PARLIAMENT OF THE REPUBLIC OF FIJI

STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

REPORT ON THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME AND THE PROTOCOLS THERETO:

(i) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, ('Trafficking in Persons Protocol');

(ii) Protocol against the Smuggling of Migrants by Land, Sea and Air, ('Smuggling of Migrants Protocol'); and

(iii) Protocol against the Illicit Manufacturing of Trafficking in Firearms, their Parts and Components and Ammunition ('trafficking in Firearms Protocol').

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CHAIR'S FOREWORD

I am pleased to present the report of the Standing Committee on Foreign Affairs and Defence (SCFAD), which was assigned to review and examine the **United Nations Convention against Transnational Organized Crime (UN CTOC) and the three Supplementary Protocols namely:**

(i) **Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, ('Trafficking in Persons Protocol');**

(ii) **Protocol against the Smuggling of Migrants by Land, Sea and Air, ('Smuggling of Migrants Protocol'); and**

(iii) **Protocol against the Illicit Manufacturing of Trafficking in Firearms, their Parts and Components and Ammunition ('Trafficking in Firearms Protocol').**

This report provides the committee's review, conclusion and recommendations from oral and written submissions received and deliberated upon by the Committee as per Standing Orders 110(e).

The report is divided into four parts:

Part 1 covers the **role and responsibilities** of the Standing Committee and the inquiry process in undertaking a review of the Convention and the Three Protocols.

Part 2 provides a **brief overview** of the Convention and the Protocols.

Part 3 details the Standing **Committee's observations** of the Convention and the Protocols.

Part 4 provides a **summary of key provisions** of the Convention and the Three Protocols.

The main purpose of the Convention is to prevent and combat transnational organised crime more effectively through collaborative cooperation globally.

Acceding to this Convention will be beneficial to Fiji in terms of:

(i) increasing detection of transnational organised crime;
(ii) enhancing greater understanding of trends and patterns of transnational crime;
(iii) improving prosecution of transnational crime cases and the protection, rehabilitation, and reintegration of victims of human trafficking; and
(iv) Improving cooperation between border security agencies both nationally and internationally.

I commend this report to Parliament for its consideration.

Hon. Netani B. Rika
Chairman

LIST OF ACRONYMS

DPP	Director of Public Prosecutions
EEZ	Exclusive Economic Zone
FICAC	Fiji Independence Commission Against Corruption
FPF	Fiji Police Force
FIU	Financial Intelligence Unit
FTR Act	Financial Transactions Reporting Act
FTRR	Financial Transactions Reporting Regulations
FRCA	Fiji Revenue Customs Authority
MOD	Ministry of Defence
NSS	National Security Strategy
RFMF	Republic of Fiji Military Forces
SCFAD	Standing Committee on Foreign Affairs and Defence
SO	Standing Orders of Parliament
UNCTOC	United Nations Convention Against Transnational Organized Crime

1.0 RECOMMENDATION

The Committee recommends that Parliament accede to the United Nations Convention against Transnational Organised Crime and its three Supplementary Protocols namely:

1.1 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children ('Trafficking in Persons Protocol');

1.2 Protocol against the Smuggling of Migrants by Land, Sea and Air ('Smuggling of Migrants Protocol'); and

1.3 Protocol against the Illicit Manufacturing of Trafficking in Firearms, their Parts and Components and Ammunition ('Trafficking in Firearms Protocol').

2.0 INTRODUCTION

The Parliament Standing Committee on Foreign Affairs and Defence (SCFAD) undertook a review of the proposal by the Government of the Republic of Fiji to accede to the United Nations Convention against Transnational Organized Crime and the Protocols Thereto (TOC Convention).

2.1 The Standing Committee on Foreign Affairs and Defence

The Standing Committee is established under Standing Order 109(2) (e) of the Parliament of the Republic of Fiji. It is mandated to look into matters related to Fiji's relations with other countries, development aid, foreign direct investment, oversight of the military and relations with multi-lateral organisations.
Under SO 110(1) (e) the Committee is also tasked with reviewing international treaties and conventions ratified by the Government and monitor their implementation.

The Committee comprises five Members of Parliament drawn from both sides of the House.|

2.2 Committee Members

The members of the Standing Committee on Foreign Affairs and Defence are:

2.2.1 Hon. Netani Rika (Chairman)

2.2.2 Hon Mataiasi Niumataiwalu

2.2.3 Hon Alexander O'Connor

2.2.4 Hon. Mosese Bulitavu

2.2.5 Hon. Ratu Suliano Matanitobua

During the Standing Committee's meetings, the following alternate membership arose pursuant to Standing Order 115(5):

2.2.6 Hon. Jilila Kumar

2.2.7 Hon. Samuela Vunivalu

2.2.8 Hon. Ro Kiniviliame Kiliraki

2.3 Procedure and Program

The Committee placed advertisements in the *Fiji Sun* and the *Fiji Times* from the 28th March to 4th April 2017. The advertisement was also placed on the Parliament website: (www.parliament.gov.fj).

The Committee received oral submissions on the Convention in the Parliament Complex from relevant stakeholders during 29th March to 18th April 2017.

3.0 UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME AND THE PROTOCOLS THERETO

3.1 Background

On 23rd March 2017, the United Nations Convention against Transnational Organised Crime and the Protocols Thereto (CTOC) was referred to SCFAD for its deliberation.

Under section 51 of the Constitution, "an international treaty or convention binds the State only after it has been approved by Parliament."

3.2 Purpose

The main purpose of the Convention was adopted by the United Nations General Assembly resolution on 15 November 2000. It was opened to Member States for signature in Palermo, Italy, on 12 to 15 December 2000 and entered into force on 29 September 2003. This is the core international instrument in the fight against transnational organised crime.

3.3 Why is it relevant?

The Convention represents a significant development in the fight against transnational organised crime and signifies the recognition by Member States of the severity of the problems posed by it, as well as the need to foster and enhance close international cooperation in order to tackle those crimes.[1]

3.4 Key Provisions

3.4.1 The Convention contains 41 Articles. Article 1 set out the purpose of the Convention and Article 2 defines common terms. Article 3 provides the scope of application of the Convention, while Article 4 allows for States Parties to exercise sovereignty.[2]

3.4.2 Articles 5 to 11 govern the criminalization of transnational organized crimes including, but not limited to corruption, participation in organized criminal groups, Money laundering and liability of legal persons.

3.4.3 Articles 12 to 14 provide that States Parties should implement a legal framework or Mechanism for the confiscation, seizure and disposal of proceeds of crime.[3]

3.4.4 Articles 15 provides for the establishment of jurisdiction in relation to Articles 5, 6, 8 and 23. Articles 16 to 18 govern international cooperation in relation to extradition and Mutual legal assistance[4].

3.4.5 Articles 19 and 20 address investigations. Articles 21 to 23 discuss criminal Proceedings Articles 24 to 25 to discuss protection of witnesses and victims.[5]

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[1] Solicitor General's Analysis on the United Nations Against Transnational Organized Crime and the Protocols Thereto: 2017.
[2] ibid
[3] ibid
[4] ibid
[5] ibid

3.4.6 Articles 26 to 28 govern law enforcement cooperation. Article 29 requires States Parties to provide training programmes for law enforcement programmes.[6]

3.4.7 Articles 30 governs financial and technical assistance to developing countries. Article 31 provides for measures of prevention. Articles 32 to 41 provide for administrative Matters, such as the conference of the parties, the secretariat, settlement of disputes, Depository and amendments to the Convention.[7]

3.4.8 The Convention is supplemented by the 3 Protocols, which target specific kinds of organised crime.

3.5 These Protocols are:

3.5.1 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ('Trafficking in Persons Protocol') Trafficking in Persons Protocol'

The Trafficking in Persons Protocol entered into force on 25 December 2003. It is the first global legally binding instrument with an agreed definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting offenders of Trafficking in Persons Protocol is to protect and assist victims of trafficking in persons with full respect for their human rights.[8]

