

**The 134<sup>th</sup> International Training Course**  
**(28 August – 6 October 2006)**

**1. Main Theme of the Course**

Challenges in the Investigation, Prosecution and Trial of Transnational Organized Crime

**2. Rationale**

**(1) Response to the Increasing Threat of Transnational Organized Crime by the International Community, in Particular, the United Nations**

Advances in communications and technology have shrunk distances between states, made state frontiers porous and opened up previously unimaginable opportunities for commercial, political and social interaction, and consequently have dramatically expanded legitimate international commercial transactions. This process of globalization has also led to unprecedented opportunities for illegitimate activities by criminal organizations. Transnational criminal organizations have been among the first to take advantage of the new global reach made possible by the revolutions in communications, transportation and commerce. The rapid growth and geographical extension of organized crime in its various forms have been undermining the development process and impairing the safety and quality of life of citizens.

Following the increased threat of transnational crime, since the mid-1990s, the international community began to recognize the gravity of the threat posed by transnational organized crime to the political, economic and social fabric of society. Subsequently, after several years of negotiations by the United Nations, in November 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime (hereinafter referred to as “the Transnational Organized Crime Convention” or “the Convention”), together with its two following protocols as a historic step forward in countering this threat: (i) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter referred to as “the Trafficking in Persons Protocol”) and (ii) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter referred to as “the Migrant Protocol”).

Moreover, in May 2001, the General Assembly adopted a third protocol, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (hereafter “the Firearms Protocol”).

Many states, having taken this threat seriously, moved swiftly towards the ratification of the Convention and the Protocols. Consequently, the Convention, the Trafficking in Persons Protocol, the Migrant Protocol and the Firearms Protocol entered into force on 29 September 2003, 25 December 2003, 28 January 2004, and 3 July 2005, respectively. By the end of 2005, more than 100 states became parties to the Convention, nearly 100 to the Trafficking in Persons Protocol and the Migrant Protocol, and nearly 50 to the Firearms Protocol. Many other states are in the ratification process.

Following the entry into force of the Convention, pursuant to Article 32 therein, the Conference of the Parties was established to improve the capacity of States Parties to combat transnational organized crime and to promote and to review the implementation of the Convention and its Protocols. The first and the second sessions of the meetings of the Conference of the Parties were held in 2004 and 2005, respectively, in which representatives of the State Parties, signatories and non-signatories participated. Subsequent sessions will be held in order to review the implementation of the Convention and the Protocols.

In addition, various bodies of the United Nations have deemed the fight against transnational organized crime as a high priority issue. In particular, the United Nations Office on Drugs and Crime (UNODC) has undertaken a series of activities to promote the ratification and implementation of the Convention and its Protocols, and to provide technical assistance to States as its top priority.

## **(2) The Significance of the Transnational Organized Crime Convention and its Protocols in the Investigation, Prosecution and Trial of Transnational Organized Crime**

One of the most important tasks for the criminal justice system is to detect, investigate, prosecute and punish organized criminals effectively. However, organized criminals often remain undetected and beyond arrest because of the difficulties and complexity inherent to the investigation of organized crime. In particular, it is difficult to penetrate the core of organized criminal groups and catch the ringleaders. As professionals of crime, organized criminals quite often conceal the tracks of their illegal activities in a methodical and sophisticated way. Also, the ringleaders are usually involved behind the scenes and behind closed doors. Moreover, those who can supply key information and evidence to the law enforcement authorities are subject to potential retaliation or intimidation by the criminal organization. Further, the increase in the transnational aspect of their illegal activities has made these tasks more complex and difficult, due to gaps in national law, jurisdictional problems or a lack of accurate information about the full scope of organized criminal groups' activities. Therefore, in order for law enforcement officials to reach such criminals, they need to fully implement the use of innovative legal weapons.

By the use of the Convention and its Protocols, States Parties are able to rely on one another in investigating, prosecuting and punishing crimes committed by organized criminal groups where either the crimes or the groups who commit them have some element of transnational involvement. This should make it much more difficult for offenders and organized criminal groups to take advantage of the difficulties inherent in the investigation, prosecution and trial of cases involving several jurisdictions.

In addition to dealing with the fight against organized crime in general, the Convention deals with some of the major activities in which transnational organized crime is commonly involved, such as money laundering and the obstruction of justice. To supplement the Convention, the three Protocols also tackle specific areas of transnational organized criminal groups' activities that are of particular concern to UN Member States.

In detail, the Convention and its Protocols apply to "serious crimes" (i.e. offences punishable by a maximum deprivation of liberty of at least four years or a more serious penalty, Articles 3.1(b) and 2(b), the Convention) and several other specific acts of which the Convention and the Protocols require criminalization (Article 3.1(a), the Convention). These acts are:

- (i) Participation in an organized criminal group (Article 5, the Convention);
- (ii) Laundering of proceeds of crime (Article 6, the Convention);
- (iii) Corruption (Article 8, the Convention);
- (iv) Obstruction of justice (Article 23, the Convention);
- (v) Trafficking in persons (Article 5, the Trafficking in Persons Protocol);
- (vi) Smuggling of migrants (Article 6, the Migrant Protocol);
- (vii) Illicit manufacturing of and trafficking in firearms, their parts and components and ammunition (Article 5, the Firearms Protocol); and
- (viii) Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms (Article 5, the Firearms Protocol).

