group of countries that blocked a mechanism on financial grounds at the COP in 2012, due to its largely blanket opposition to increases in the UN Regular Budget. This position did not change in subsequent years, leading ultimately to a mechanism that must be funded through existing Regular Budget resources and extrabudgetary contributions from donors. The fundamental geo-political shifts and declining interest in multilateralism created the foundation for all these differences to be allowed to stall progress.

By 2014, the issue of civil society involvement had become the issue which blocked progress at the COP. States Parties could not agree on a compromise solution between those countries opposed to any independent scrutiny in what they saw as an intergovernmental process (led by Egypt, Pakistan, Russia, China), and those advocating for civil society involvement as a key part of a meaningful review (led by largely by Switzerland and Norway, along with other WEOG countries). Over subsequent years, these two issues became the well-rehearsed obstacles to the review mechanism.<sup>27</sup> But lack of progress on those issues were symptomatic of a low public profile and lack of political will.

### ***The Review Mechanism and Ideas for Reinvigoration of the Convention and the COP***

From 2014 to 2019, the UNTOC and its Review Mechanism was not a high-profile issue in UN Vienna. The COP meetings in 2014 and 2016 could only agree incremental steps, and most delegations felt little pressure to move faster. The surprise success in achieving a review mechanism was largely due to the determination and diplomatic skill of the Italian Ambassador, Maria Assunta Accili Sabbatini, and her team.<sup>28</sup> This built on the previous leg work of the Ambassadors of Costa Rica and Jordan.

The Mechanism was adopted with no media interest, or wider public awareness. It has very meagre resources, a complicated and long structure, very narrow scope for engagement from civil society, and extremely low mandatory transparency. It is very much a lowest common denominator agreed with a view to ending the discussions and uncertainty, rather than the political leap of faith represented by the Convention itself.

What do those diplomats and officials present earlier in the process make of the mechanism? Laborde says '[t]he Review Mechanism is a political mechanism that won't work'.<sup>29</sup> Peter Gastrow is similarly 'not optimistic that the slumber of the UNTOC will be ended any time soon'.<sup>30</sup> Zvekic says that

The Convention is a quasi-legal framework and lacks authority and sanctions. Currently, there is no way of knowing whether and how countries are implementing it. There is no international authority governing organized crime, but the mechanism will allow more information on implementation to be generated.<sup>31</sup>

Joutsen says calls it 'a diluted version of the UNCAC Review Mechanism, which was itself the result of many difficult compromises'.<sup>32</sup> Others used more colourful language to describe their distaste for it, along with the behaviour of both Member States and the Secretariat throughout the process.

The Review Mechanism will undoubtedly improve data collection and once again allow the Secretariat to produce analytical reports on implementation. However, on its own, it will not provide the independent

<sup>26</sup> Zvekic, U, Interview by the author, July 2020.

<sup>27</sup> The author took part in the processes as a national delegate during this period.

<sup>28</sup> Ambassador Sabbatini's views on the process are recorded in this essay, available in Italian: Maria Assunta Accili Sabbatini la convenzione di palermo e i negoziati per il rafforzamento della cooperazione internazionale, V. 5 N. 4 (2019): Rivista di Studi e Ricerche sulla criminalità organizzata.

<sup>29</sup> Laborde, J-P, Interview by the author, July 2020.

<sup>30</sup> Gastrow, P, Interview by the author, July 2020.

<sup>31</sup> Zvekic, U, Interview by the author, July 2020.

<sup>32</sup> Joutsen, M, Interview by the author, August 2020.

and transparent platform that is needed in order to analyse the complex and evolving nature of TOC. Nevertheless, to improve the implementation the international community needs to ensure it engages meaningfully – maximising transparency and civil society engagement to ensure that the information available is as useful and rich as possible.

Despite the lack of optimism, those interviewed offered several ideas to push forward. For example, that the COP does not make enough use of expertise, practical discussions and experience sharing. In addition, there are some new issues that should be better incorporated, for example the use of electronic evidence and special investigative techniques by prosecutors. There is also scope to allow for deeper discussion on new and emerging forms of criminality, including expanding the focus on criminal groups to allow for prosecution of looser criminal networks.

Gino Polimeni argues the UNTOC:

is flexible, and it invites updates and changes. The COP should therefore be dynamic, and therefore have a dynamic approach to review. The 3 supplementary Protocols were added straight away after the adoption of the Convention, showing how flexible the Convention is. To allow this dynamic approach, the COP needs to include more expertise and science.<sup>33</sup>

Zvekic says that the UNTOC COP risks becoming outdated:

The downfall of UNTOC is due to the expansion of TOC politically and geographically. There are new markets and the problem is getting more serious. The COP is currently not adequate to deal with this expansion. The UNTOC should be reviewed and updated to cover all modern types of TOC phenomena.<sup>34</sup>

Balsamo agrees with the need for updating and including expert discussion:

The link between development and organized crime is a challenge for the future. In the current COP architecture, best practice is not shared in enough detail, it is general context mainly. There could be a two-level system for example. There should be more consultations at the national level on implementation of the Convention, to understand how UNTOC is being used. This would allow more specific recommendations to be made to the working groups, and for discussion with civil society in the constructive dialogues. Overall, there should be more targeted and specific discussions.<sup>35</sup>