3.5.2 Protocol against the Smuggling of Migrants by Land, Sea and Air ('Smuggling of Migrants Protocol')

The Smuggling of Migrants Protocol came into force on 28 January 2004. It addresses the growing problem of organized criminal groups who smuggle migrants, often at high risk to the migrants and at great profit for the offenders. A major achievement of the Smuggling of Migrants Protocol was that, for the first time in a global international instrument, a definition of smuggling of migrants was developed and agreed upon. The Smuggling of Migrants Protocol aims at preventing and combating the smuggling of migrants, as well as promoting cooperation among States Parties, while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation which often characterize the smuggling process.[9]

3.5.3 Protocol against the Illicit Manufacturing of Trafficking in Firearms, their Parts and Components and Ammunition. ('Trafficking in Firearms Protocol')

The Trafficking in Firearms Protocol came into force on 3 July 2005. The objective of the Trafficking in Firearms Protocol, which is the first legally binding instrument on small arms that has been adopted at the global level, is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and

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[6] ibid

[7] ibid

[8] ibid

[9] ibid

trafficking in firearms, their parts and components and ammunition. By acceding to the Trafficking in Firearms Protocol, States make a commitment to adopt a series of crime-control measures and implement in their domestic laws and framework for the following:

3.5.3.1 The establishment of criminal offences related to illegal manufacturing of, and trafficking in, firearms on the basis of the Protocol's requirements and definitions; system of government authorisations or licensing intending to ensure legitimate manufacturing of, and trafficking in, firearms; and the marking and tracing of firearms.

3.5.3.2 Countries must become parties to the Convention before they can become parties to any of the supplementing Protocols. As of 19 March 2017, there are 147 signatories and 187 parties to the Convention. Fiji is neither a signatory nor a party to the Convention or the supplementing Protocols.

3.5.3.3 While the Convention is now closed for signature, it remains open for accession.

3.5.3.4 To become a party to the Convention, Fiji has to deposit its instrument of accession.

3.5.3.5 To become a party to the Convention, Fiji has to deposit its instruments of accession with the Secretary General of the United Nations, being the depository of the Convention (Article 38). The Convention will enter into force with respect to Fiji on the thirtieth day after the date of deposit.[10]

3.5.3.6 This also applies to the Protocols under Article 17 of the Trafficking in Persons Protocol, Article 22 of the Smuggling of Migrants Protocol and Article 18 of the Trafficking in Firearms Protocol.[11]

3.6 Regional Observations on Transnational Organized Crime

3.6.1 Provides a global approach to preventing and combating transnational organized crime.[12]

3.6.2 Criminalise offences committed by organized criminal groups, to combat money laundering, and to facilitate international cooperation in the fight against transnational organized crime.[13]

3.6.3 Significant new opportunities for organised crime have been created by the globalisation of economic systems and developments in transportation and communications technologies, that in this environment transnational organised crime threatens the security and prosperity of all countries.[14]

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[10] ibid
[11] ibid
[12] Australian Parliament House Committee on Treaties, Report 2004, Chapter 5 ; UN Convention against Transnational Organised Crime, Australian Federal Parliament House of Representatives.
[13] National Interest Analysis (NIA), para 5, Australian Federal Parliament House, 2004.
[14] Ms Joanne Blackburn, Transcript of Evidence, 13 February 2004, p.12.

4.0 COMMITTEE'S OBSERVATIONS AND AREAS OF CONCERN

4.1 Stakeholders Observations

Submissions were received from relevant stakeholders on the Convention and the overwhelming majority were for ratification.

4.2 Gender Equality

The Parliament of Fiji Standing Orders 110(2) specifically states that a committee shall ensure that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally. The Committee is satisfied that the matters considered in this report will impact both women and men equally and as such, ratifying will not have an adverse impact on gender equality.

4.3 General Observation

4.3.1 Positive Aspects of the Convention to Fiji

4.3.1.1 Benefits for law enforcement agencies and border control agencies and relevant stakeholders.

4.3.1.2 Strengthening Better Intelligence Gathering and Sharing amongst Stakeholders

4.3.1.3 Strengthening Joint Planning ,Training and Policy Action

4.3.1.4 Enhance the use of appropriate technology to mitigate gaps in border control, investigations, information security and management.

4.3.1.5 Adapt and amend laws and policies to international standards

4.4 Challenges

4.4.1 Fiji Revenue & Customs Authority (FRCA), Office of the Director of Public Prosecutions, Fiji Police Force, Republic of Fiji Military Force and Fiji Immigration Department shared the same concern during their submissions that there is a need to strengthen collective collaboration in terms of information Sharing amongst private, public sectors and border control agencies.

4.4.2 The Fiji Immigration Department suggested primary line to be given to them as they are trained and well informed to detect illicit activities such as human trafficking, illegal immigrants, and illicit drug at the border.

4.4.3 There is a need in the improvement of the existing operational systems by the introduction of new equipment and technology to enhance the FPF and the RFMF capabilities in securing our borders.

4.5 Opportunities

4.5.1 The ratification of the Convention will help bring Fiji's laws and practice in line with international standards.

4.5.2 Being a part of this Convention will promote certainty and predictability in laws, policies, best practices and work ethics to fight transnational crime effectively with international partners for current and future transnational organized crime trends and security threats.

5.0 CONCLUSION

Convention and supplementary three protocols will ensure Fiji's laws and practices are aligned to global standards to fight against transnational organised crime. The Committee has put forward observations and recommendations to Parliament for the accession of the Convention and the supplementary three protocols.

APPENDICES

UNITED NATIONS
Office on Drugs and Crime

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO



UNITED NATIONS

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO



UNITED NATIONS
New York, 2004

Foreword

With the signing of the United Nations Convention against Transnational Organized Crime in Palermo, Italy, in December 2000, the international community demonstrated the political will to answer a global challenge with a global response. If crime crosses borders, so must law enforcement. If the rule of law is undermined not only in one country, but in many, then those who defend it cannot limit themselves to purely national means. If the enemies of progress and human rights seek to exploit the openness and opportunities of globalization for their purposes, then we must exploit those very same factors to defend human rights and defeat the forces of crime, corruption and trafficking in human beings.

One of the starkest contrasts in our world today is the gulf that exists between the civil and the uncivil. By "civil" I mean civilization: the accumulated centuries of learning that form our foundation for progress. By "civil" I also mean tolerance: the pluralism and respect with which we accept and draw strength from the world's diverse peoples. And finally, I mean civil society: the citizens' groups, businesses, unions, professors, journalists, political parties and others who have an essential role to play in the running of any society.

Arrayed against these constructive forces, however, in ever greater numbers and with ever stronger weapons, are the forces of what I call "uncivil society". They are terrorists, criminals, drug dealers, traffickers in people and others who undo the good works of civil society. They take advantage of the open borders, free markets and technological advances that bring so many benefits to the world's people. They thrive in countries with weak institutions, and they show no scruple about resorting to intimidation or violence. Their ruthlessness is the very antithesis of all we regard as civil. They are powerful, representing entrenched interests and the clout of a global enterprise worth billions of dollars, but they are not invincible.

The Millennium Declaration adopted by the Heads of State meeting at the United Nations in September 2000 reaffirmed the principles underlying our efforts and should serve to encourage all who struggle for the rule of law. The Declaration states that "men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice".

At the Millennium Summit, world leaders proclaimed freedom—from fear and from want—as one of the essential values in the twenty-first century. Yet the right to live in dignity, free from fear and want, is still denied to millions

of people around the world. It is denied to the child who is working as an indentured labourer in a sweatshop; to the father who must pay a bribe to get medical care for his son or daughter; to the woman who is condemned to a life of forced prostitution.

