



# PROCURA GENERALE

## della Corte di Cassazione

### il Procuratore generale

#### **Intervento del Procuratore generale al 20° Anniversario della Conferenza delle Parti della Convenzione di Palermo (UNTOC) - Vienna 12 - 16 ottobre 2020**

#### **The Palermo Convention 20 Years after: Celebrating its Anniversary and Unleashing its Full Potential through the Implementation of the Review Mechanism – 12 October**

The Palermo Convention is one of the main tools against transnational organized crime. Countering Cosa Nostra at the beginning of 1980s required the investigating judges and Law Enforcement Agencies to use investigative tools that Italian institutional culture was not familiar with. The deep relationship with other countries, mainly the USA, built through investigations and trials, enhanced our comprehension of new approaches that were effective in dealing with Organized Crime. Cooperating defendants, wiretapping, bank secrecy disclosure, and *in rem* proceedings became part of our *panoply*.

These shared experiences from different institutional backgrounds were the roots of the UNTOC. The UNTOC can be considered a *bridge convention*, able to connect the specific field of transnational serious crimes to the main idea, pervading the United Nations, of the rule of law as a precondition of a well ordered, safe, fair, and equal society, as we can see today from the 2030 Agenda for Sustainable Development.

On the other side, the UNTOC can operate at its maximum potential when used with other, specific international instruments, mainly in the fields of terrorism, money laundering, corruption, and judicial and law enforcement cooperation.

The UNTOC, the satellite conventions above mentioned, and European efforts to harmonize legislation and actions are a powerful set of instruments to deal with transnationality and the new challenges of globalization.

One of the main challenges to an equal and safe society comes today from the abuse of the tribulations of entire populations, distressed by wars, conflicts, terrorism, climate change, and fanaticisms — tribulations exploited by criminal organizations as opportunities for larger profits.

Italy was hit in the last decade by waves of immigration by the sea, largely handled by criminal organizations based abroad. Italy responded to the obligation to save lives in danger. The obligation was established by the international law but, primarily, by compassion and the eternal law of the sea. At the same time, we have been able to punish through legal proceedings the culprits of major crimes. The UNTOC was a crucial instrument in this task.

The UNTOC prompted us to rely on up-to-date electronic surveillance evidence and to create Joint Investigation Teams. That experience is now shared with the UNODC dedicated working group.

Using the definition of transnational crime, provided in the additional protocol against migrant smuggling, we were able to link our internal legislation to the Montego Bay Convention on the Law of the Sea (UNCLOS) and to the Geneva Convention on the High Seas.

The Palermo Convention and its additional protocol, specifically Article 3, transposed into Law n. 146, 2006, provides a transnational crime definition that fits with the cases considered in Italian penal legislation, which punish trafficking in organized forms.

The consequence of such provisions is the fulfillment of the required internal determination of crimes that could be considered “transnational” according to the Convention, therefore allowing a State Party to *take appropriate measures in accordance with relevant domestic and international law.*”

According to the Palermo Convention, therefore, art. 7 of the Italian penal code should be applied in the case of crimes aimed at abetting illegal immigration.

Appropriate measures, according to the above mentioned art. 8 of the Palermo Protocol, are provided by art. 12, comma 9 *bis* and *quater* Law 286/98 – modified in 2002 (the right to seize and arrest, in territorial waters and also in the international ones, when allowed by international law on the grounds of transportation of illegal migrants).

To summarize, where a vessel is without flag or in similar situations, right of visit is granted by the High Seas Conventions; smuggling of migrants is grounds to seize the ship and arrest the crew, according to the Palermo Convention and national legislation. This approach has been upheld by the Supreme Court.

In executing detention warrants in a country that has signed the UNTOC, we faced the serious problem of legislation not complying with the Convention requirements; specifically, not considering trafficking in migrants as a criminal offense.

This disheartening experience makes me consider the Revision Mechanism, provided by the 1/9 Resolution (2019), to be of the utmost importance.

The pandemic emergency is a great challenge for our priorities, even in the OC field. Enormous public resources are a great opportunity for natural gold-diggers, such as criminal organizations. We have appropriate tools and we are trained to face even this threat. What is new is the size of the problem and its transnational nature.

If we consider that such a situation is grounded in the world of global information exchange, practically without any effective supranational regulation, the importance of the challenge is self-evident.

At the same time, such a consideration makes it clear that the penal approach could become ineffective, if not grounded in the enhancement of the conventional instrument, passing through a series of distinct areas, from A.I. to cybersecurity to cybermarket regulation.

Finally, the UNTOC could be an important part of the legal framework for preventing and combating serious transnational crimes that have a negative impact on the environment, in terms of damage or the danger of damage to it.

Two conditions are required to achieve this goal.

First, it is necessary to have a shared definition of environmental crimes that can be included in, or related to, the definition in article 2 (b) and article 3, paragraph 1 (b) of the convention, when they are transnational in nature and involve an organized criminal group.

Secondly, it is necessary to identify specific forms of international cooperation and special investigative techniques to cope with this type of crime.

From this perspective, the organization of the environmental network linking the Italian Prosecutor General’s offices, coordinated by my office, could be proposed as a positive example in identifying and disseminating best practices in the assessment of environmental crimes and promoting sharing common models of organization.

Vienna, 12 October 2020