In order to suppress these crimes, the Convention and its Protocols provide for a variety of remarkable measures to investigate, prosecute and try transnational organized crime effectively.

As one of the significant investigative measures, Article 20 of the Convention provides for the use of special investigative techniques, such as controlled delivery, electronic surveillance and

undercover operations, and their use at the international level. Such measures could enable law enforcement authorities to obtain evidence behind closed doors. Also, as an effective tool in order to reach the organized criminals, in particular, the core of the criminal organization, Article 26 refers to granting immunity from prosecution and mitigating punishment for a person who participates or has participated in an organized criminal group and provides substantial cooperation in the investigation or prosecution.

In order for the criminals that have been detected and investigated to be prosecuted, tried and punished effectively, further measures are needed to secure the testimony of witnesses. In this regard, Articles 24 and 25 provide for witness and victim protection measures, including the use of physical protection and testimony through the use of video links, etc.

As the most crucial element for combating transnational organized crime, the Convention comprehensively addresses the issue of international cooperation. In particular, Articles 16 and 18 provide for elaborated mechanisms for extradition and mutual legal assistance, respectively. Additionally, Article 13 specifically addresses international cooperation for purposes of confiscation in detail. Moreover, the Convention refers to methods to accelerate trans-border investigation, such as joint investigations in Article 19 and law enforcement cooperation in Article 27.

Although some of the measures are not in the mandatory clauses of the Convention, the use of these measures could enhance the capacity of the competent authorities in the investigation, prosecution and trial of organized criminals who seek to take advantage of gaps in traditional laws and the differences in the criminal justice systems and legislation.

Giving due consideration to the significance of the Convention and its Protocols and the necessity of their effective implementation in the fight against transnational organized crime as mentioned above, UNAFEI, as a regional institute of the United Nations Crime Prevention and Criminal Justice Program Network, believes that it is of vital importance to make full use of the countermeasures provided in the Convention and the Protocols in order to combat this threat. It has been several years since the international community first recognized the threat of transnational organized crime and each state has started to strengthen its legal regime to combat it both domestically and internationally in line with the Convention and the Protocols. In order to facilitate such efforts, which are still in progress in many countries, it is time to review how each country's criminal justice system has in practice dealt with transnational organized crime, and what problems and challenges it faces. UNAFEI, therefore, will explore in this Course various practical issues that relate to the investigation, prosecution and trial of transnational organized crime, with special attention to the Convention and its three Protocols.

### **3.Objectives**

This Training Course aims at examining and analyzing the current situation, problems and challenges in the investigation, prosecution and trial of transnational organized crime. The objectives and their subtopics are as follows:

( 1 ) Current situation of transnational organized crime in the respective countries and their existing legal regime to investigate, prosecute and try it, in particular, the offences listed below (NB: for the purpose of preparing the individual presentation paper, participants are requested to focus on any one or more of these offences):

- Participation in an organized criminal group;
- Money laundering;
- Obstruction of justice;
- Trafficking in persons;
- Smuggling of migrants;
- Illicit manufacturing of and trafficking in firearms, their parts and components and

ammunition;

- Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms; and
- Others (i.e. “serious crimes”, as defined in Article 2(b) above).

Please note that corruption offences, as defined in Article 8 of the Convention, are excluded from the scope of this Training Course, since the incorporation of corruption into the Convention offences was intended mainly to facilitate international cooperation between State Parties, and more detailed measures were left to the UN Convention Against Corruption.

( 2 ) Current situation of, and problems and challenges in the investigation, prosecution and trial of the above mentioned offences, in relation to collecting key evidence

- (i) Problems and challenges in the use of special investigative techniques
  - a) controlled delivery b) electronic and other forms of surveillance c) undercover operations
  - d) other special investigative techniques e) use of special investigative techniques at the international level.
- (ii) Problems and challenges in obtaining information and testimony by key witnesses and victims
  - a) protection measures for witnesses and victims (e.g. relocation, non-disclosure of identity, testimony through video links) and its use at the international level b) measures to encourage persons who participate(d) in organized criminal groups to supply information and to cooperate with the law enforcement authorities (e.g. granting immunity from prosecution).

(NB: Participants are also encouraged to include in their presentation any examples of success stories on the above issues, which could serve as best practices for other participants).

( 3 ) Current situation of, and problems and challenges in, the investigation, prosecution and trial of the above mentioned offences, in relation to international cooperation

- (i) Problems and challenges in obtaining and providing mutual legal assistance, including for purposes of confiscation
- (ii) Problems and challenges in the use of other types of international cooperation
  - a) joint investigations b) law enforcement cooperation (e.g. exchange of information).

Please note that since extradition mainly entails legal issues rather than practical ones, extradition issues are excluded from the main scope of this Course, which focuses on practical issues pertaining to investigation, prosecution and trial of transnational organized crime.