I believe the trafficking of persons, particularly women and children, for forced and exploitative labour, including for sexual exploitation, is one of the most egregious violations of human rights that the United Nations now confronts. It is widespread and growing. It is rooted in social and economic conditions in the countries from which the victims come, facilitated by practices that discriminate against women and driven by cruel indifference to human suffering on the part of those who exploit the services that the victims are forced to provide. The fate of these most vulnerable people in our world is an affront to human dignity and a challenge to every State, every people and every community. I therefore urge the Member States to ratify not only the United Nations Convention against Transnational Organized Crime, but also the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which can make a real difference in the struggle to eliminate this reprehensible trade in human beings.

Criminal groups have wasted no time in embracing today's globalized economy and the sophisticated technology that goes with it. But our efforts to combat them have remained up to now very fragmented and our weapons almost obsolete. The Convention gives us a new tool to address the scourge of crime as a global problem. With enhanced international cooperation, we can have a real impact on the ability of international criminals to operate successfully and can help citizens everywhere in their often bitter struggle for safety and dignity in their homes and communities.

The signing of the Convention in Palermo in December 2000 was a watershed event in the reinforcement of our fight against organized crime. I urge all States to ratify the Convention and the Protocols thereto at the earliest possible date and to bring these instruments into force as a matter of urgency.

Kofi A. Annan
Secretary-General

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General Assembly resolution 55/25 of 15 November 2000

United Nations Convention against Transnational Organized Crime

The General Assembly,

Recalling its resolution 53/111 of 9 December 1998, in which it decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea,

Recalling also its resolution 54/126 of 17 December 1999, in which it requested the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to continue its work, in accordance with resolutions 53/111 and 53/114 of 9 December 1998, and to intensify that work in order to complete it in 2000,

Recalling further its resolution 54/129 of 17 December 1999, in which it accepted with appreciation the offer of the Government of Italy to host a high-level political signing conference in Palermo for the purpose of signing the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the protocols thereto, and requested the Secretary-General to schedule the conference for a period of up to one week before the end of the Millennium Assembly in 2000,

Expressing its appreciation to the Government of Poland for submitting to it at its fifty-first session a first draft United Nations convention against transnational organized crime[1] and for hosting the meeting of the inter-sessional open-ended intergovernmental group of experts, established pursuant to resolution 52/85 of 12 December 1997, on the elaboration of a preliminary draft of

[1] A/C.3/51/7, annex.

a possible comprehensive international convention against transnational organized crime, held in Warsaw from 2 to 6 February 1998,

Expressing its appreciation to the Government of Argentina for hosting the informal preparatory meeting of the Ad Hoc Committee, held in Buenos Aires from 31 August to 4 September 1998,

Expressing its appreciation to the Government of Thailand for hosting the Asia-Pacific Ministerial Seminar on Building Capacities for Fighting Transnational Organized Crime, held in Bangkok on 20 and 21 March 2000,

Deeply concerned by the negative economic and social implications related to organized criminal activities, and convinced of the urgent need to strengthen cooperation to prevent and combat such activities more effectively at the national, regional and international levels,

Noting with deep concern the growing links between transnational organized crime and terrorist crimes, taking into account the Charter of the United Nations and the relevant resolutions of the General Assembly,

Determined to deny safe havens to those who engage in transnational organized crime by prosecuting their crimes wherever they occur and by cooperating at the international level,

Strongly convinced that the United Nations Convention against Transnational Organized Crime will constitute an effective tool and the necessary legal framework for international cooperation in combating, inter alia, such criminal activities as money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage and the growing links between transnational organized crime and terrorist crimes,

1. *Takes note* of the report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime,[2] which carried out its work at the headquarters of the United Nations Office for Drug Control and Crime Prevention in Vienna, and commends the Ad Hoc Committee for its work;

2. *Adopts* the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol against

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[2] A/AC.254/34.

the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime annexed to the present resolution, and opens them for signature at the High-level Political Signing Conference to be held in Palermo, Italy, from 12 to 15 December 2000 in accordance with resolution 54/129;

3. *Requests* the Secretary-General to prepare a comprehensive report on the High-level Political Signing Conference to be held in Palermo in accordance with resolution 54/129;

4. *Notes* that the Ad Hoc Committee has not yet completed its work on the draft 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;

5. *Requests* the Ad Hoc Committee to continue its work in relation to this draft Protocol, in accordance with resolutions 53/111, 53/114 and 54/126, and to finalize such work as soon as possible;

6. *Calls upon* all States to recognize the links between transnational organized criminal activities and acts of terrorism, taking into account the relevant General Assembly resolutions, and to apply the United Nations Convention against Transnational Organized Crime in combating all forms of criminal activity, as provided therein;

7. *Recommends* that the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996, which is beginning its deliberations with a view to developing a comprehensive convention on international terrorism, pursuant to resolution 54/110 of 9 December 1999, should take into consideration the provisions of the United Nations Convention against Transnational Organized Crime;

8. *Urges* all States and regional economic organizations to sign and ratify the United Nations Convention against Transnational Organized Crime and the protocols thereto as soon as possible in order to ensure the speedy entry into force of the Convention and the protocols thereto;

9. *Decides* that, until the Conference of the Parties to the Convention established pursuant to the United Nations Convention against Transnational Organized Crime decides otherwise, the account referred to in article 30 of the Convention will be operated within the United Nations Crime Prevention and Criminal Justice Fund, and encourages Member States to begin making adequate voluntary contributions to the above-mentioned account for the

provision to developing countries and countries with economies in transition of the technical assistance that they might require for implementation of the Convention and the protocols thereto, including for the preparatory measures needed for that implementation;

10. *Decides also* that the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime will complete its tasks arising from the elaboration of the United Nations Convention against Transnational Organized Crime by holding a meeting well before the convening of the first session of the Conference of the Parties to the Convention, in order to prepare the draft text of the rules of procedure for the Conference of the Parties and other rules and mechanisms described in article 32 of the Convention, which will be communicated to the Conference of the Parties at its first session for consideration and action;

11. *Requests* the Secretary-General to designate the Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention to serve as the secretariat for the Conference of the Parties to the Convention in accordance with article 33 of the Convention;

12. *Also requests* the Secretary-General to provide the Centre for International Crime Prevention with the resources necessary to enable it to promote in an effective manner the expeditious entry into force of the United Nations Convention against Transnational Organized Crime and to discharge the functions of secretariat of the Conference of the Parties to the Convention, and to support the Ad Hoc Committee in its work pursuant to paragraph 10 above.

Annex I

United Nations Convention against Transnational Organized Crime

Article 1. Statement of purpose

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

Article 2. Use of terms

For the purposes of this Convention:

(a) "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;

(b) "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;

(c) "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;

(d) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

(e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;

(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

(j) "Regional economic integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to "States Parties" under this Convention shall apply to such organizations within the limits of their competence.

Article 3. Scope of application

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:

(a) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and

(b) Serious crime as defined in article 2 of this Convention;

where the offence is transnational in nature and involves an organized criminal group.

2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:

(a) It is committed in more than one State;

(b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;

(c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or

(d) It is committed in one State but has substantial effects in another State.

Article 4. Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 5. Criminalization of participation in an organized criminal group

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

(i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:

a. Criminal activities of the organized criminal group;

b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with

paragraph 1 *(a)* (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 *(a)* (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

Article 6. Criminalization of the laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(*a*) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(*b*) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;

(*c*) For the purposes of subparagraph *(b)*, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party

in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;

(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

Article 7. Measures to combat money-laundering

1. Each State Party:

(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

(b) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 8. Criminalization of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.

3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.

4. For the purposes of paragraph 1 of this article and article 9 of this Convention, "public official" shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

Article 9. Measures against corruption

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal

system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

Article 10. Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 11. Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. In the case of offences established in accordance with articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

Article 12. Confiscation and seizure

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also

be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 13. International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property,

equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 18 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 *(a)* of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 *(b)* of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 14. Disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:

(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 *(c)*, of this Convention and to intergovernmental bodies specializing in the fight against organized crime;

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Article 15. Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party;

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is:

(i) One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;

(ii) One of those established in accordance with article 6, paragraph 1 *(b)* (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, paragraph 1 *(a)* (i) or (ii) or *(b)* (i), of this Convention within its territory.