Laborde points out that the COP does not include enough space for expert discussion, and believes that there are articles and provisions that have been overlooked:

The COP should do more to promote the use of international cooperation mechanisms of UNTOC in a broad sense. The COP does not fight the phenomenon of TOC properly, as the use of UNTOC is too low. There needs to be less politics and more expertise, practitioners should be brought together in a neutral way, which could diminish the intensity of TOC, and speed up implementation of the Convention. There are provisions in Articles 28, 29 and 30 on wider issues that should be addressed more. More needs to be done on issues like economic development and technical assistance, collection and analysis of information on organized crime, and proper exchanges of views.<sup>36</sup>

## Conclusion

Despite the initial lack of consensus, the international community rapidly agreed on a legally binding instrument to enhance international cooperation to tackle the common threat of transnational organized crime. We can attribute this success to the intellectual and moral support from the Italian system and key figures in the UN Secretariat, and the political weight given by US and wider Western support for the process, despite initial scepticism. On a more macro level, a favourable but short-lived geo-political period of East-West cooperation was instrumental. Importantly, the timely intervention of the Polish Prime Minister in 1996 completed the constellation of political and personal circumstances that allowed the Convention to take shape.

<sup>33</sup> Polimeni, G, Interview by the author, August 2020.

<sup>34</sup> Zvekic, U, Interview by the author, July 2020.

<sup>35</sup> Balsamo, A, Interview by the author, July 2020.

<sup>36</sup> Laborde, J-P, Interview by the author, July 2020.

The story of the negotiation of the UNTOC is a story of achievement in the face of significant obstacles. Through the efforts of those involved, the need to tackle organized crime was taken to the top of the international political agenda, and concrete measures were taken. This has resulted in real, although unquantifiable, progress in boosting judicial cooperation and the development of legislation around the world. But since its adoption TOC has continued to adapt and evolve. It grows more pervasive, insidious, and dangerous. The pleas for response are sadly still just as pertinent. The 1990 UN Committee report calling for an 'End of Complacency', Clinton's 1995 Directive calling for international cooperation against 'supra-national criminal cartels', and Kwasniewski's 1996 description of organized crime as a corrosive cancer. All these warnings were heeded in part by the creation of the UNTOC, despite the difficulties and compromises. Sadly, Dimitri Vlassis's conviction that it would rid organized criminals of their safe havens, has not come to fruition.

That is not the fault of the UNTOC. It has undoubtedly created a framework of legislative tools which have been transposed into national legislation, and international cooperation provisions which have been used to prosecute organized criminal figures. The UNTOC is an incredibly broad, innovative, and modern legal instrument – it even includes provisions on video testimony for witnesses, long before the COVID crisis forced the mass use of video conferencing. It is flexible enough to adapt to new and emerging crimes and criminal group behaviours. Anti-TOC legislation exists where it did not before, countries can cooperate with each other in these investigations where they could not before. The three supplementary Protocols have also increased the profile and international efforts against the issues concerned, most notably on human trafficking. But, it has not been possible to gather or analyse enough comprehensive information in this regard.

Furthermore, the political will and public support that created the UNTOC has dissipated, and the COP has been allowed to drift into relative obscurity and irrelevance, resulting in its agreement of a long-delayed and flawed review mechanism. There are various reasons why this is the case, including larger geo-political challenges. In the meantime, other processes and instruments have overshadowed the UNTOC in the fight against organized crime, such as the UNCAC, Counter Terrorism instruments, and the looming negotiation of a new convention on cybercrime, which has resulted from non-consensus based decision making at the UN in New York.

But there is scope for the COP to reboot its approach, which has been dogged by political disagreements over the mechanism for many years. It should redirect its focus towards expert-led and technical expertise sharing, to increase understanding and implementation of UNTOC. It should ensure the latest developments in organized crime are discussed, understood, and addressed, whether within the framework of the review mechanism or not.

On a macro-level, the UN, through the Sustainable Development Goals, has recognised the cross-cutting nature of organized crime and implicitly understands the scale of the social, environmental, economic, and therefore developmental harms that it causes. The UNTOC is an important part of responding through building up legal systems' and law enforcement's capacity to counter TOC. But it must be understood that, even if fully implemented and reviewed, it is not a silver bullet, and simply cannot fulfil the ambitions that some espoused. It should be understood as part of a broader collection of tools that can disrupt and deter organized criminals, as part of a joined up global strategy, across all relevant parts of the UN system, and the wider international community.

The promise of Palermo has not been fulfilled, despite the substantial progress embodied in the Convention. The creation of UNTOC did in fact bring those anti-drug and anti-crime efforts at the UN closer together, in spite of their different histories and personnel, but the level of coordination amongst all UN processes on drugs and crime issues still leave significant room for improvement. To do more means the creativity, determination and resolve of those who helped create the Convention needs to be re-discovered. It is perhaps time to go beyond Palermo.

## Competing Interests

The author has no competing interests to declare.

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