An International Framework to Fight against Transnational Organized Crime and Human Trafficking: The UN Approach
Approaching universal ratification
UNTOC and its protocols – As of 21 August 2013

- United Nations Convention against Transnational Organized Crime
  - Status: entered into force 29 September 2003
  - Parties 177
  - Signatories 147

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
  - Status: entered into force 25 December 2003
  - Parties 157
  - Signatories 117

- Protocol against the Smuggling of Migrants by Land, Sea and Air
  - Status: entered into force 28 January 2004
  - Parties 137
  - Signatories 112
Structure of Convention

✓ Defines and standardizes terminology
✓ Requires States to criminalize specific conducts
✓ Specific control measures (money-laundering, corruption etc.)
✓ Confiscation of proceeds of crime
✓ Cooperation
✓ Training, research, information measures
✓ Prevention
✓ Technical provisions (signature, ratification etc.)
Key obligations for State Parties*

- Criminalization
- Prevention, Investigation and prosecution
- International cooperation
Criminalization

- Offences established by the convention (Art. 5, 6, 8 and 23)
- Other serious crimes defined in Art.2
- Protocol offences (Protocols, Art.1)

- when:
  - transnational in nature
  - an organized criminal group is involved
Criminalization:
Participation in an organized group

• Organized criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit (Article 2a, UNTOC)

• Comment: the definition of an “organized criminal group” is central to its operation. The definition of “organized criminal group” does not include groups that do not seek to obtain any “financial or other material benefit”.
Criminalization

Laundering of proceeds of crime (art.6)

“Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence. (art. 2e UNTOC)

Comment: If the legislature wants to ensure coverage of proceeds of crime, where these are located outside the State’s territorial jurisdiction, it may be useful to clearly state that proceeds of crime can include proceeds located offshore.
Criminalization: Corruption (art.8)
Criminalization

Obstruction of justice (Art. 23)

The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention (a)

The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention (b)
Prevention, investigation & prosecution
International cooperation

- Purpose of the Convention is to promote cooperation to prevent and combat transnational organized crime (Article 1 UNTOC)
- Mutual legal assistance
- Extradition
- Law-enforcement cooperation
- Technical assistance and training.
Relation of the Convention with the Protocols:

Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol (Art. 37.4 UNTOC)

The provisions of the Convention shall apply, mutatis mutandis, to the Protocols, unless otherwise provided therein (Art. 1 TIPP and SOMP)
Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons
Trafficking in Persons (TIP) Protocol

- The protocol provides concise definition of trafficking in persons and the constituent elements of the crime (Article 3) “Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of Persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of the 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…..”
The definition involves three basic elements namely:

- **ACTION** of trafficking,
- **MEANS** of trafficking and
- **PURPOSE** of trafficking
“Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.
SOM Protocol – Elements of Smuggling of Migrants

SMUGGLING OF MIGRANTS

- Procurement of illegal entry
- For financial or other material gain
- Across a border into another state
Differences between trafficking in persons and smuggling of migrants

Consent

Exploitation

Transnationality

Victim

Source of profit
STRUCTURE OF THE PROTOCOL

GENERAL PROVISIONS

- Article 5(2)(a) Criminalization

PROTECTION OF VICTIMS OF TRAFFICKING IN PERSON

- Article 6 Assistance to and protection of victims of trafficking in persons
- Article 7 Status of victims of trafficking in persons in receiving States
- Article 8 Repatriation of victims of trafficking in persons

PREVENTION COOPERATION AND OTHER MEASURES

- Article 9 Prevention of trafficking in persons
- Article 10 Information exchange and training
- Article 11 Border measures
- Article 12 Security and control of documents
- Article 13 Legitimacy and validity of documents

FINAL PROVISIONS
AVAILABLE TOOLS

Model Legislative Provisions against Organized Crime

Model Law against Trafficking in Persons

Model Law against the Smuggling of Migrants

Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition
Thank you!

United Nations Office on Drugs and Crime
Viet Nam Country Office
minh.nguyen@unodc.org