3. For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 16. Extradition

1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 *(a)* or *(b)*, involves

an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or

punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 17. Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

Article 18. Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 *(a)* or *(b)*, is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the

corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person,

whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction

of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 19. Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 20. Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

Article 21. Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 22. Establishment of criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose

that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

Article 23. Criminalization of obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) 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;

(b) 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. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

Article 24. Protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 25. Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 26. Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:

(a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

(i) The identity, nature, composition, structure, location or activities of organized criminal groups;

(ii) Links, including international links, with other organized criminal groups;

(iii) Offences that organized criminal groups have committed or may commit;

(b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity

from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

4. Protection of such persons shall be as provided for in article 24 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 27. Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(e) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.

Article 28. Collection, exchange and analysis of information on the nature of organized crime

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.

2. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making assessments of their effectiveness and efficiency.

Article 29. Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel,

including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(c) Monitoring of the movement of contraband;

(d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

(e) Collection of evidence;

(f) Control techniques in free trade zones and free ports;

(g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

(h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and

(i) Methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

Article 30. Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;

(b) To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of transnational organized crime.

Article 31. Prevention

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.

2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:

(a) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;

(b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

(c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

(d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:

(i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;

(ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;

(iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and

(iv) The exchange of information contained in the records referred to in subparagraphs *(d)* (i) and (iii) of this paragraph with the competent authorities of other States Parties.

3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.

4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.

5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organized crime.

7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.

Article 32. Conference of the Parties to the Convention

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;

(c) Cooperating with relevant international and regional organizations and non-governmental organizations;

(d) Reviewing periodically the implementation of this Convention;

(e) Making recommendations to improve this Convention and its implementation.

4. For the purpose of paragraphs 3 *(d)* and *(e)* of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

Article 33. Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the Parties in carrying out the activities set forth in article 32 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 32, paragraph 5, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Article 34. Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party

independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.

3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

Article 35. Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 36. Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 37. Relation with protocols

1. This Convention may be supplemented by one or more protocols.

2. In order to become a Party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.

3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.

4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

Article 38. Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the

fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

Article 39. Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 40. Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

Article 41. Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Annex II

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

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the

prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1. Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2. Statement of purpose

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.

Article 3. Use of terms

For the purposes of this Protocol:

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

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph *(a)* of this article shall be irrelevant where any of the means set forth in subparagraph *(a)* have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph *(a)* of this article;

(d) "Child" shall mean any person under eighteen years of age.

Article 4. Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5. Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6. Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking

in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7. Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8. Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9. Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10. Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in

persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11. Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12. Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13. Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14. Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention[1] and the 1967 Protocol[2] relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15. Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

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[1]United Nations, *Treaty Series,* vol. 189, No. 2545.

[2]Ibid., vol. 606, No. 8791.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16. Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party

to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17. Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18. Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19. Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20. Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Annex III

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels,

Recalling General Assembly resolution 54/212 of 22 December 1999, in which the Assembly urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those related to poverty, and to maximize the benefits of international migration to those concerned, and encouraged, where relevant, interregional, regional and subregional mechanisms to continue to address the question of migration and development,

Convinced of the need to provide migrants with humane treatment and full protection of their rights,

Taking into account the fact that, despite work undertaken in other international forums, there is no universal instrument that addresses all aspects of smuggling of migrants and other related issues,

Concerned at the significant increase in the activities of organized criminal groups in smuggling of migrants and other related criminal activities set forth in this Protocol, which bring great harm to the States concerned,

Also concerned that the smuggling of migrants can endanger the lives or security of the migrants involved,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing illegal trafficking in and transporting of migrants, including by sea,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the smuggling of migrants by land, sea and air will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1. Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2. Statement of purpose

The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.

Article 3. Use of terms

For the purposes of this Protocol:

(a) "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;

(b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;

(c) "Fraudulent travel or identity document" shall mean any travel or identity document:

(i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or

(ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or

(iii) That is being used by a person other than the rightful holder;

(d) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

Article 4. Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences.

Article 5. Criminal liability of migrants

Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.

Article 6. Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:

(a) The smuggling of migrants;

(b) When committed for the purpose of enabling the smuggling of migrants:

(i) Producing a fraudulent travel or identity document;

(ii) Procuring, providing or possessing such a document;

(c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph *(b)* of this paragraph or any other illegal means.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 *(a)*, *(b)* (i) or *(c)* of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 *(b)* (ii) of this article;

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 *(a)*, *(b)* (i) and *(c)* of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 *(b)* and *(c)* of this article, circumstances:

(*a*) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or

(b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.

4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.

II. Smuggling of migrants by sea

Article 7. Cooperation

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

Article 8. Measures against the smuggling of migrants by sea

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.

2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, inter alia:

(a) To board the vessel;

(b) To search the vessel; and

(c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.

3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.

4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made in accordance with paragraph 2 of this article.

5. A flag State may, consistent with article 7 of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.

6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of

registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.

7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

Article 9. Safeguard clauses

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:

(a) Ensure the safety and humane treatment of the persons on board;

(b) Take due account of the need not to endanger the security of the vessel or its cargo;

(c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;

(d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.

3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:

(a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or

(b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.

4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

III. Prevention, cooperation and other measures

Article 10. Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol;

(b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;

(c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;

(d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;

(e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and

(f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.

2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11. Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial

carriers from being used in the commission of the offence established in accordance with article 6, paragraph 1 *(a)*, of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12. Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13. Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for purposes of conduct set forth in article 6 of this Protocol.

Article 14. Training and technical cooperation

1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.

2. States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:

(a) Improving the security and quality of travel documents;

(b) Recognizing and detecting fraudulent travel or identity documents;

(c) Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants;

(d) Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; and

(e) The humane treatment of migrants and the protection of their rights as set forth in this Protocol.

3. States Parties with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct set forth in article 6 of this Protocol. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the conduct set forth in article 6.

Article 15. Other prevention measures

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.

2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.

3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

Article 16. Protection and assistance measures

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.

3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.

4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.

5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations,[1] where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

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[1]United Nations, *Treaty Series,* vol. 596, Nos. 8638-8640.

Article 17. Agreements and arrangements

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:

(a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or

(b) Enhancing the provisions of this Protocol among themselves.

Article 18. Return of smuggled migrants

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.

2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.

3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.

4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.

6. States Parties may cooperate with relevant international organizations in the implementation of this article.

7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.

8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

IV. Final provisions

Article 19. Saving clause

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention[2] and the 1967 Protocol[3] relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 20. Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider

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[2]United Nations, *Treaty Series*, vol. 189, No. 2545.

[3]Ibid., vol. 606, Nos. 8791.

itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21. Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 22. Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or

accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 23. Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States

Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 24. Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 25. Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

General Assembly resolution 55/255 of 31 May 2001

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

The General Assembly,

Recalling its resolution 53/111 of 9 December 1998, in which it decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea,

Recalling also its resolution 54/126 of 17 December 1999, in which it requested the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to continue its work, in accordance with resolutions 53/111 and 53/114 of 9 December 1998, and to intensify that work in order to complete it in 2000,

Recalling further its resolution 55/25 of 15 November 2000, by which it adopted the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime,

Reaffirming the inherent right to individual or collective self-defence recognized in Article 51 of the Charter of the United Nations, which implies that

States also have the right to acquire arms with which to defend themselves, as well as the right of self-determination of all peoples, in particular peoples under colonial or other forms of alien domination or foreign occupation, and the importance of the effective realization of that right,

1. *Takes note* of the report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its twelfth session,[1] and commends the Ad Hoc Committee for its work;

2. *Adopts* 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, annexed to the present resolution, and opens it for signature at United Nations Headquarters in New York;

3. *Urges* all States and regional economic organizations to sign and ratify the United Nations Convention against Transnational Organized Crime and the protocols thereto as soon as possible in order to ensure the speedy entry into force of the Convention and the protocols thereto.

[1] A/55/383/Add.2.

Annex

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

Preamble

The States Parties to this Protocol,

Aware of the urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, owing to the harmful effects of those activities on the security of each State, region and the world as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace,

Convinced, therefore, of the necessity for all States to take all appropriate measures to this end, including international cooperation and other measures at the regional and global levels,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,

Bearing in mind the principle of equal rights and self-determination of peoples, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[1]

[1]Resolution 2625 (XXV) annex.

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition will be useful in preventing and combating those crimes,

Have agreed as follows:

I. General provisions

Article 1. Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2. Statement of purpose

The purpose of this Protocol is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

Article 3. Use of terms

For the purposes of this Protocol:

(a) "Firearm" shall mean any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899;

(b) "Parts and components" shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including

a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm;

(c) "Ammunition" shall mean the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorization in the respective State Party;

(d) "Illicit manufacturing" shall mean the manufacturing or assembly of firearms, their parts and components or ammunition:

(i) From parts and components illicitly trafficked;

(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or

(iii) Without marking the firearms at the time of manufacture, in accordance with article 8 of this Protocol;

Licensing or authorization of the manufacture of parts and components shall be in accordance with domestic law;

(e) "Illicit trafficking" shall mean the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 8 of this Protocol;

(f) "Tracing" shall mean the systematic tracking of firearms and, where possible, their parts and components and ammunition from manufacturer to purchaser for the purpose of assisting the competent authorities of States Parties in detecting, investigating and analysing illicit manufacturing and illicit trafficking.

Article 4. Scope of application

1. This Protocol shall apply, except as otherwise stated herein, to the prevention of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to the investigation and prosecution of offences established in accordance with article 5 of this Protocol where those offences are transnational in nature and involve an organized criminal group.

2. This Protocol shall not apply to state-to-state transactions or to state transfers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interest of national security consistent with the Charter of the United Nations.

Article 5. Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally:

(a) Illicit manufacturing of firearms, their parts and components and ammunition;

(b) Illicit trafficking in firearms, their parts and components and ammunition;

(c) Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms required by article 8 of this Protocol.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct:

(a) Subject to the basic concepts of its legal system, attempting to commit or participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence established in accordance with paragraph 1 of this article.

Article 6. Confiscation, seizure and disposal

1. Without prejudice to article 12 of the Convention, States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of firearms, their parts and components and ammunition that have been illicitly manufactured or trafficked.

2. States Parties shall adopt, within their domestic legal systems, such measures as may be necessary to prevent illicitly manufactured and trafficked firearms, parts and components and ammunition from falling into the hands of unauthorized persons by seizing and destroying such firearms, their parts and components and ammunition unless other disposal has been officially authorized, provided that the firearms have been marked and the methods of disposal of those firearms and ammunition have been recorded.

II. Prevention

Article 7. Record-keeping

Each State Party shall ensure the maintenance, for not less than ten years, of information in relation to firearms and, where appropriate and feasible, their

parts and components and ammunition that is necessary to trace and identify those firearms and, where appropriate and feasible, their parts and components and ammunition which are illicitly manufactured or trafficked and to prevent and detect such activities. Such information shall include:

(a) The appropriate markings required by article 8 of this Protocol;

(b) In cases involving international transactions in firearms, their parts and components and ammunition, the issuance and expiration dates of the appropriate licences or authorizations, the country of export, the country of import, the transit countries, where appropriate, and the final recipient and the description and quantity of the articles.

Article 8. Marking of firearms

1. For the purpose of identifying and tracing each firearm, States Parties shall:

(a) At the time of manufacture of each firearm, either require unique marking providing the name of the manufacturer, the country or place of manufacture and the serial number, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code, permitting ready identification by all States of the country of manufacture;

(b) Require appropriate simple marking on each imported firearm, permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the firearm, and a unique marking, if the firearm does not bear such a marking. The requirements of this subparagraph need not be applied to temporary imports of firearms for verifiable lawful purposes;

(c) Ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate unique marking permitting identification by all States Parties of the transferring country.

2. States Parties shall encourage the firearms manufacturing industry to develop measures against the removal or alteration of markings.

Article 9. Deactivation of firearms

A State Party that does not recognize a deactivated firearm as a firearm in accordance with its domestic law shall take the necessary measures, including the establishment of specific offences if appropriate, to prevent the illicit reactivation of deactivated firearms, consistent with the following general principles of deactivation:

(a) All essential parts of a deactivated firearm are to be rendered permanently inoperable and incapable of removal, replacement or modification in a manner that would permit the firearm to be reactivated in any way;

(b) Arrangements are to be made for deactivation measures to be verified, where appropriate, by a competent authority to ensure that the modifications made to a firearm render it permanently inoperable;

(c) Verification by a competent authority is to include a certificate or record attesting to the deactivation of the firearm or a clearly visible mark to that effect stamped on the firearm.

Article 10. General requirements for export, import and transit licensing or authorization systems

1. Each State Party shall establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition.

2. Before issuing export licences or authorizations for shipments of firearms, their parts and components and ammunition, each State Party shall verify:

(a) That the importing States have issued import licences or authorizations; and

(b) That, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.

3. The export and import licence or authorization and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit. The information contained in the import licence must be provided in advance to the transit States.

4. The importing State Party shall, upon request, inform the exporting State Party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition.

5. Each State Party shall, within available means, take such measures as maybe necessary to ensure that licensing or authorization procedures are secure

and that the authenticity of licensing or authorization documents can be verified or validated.

6. States Parties may adopt simplified procedures for the temporary import and export and the transit of firearms, their parts and components and ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.

Article 11. Security and preventive measures

In an effort to detect, prevent and eliminate the theft, loss or diversion of, as well as the illicit manufacturing of and trafficking in, firearms, their parts and components and ammunition, each State Party shall take appropriate measures:

(a) To require the security of firearms, their parts and components and ammunition at the time of manufacture, import, export and transit through its territory; and

(b) To increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and customs transborder cooperation.

Article 12. Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant case-specific information on matters such as authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition.

2. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(a) Organized criminal groups known to take part or suspected of taking part in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition;

(b) The means of concealment used in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition and ways of detecting them;

(c) Methods and means, points of dispatch and destination and routes customarily used by organized criminal groups engaged in illicit trafficking in firearms, their parts and components and ammunition; and

(d) Legislative experiences and practices and measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

3. States Parties shall provide to or share with each other, as appropriate, relevant scientific and technological information useful to law enforcement authorities in order to enhance each other's abilities to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to prosecute the persons involved in those illicit activities.

4. States Parties shall cooperate in the tracing of firearms, their parts and components and ammunition that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt responses to requests for assistance in tracing such firearms, their parts and components and ammunition, within available means.

5. Subject to the basic concepts of its legal system or any international agreements, each State Party shall guarantee the confidentiality of and comply with any restrictions on the use of information that it receives from another State Party pursuant to this article, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information. If such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.

Article 13. Cooperation

1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

2. Without prejudice to article 18, paragraph 13, of the Convention, each State Party shall identify a national body or a single point of contact to act as liaison between it and other States Parties on matters relating to this Protocol.

3. States Parties shall seek the support and cooperation of manufacturers, dealers, importers, exporters, brokers and commercial carriers of firearms, their parts and components and ammunition to prevent and detect the illicit activities referred to in paragraph 1 of this article.

Article 14. Training and technical assistance

States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the training and technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, including technical, financial and material assistance in those matters identified in articles 29 and 30 of the Convention.

Article 15. Brokers and brokering

1. With a view to preventing and combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, States Parties that have not yet done so shall consider establishing a system for regulating the activities of those who engage in brokering. Such a system could include one or more measures such as:

(a) Requiring registration of brokers operating within their territory;

(b) Requiring licensing or authorization of brokering; or

(c) Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.

2. States Parties that have established a system of authorization regarding brokering as set forth in paragraph 1 of this article are encouraged to include information on brokers and brokering in their exchanges of information under article 12 of this Protocol and to retain records regarding brokers and brokering in accordance with article 7 of this Protocol.

III. Final provisions

Article 16. Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request

for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 17. Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature at United Nations Headquarters in New York from the thirtieth day after its adoption by the General Assembly until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect

to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 18. Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 19. Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 20. Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 21. Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

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ANALYSIS ON THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO

1.0 INTRODUCTION

1.1 The United Nations Convention on Transnational Organized Crime (**'Convention'**) was adopted by the United Nations General Assembly resolution on 15 November 2000. It was opened to Member States for signature in Palermo, Italy, on 12 to 15 December 2000 and entered into force on 29 September 2003. This is the core international instrument in the fight against transnational organised crime.

2.0 SUMMARY

2.1 The Convention represents a significant development in the fight against transnational organised crime and signifies the recognition by Member States of the severity of the problems posed by it, as well as the need to foster and enhance close international cooperation in order to tackle those crimes.

2.2 The Convention contains 41 Articles. Article 1 set out the purpose of the Convention and Article 2 defines common terms. Article 3 provides the scope of application of the Convention, while Article 4 allows for States Parties to exercise sovereignty.

2.3 Articles 5 to 11 govern the criminalisation of transnational organised crimes including, but not limited to corruption, participation in organised criminal groups, money laundering and liability of legal persons.

2.4 Articles 12 to 14 provide that States Parties should implement a legal framework or mechanism for the confiscation, seizure and disposal of proceeds of crime.

2.5 Article 15 provides for the establishment of jurisdiction in relation to Articles 5, 6, 8 and 23. Articles 16 to 18 govern international cooperation in relation to extradition and mutual legal assistance.

2.6 Articles 19 and 20 address investigations. Articles 21 to 23 discuss criminal proceedings. Articles 24 to 25 discuss protection of witnesses and victims.

2.7 Articles 26 to 28 govern law enforcement cooperation. Article 29 requires States Parties to provide training programmes for law enforcement programmes.

2.8 Article 30 governs financial and technical assistance to developing countries. Article 31 provides for measures of prevention. Articles 32 to 41

provide for administrative matters, such as the conference of the parties, the secretariat, settlement of disputes, depository and amendments to the Convention.

2.9 The Convention is supplemented by 3 Protocols, which target specific areas of organised crime.

2.10 These Protocols are –

(i) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (**'Trafficking in Persons Protocol'**)

The Trafficking in Persons Protocol entered into force on 25 December 2003. It is the first global legally binding instrument with an agreed definition on "trafficking in persons". The intention behind this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting offenders of trafficking in persons. An additional objective of the Trafficking in Persons Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.

(ii) Protocol against the Smuggling of Migrants by Land, Sea and Air (**'Smuggling of Migrants Protocol'**)

The Smuggling of Migrants Protocol came into force on 28 January 2004. It addresses the growing problem of organised criminal groups who smuggle migrants, often at high risk to the migrants and at great profit for the offenders. A major achievement of the Smuggling of Migrants Protocol was that, for the first time in a global international instrument, a definition of smuggling of migrants was developed and agreed upon. The Smuggling of Migrants Protocol aims at preventing and combating the smuggling of migrants, as well as promoting cooperation among States Parties, while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation which often characterise the smuggling process.

(iii) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (**'Trafficking in Firearms Protocol'**)

The Trafficking in Firearms Protocol came into force on 3 July 2005. The objective of the Trafficking in Firearms Protocol, which is the first legally binding instrument on small arms that has been adopted at the global level, is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and

eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. By acceding to the Trafficking in Firearms Protocol, States make a commitment to adopt a series of crime-control measures and implement in their domestic laws and framework for the following:

1. the establishment of criminal offences related to illegal manufacturing of, and trafficking in, firearms on the basis of the Protocol's requirements and definitions;
2. a system of government authorisations or licensing intending to ensure legitimate manufacturing of, and trafficking in, firearms; and
3. the marking and tracing of firearms.

2.11 Countries must become parties to the Convention before they can become parties to any of the supplementing Protocols. As of 19 March 2017, there are 147 signatories and 187 parties to the Convention. Fiji is neither a signatory nor a party to the Convention or the supplementing Protocols.

2.12 While the Convention is now closed for signature, it remains open for accession.

2.13 To become a party to the Convention, Fiji has to deposit its instrument of accession with the Secretary-General of the United Nations, being the depositary of the Convention (Article 38). The Convention will enter into force with respect to Fiji on the thirtieth day after the date of deposit.

2.14 This also applies to the Protocols under Article 17 of the Trafficking in Persons Protocol, Article 22 of the Smuggling of Migrants Protocol and Article 18 of the Trafficking in Firearms Protocol.

3.0 REQUIREMENTS FOR IMPLEMENTATION OF THE CONVENTION AND THE SUPPLEMENTING PROTOCOLS

3.1 States that become parties to the Convention and the supplementing Protocols commit themselves to taking a series of measures against transnational organised crime, which include –

(a) creating domestic criminal offences, such as participation in organised criminal groups, money laundering, corruption and obstruction of justice;
(b) adopting new and comprehensive frameworks for extradition, mutual legal assistance and law enforcement cooperation; and
(c) promoting training and technical assistance for capacity-building or upgrading of national authorities.

3.2 While Fiji is not a party to the Convention and the supplementing Protocols, the Fijian Government has implemented various measures required under the Convention. Some of these measures are –

(a) Article 5 of the Convention which provides for the criminalisation of participation in an organised criminal group, is addressed under the Public Order Act 1969 as amended by the Public Order (Amendment) (No. 2) Act 2017 and the Proceeds of Crime Act 1997;

(b) Articles 6, 12, 13 and 14 of the Convention which deals with the criminalisation of the laundering of proceeds of crime is addressed under the Proceeds of Crime Act 1997, Financial Transactions Reporting Act 2004 (**'FTR Act'**) and Financial Transactions Reporting Regulations 2007 (**'FTR Regulations'**) and the establishment of a functioning Financial Intelligence Unit under the FTR Act which forms part of the framework for regulation and the supervision of financial institutions for anti-money laundering and countering financial terrorism purposes;

(c) Article 7 of the Convention which states the measures to combat money-laundering is addressed by the FTR Act, the FTR Regulations and the Crimes Act 2009;

(d) Article 8 and Article 9 of the Convention which cover the criminalisation of corruption are addressed under the Crimes Act 2009 and the establishment of the Fiji Independent Commission Against Corruption (**'FICAC'**) in 2007 under the Fiji Independent Commission Against Corruption Act 2007. FICAC is responsible for investigating and prosecuting corruption-related cases;

(e) Article 10 of the Convention that covers liability of legal persons is addressed under the FTR Act and the Public Order Act 1969 as amended by the Public Order (Amendment) (No. 2) Act 2017;

(f) Articles 16 and 17 of the Convention on Extradition are covered under the Extradition Act 2003;

(g) Article 18 of the Convention on mutual legal assistance is covered under the Mutual Assistance in Criminal Matters Act 2009;

(h) The Trafficking in Persons Protocol on the criminalisation of human trafficking offences is addressed under section 10 of the Constitution of the Republic of Fiji and covered for in the Immigration Act 2003 and the Crimes Act 2009;

(i) The Smuggling of Migrants Protocol on the criminalisation of the smuggling of migrants is covered for in the Immigration Act 2003 and the Passport Act 2002;

(j) The Trafficking in Firearms Protocol is addressed in the Arms and Ammunitions Act 2003.

4.0 IMPACT OF THE CONVENTION AND THE SUPPLEMENTING PROTOCOLS

4.1 It is well understood that successful measures to combat transnational crime require swift and effective international cooperation from States Parties.

4.2 The threats of transnational crimes including money laundering, human trafficking, trafficking in illicit drugs, cyber-crime, etc. have drastically changed global enforcement given the cross-jurisdiction nature of the crimes. As such, there is increased demand for networking and intelligence sharing considering the widespread impact and nature of such crimes.

4.3 Acceding to the Convention and the supplementing Protocols will enable:

(i) new means of communicating with the United Nations and other international bodies on issues linked to transnational organised crime; and

(ii) swift action between cross-jurisdiction law enforcement agencies requiring intelligence information assistance in effectively tracking and successfully prosecuting criminals.

4.4 Upon further consideration, it is recommended that Fiji make a reservation pursuant to Article 35 of the Convention.

4.5 Article 35 of the Convention deals with the settlement of disputes arising out of the interpretation and application of the Convention.

4.6 Article 35 states that States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation. If the dispute cannot be settled through negotiation within a reasonable time, a State Party can request the dispute be submitted to arbitration. If however, after six months from the date of request there is no agreed organization of the arbitration, any State Party to the dispute may refer the dispute to the International Court of Justice (**'ICJ'**).

4.7 Essentially, this means that in the event that Fiji has a dispute with any other State Party, any State Party to the dispute can refer the dispute after 6 months when there is no arbitration agreement, even if Fiji does not agree to refer the matter to the ICJ. Should this happen, Fiji will be bound to any decision the ICJ delivers, thereby waiving its sovereign rights.

4.8 However, paragraph 3 of Article 35 of the Convention states that each State Party may, at the time of signature, ratification, acceptance or approval of or accession to the Convention, declare that it does not consider itself bound by this Article and any reservation made in accordance with paragraph 3 of this Article may at any time be withdrawn by notification to the Secretary-General of the United Nations.

4.9 The Convention and the supplementing Protocols, there are currently 43 countries that have made reservations or declarations pursuant to Article 35 of the Convention, including the People's Republic of China, Singapore and the United States of America. Article 35 of the Convention is similar to Articles 15, 20 and 16 of the respective supplementing Protocols.

4.10 Therefore, it is recommended that Fiji reserves the right to not be bound by Article 35(2) of the Convention and the similar provisions in Articles 15, 20 and 16 of the respective supplementing Protocols. The rationale behind this reservation is that no dispute under the Convention will be submitted to arbitration or to the ICJ without the consent of all the parties to the dispute.

APPENDIX 1

POWERPOINT PRESENTATION

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME – NARRATION – 6TH APRIL, 2017

Opening Slide - Salutations

Opening Statement by DCP

Slide 2 – Objectives

Ladies and Gentleman, the objectives of this presentation are as follows:

1. state our position on Government's Intent to accede to UN CTOC;
2. provide a brief overview of the Convention and the security and criminal landscape implications of acceding to the Convention;
3. explain the positive steps the organisation has taken in addressing cases involving the Protocol on Human Trafficking;
4. explain the positive steps the organisation has taken in combating the illicit manufacturing and trafficking in firearms, their parts and components; and
5. make recommendations.

Slide 3 - Introduction

At the outset, the Fiji Police Force wishes to clearly state it fully supports Government's intentions to accede to the UN Convention against Transnational Organized Crime.

The Fiji Police Force has for some years now been making submissions to Government on the same, particularly when international cooperation is now more important than ever in combating transnational organised crime.

As a policing organisation we have always being confronted with transnational organised crime in one form or another since its establishment in the nineteenth century.

Acceding to the Convention would absolutely enhance FPF's commitment to effectively address transnational crime while helping Government fulfil its legal obligations to the international community under the Convention.

We now turn to discussing the three questions stated earlier.

Slide 4 – The Convention and Crime/Security Landscape

Over 190 countries have become party to the Convention since 2000. The Convention obligates states parties to enact laws and administrative reforms that allow for the effective curbing of transnational organised crime such as money laundering, terror financing, and corruption. Its three protocols address three [3] other main offences, namely: human trafficking, people smuggling, and illicit trafficking of arms and ammunition.

Further, the Convention and the three [3] protocols oblige states to develop their investigative capabilities, information- and intelligence-sharing, and international cooperation in detecting transnational crime and relevant capacity-building. States are also obliged to make laws for extradition, mutual assistance in criminal matters, proceeds of crime and tainted property, transfer of sentenced persons, and joint investigations among others.

We now turn to discuss how the Convention would affect the crime and security landscape, firstly it must be realised that transnational crime has both security and criminal implications.

This is where we are right now in as far as the current security landscape and the Convention are concerned:

- ~~we are~~ Fiji is already compliant with many of the Convention's provisions in terms of lawmaking – we have enacted many laws such as the Extradition Act 2002, Mutual Legal Assistance in Criminal Matters Act 1997, Proceeds of Crimes Act 1997, Crimes Act 2009, FICAC Promulgation 2007, and the Financial Transactions Reporting Act 2004;
- FPF, and other law enforcement agencies, are already enforcing these requirements under the Convention by investigating and prosecuting cases through the above laws; and
- we have worked with Government in developing the National Security Strategy and Police White Paper in strengthening the ability of Police to combat transnational crime, and securing our borders

In terms of where we want to take the security landscape, acceding to the Convention would impact on the security landscape in the following ways:

1. encourage lawmaking that further empowers Police to combat all forms of transnational crime;

2. underlines the necessity of Government pursuing various measures to keep our borders secure;
3. encourages cooperation between Fiji and other countries;
4. legitimises the necessity of information-sharing and intelligence-sharing;
5. legitimises the necessity of conducting training and the sharing of training domestically and between Fiji and other countries;
6. encourages sharing of expertise and resource (including scientific and technological);
7. encourages institutional strengthening;
8. legitimises the need for seeking of more funding domestically and from foreign countries; and
9. puts in place a platform that stimulates the economy, boosts investor and consumer confidence and encourages further development.

In terms of the crime landscape, acceding to the Convention would have the following implications:

Benefits

1. increases detection of transnational organised crime;
2. leads to greater understanding of trends and patterns of transnational crime;
3. improves prosecution of transnational crime cases and the protection, rehabilitation, and reintegration especially of victims of human trafficking;
4. reduces transnational crimes cases;
5. improves working relations at a personal expertise level within Fiji and across borders; and
6. improves cooperation between organisations (MOUs, partnerships, etc.).

Slide 5 – TCU's regional framework

Also for the information of the forum, the FPF has a Transnational Crime Unit, also known as TCU, operating since 2002 with a Police-to-Police MOU between FPF and the Australian Federal Police, also known as AFP. TCU also operates on a Fiji Police-Fiji Customs MOU allowing for information-sharing between Fiji Police, Fiji Customs, and AFP on transnational crime.

During important investigations relating to drug trafficking for instance, this network is utilised to conduct joint international operations in both Fiji and other countries thus complying with the Convention's requirements.

helping Fiji

In addition, TCU has a regional information-sharing network under the Pacific Transnational Crime Coordination Centre based in Apia, Samoa. This network allows ~~TCU and Police~~ Fiji through TCU to claim it is already complying with the intelligence-sharing requirements of the Convention. As part of our contribution to the Centre in Samoa, we rotate one [1] officer from our TCU to Samoa to every year.

Further, FPF closely shares information with the Fiji Financial Intelligence Unit at the Reserve Bank on suspect financial transactions as means of detecting and successfully investigate cases of money laundering and other financial crimes. We also have one [1] officer seconded to the Fiji Financial Intelligence Unit [FIU] to serve for one year before being replaced by another. Despite our close working relations with FIU, we continue to detect cases of transnational crime.

~~Further~~ Also, in accordance with the Convention's requirements to combat terrorism, FPF has already established and maintains since 2004 a Counter Terrorism Unit, or CTU, that focuses specifically on gathering intelligence on suspected terrorist elements or radicalised elements within Fiji.

CTU also actively shares information with foreign law enforcement on foreign terrorist fighters and their associates and periodically receives training from our foreign counterparts on surveillance training and counter terrorism investigations.

This is in addition to the recent legal reforms recently undertaken by Government that further empower police such as *Public Order (Amendment) Act* 2012 and the *Public Order (Amendment)(No. 2)Act* 2017.

In addition, as an active member of Interpol, FPF has access to Interpol's I-24/7 database and its various avenues for information-sharing, particularly to detect stolen, lost, or forged travel documents. Many cases of transnational crime often involve syndicate members using such illicit travel documents. Timely detections of the use of such travel documents are however hindered by Immigration officials at Fiji's borders not having 24-hour access to the I-24/7 database.

As such, detections of the use of such travel documents are currently only detected *after* the user of the travel document has already passed through Nadi International Airport. To counter this, the FPF seeks to extend access of the Interpol I-24/7 database to primary line officers of Immigration at Nadi Airport and other international ports-of-entry. FPF has been liaising

with Immigration to extend access of the I-24/7 database for some years now.

Slide 6 – Protocol on Human Trafficking

In terms of where FPF is in terms of human trafficking, FPF has initiated a number of strategies to combat human trafficking since 2010 in compliance with the UN Protocol on Trafficking in Persons. These include:

1. creating the Human Trafficking Unit in 2010;
2. contributing towards the drafting of the Government's Human Trafficking Action Plan 2010;
3. being part of a Working Group on Human Trafficking with Immigration, Social Welfare Department, and other stakeholders;
4. cooperation with other Melanesian Spearhead Group-member countries in regards to transnational crime;
5. standing information-sharing platform with Interpol on human trafficking and other forms of transnational crime;
6. our Sexual Offences Unit complementing the Human Trafficking Unit's ability to detect human trafficking cases involving women and children;–Inoke Raikadroka case
7. standing intelligence-gathering directive on human trafficking;
8. investigated and prosecuted four [4] cases on human trafficking with another six [6] cases being currently investigated;
9. conducting a national awareness campaigns at national and district levels, including lectures in schools and for women in rural areas;
10. facilitating training for law enforcement officers on preventing, identifying, investigating, and prosecuting human trafficking offences and victim protection in partnership with UNODC and UNICEF Pacific since 2010; and
11. enforcement of extradition agreements with requesting countries.

In terms of where the FPF wants to be in future, this is what we envision:

1. improve the protection, rehabilitation, and reintegration services for victims of human trafficking regardless of their nationality;
2. increase our prosecutions of both domestic and transnational human trafficking; and
3. broaden and maintain information-sharing avenues to ensure detections of human trafficking.

Slide 7 – Trafficking in Illicit Arms and Ammunition

In terms of combating illicit trafficking in arms and ammunition, this is where the FPF is currently:

1. maintaining a national register of all legally-owned firearms around Fiji in accordance with the *Arms and Ammunition Act* 2003;
2. conducting periodical inspections and surveys of all legally-owned firearms around Fiji;
3. investigating and prosecuting cases in the illicit possession of firearms under the *Arms and Ammunition Act* 2003;
4. have a standing access to Interpol's iArms database for recording of data relating to arms and ammunition trafficking;
5. conducting, or once did conduct, national awareness;
6. police cooperation with Melanesian Spearhead Group-member countries; and
7. providing periodic intelligence assessments to Government.

In terms of where the FPF wants to be in future, we endeavour to:

1. have a national IT database for the FPF's master register of firearms to facilitate quick police checks and investigations;
2. limit past risks of illicit firearms and ammunition being trafficked by securing our borders; and
3. be more consistent in conducting checks on private individuals storing firearms as well as assess the security of such firearms stock.

These are the next steps FPF will take:

1. pursue a scoping study for eventual implementation of a Force-wide database for use in the digitising of the national register;
2. revitalise Police procedures for the consistent surveying and analysis of firearms and ammunition being possessed by private individuals.

To date, Fiji has yet to authorise any company to manufacture weapons even though this is allowed under section 3 (2) of the *Arms and Ammunitions Act* 2003.

It is also notable that the Solicitor-General's Chambers has already concluded that Fiji is already compliant with the above protocol by the enactment of the *Arms and Ammunitions Act* 2003.

Slide 8 – Daily Challenges in Combating Transnational Crime

Some of the biggest challenges that FPF faces in combating the many faces of transnational organised crime on a daily basis include:

1. insufficient awareness of current and emerging trends;
2. limited use of special investigative techniques, including statutorily sanctioned/authorised controlled deliveries, technical equipment-based surveillance due to limited statutory authority and limited training;
3. limited capabilities for normal investigative methods such as difficulties in attaining foreign language interpreters, strengthening prosecutions, etc.;
4. storage and management of proceeds of crime/exhibits/tainted property lacking;
5. lack of expertise in forensics, forensics analysis, etc.;
6. gaps in the law for surveillance, information-sharing, intelligence-gathering, and controlled deliveries of arms;
7. lack of information-sharing/communications breakdown;
8. insufficient resources for policing and surveillance of Fiji's archipelagic waters, including visiting yachts and foreign vessels;
9. visitors disembarking from cruise ships being inadequately or inconsistently monitored for risks of money laundering;
10. lack of monitoring capability for container ships;
11. involvement of locals with overseas syndicate members; and
12. barrier of jurisdictions impeding quick investigations and prosecutions.

Slide 9 - Recommendations

We have already outlined where FPF is in terms of its capabilities, what we are lacking, and what we envision FPF to develop. Now we would like to leave you with some recommendations as to what FPF should be doing next with the collaboration of the public and private sector and international actors:

1. **Fiji to accede to UN CTOC;**

2. **Need for national written guidelines** and implementation of existing guidelines for prosecutions, investigations, information-sharing, international joint investigations, protection of witnesses and victims of human trafficking;

3. **Law reform in the following aspects:**
   i. legalising the use of special investigative techniques such as technical surveillance for all types of transnational organised crime whereas currently legislative authorisation is currently limited to illicit drug trafficking while legislative authority for the use of such techniques in combatting terrorism is mostly implied and heavily reliant on common law – *Abhay Singh* 2007 Supreme Court case;
   ii. introducing whistleblowing protections for sources and informers of transnational crime to complement current provisions in the *Companies Act* 2015;
   iii. broadening and maintaining regional and sub-regional networks for sharing information and intelligence relating to transnational crime;
   iv. legislative review to facilitate ~~victim~~ protection, rehabilitation, and reintegration ~~services~~ for victims of transnational crime; and
   v. strengthening information-sharing and standardising rules of engagement and coordination between local law enforcement through the NCLASA arrangement and between local law enforcement and foreign counterparts.

4. **Administrative reform in the following respects:**
   i. providing storage and management services for seized proceeds of crime and tainted property;
   ii. strengthening of regional and sub-regional information-sharing;
   iii. revitalise the Human Trafficking Working Group and actively implement the Human Trafficking Action Plan 2010;
   iv. institutional strengthening and capacity-building (including manpower and resources);
   v. provision of safe houses for victims of human trafficking, witnesses, and whistle blowers;
   vi. strengthening protection, rehabilitation, and reintegration services for victims of human trafficking, including providing temporary work visa arrangements and medical services;
   vii. extending the Interpol I-24/7 database to Immigration officers at all international ports-of-entry;
   viii. establishing a FPF-wide database, including digitising the current Police register of all privately-owned firearms for monitoring and to facilitate quick updating and investigations at station-level across Fiji; and

ix. strengthening border security under the guidance of the National Security Strategy, Police White Paper, and in collaboration with NCLASA.

5. **Operational strengthening in the following respects:**
   i. increasing monitoring of cruise ships and foreign yachts due to the risks of money laundering, environmental degradation, and illicit drug trafficking that they bring;
   ii. sharing of information, intelligence, and persons-of-interest across borders.

6. **Training in the following:**
   i. management of intelligence for transnational organised crime cases;
   ii. post-terrorist attack investigations;
   iii. forensics, forensics accounting, and terror financing analysis; and
   iv. facilitating domestic or international training, sharing of expertise and best practices, benchmarking exercises for law enforcement, intelligence community, the legal profession, the judiciary, and at Government-level.

7. **Developing a national CTOC strategy** – this will provide Government with a ready reference for a comprehensive and integrated effort at addressing the above recommendations in a thorough manner so that Government can fully comply with its obligations under CTOC.

The Hon. Chair, Honourable Members of this august Committee, my brief is ended and I will hand now over to the Deputy Commissioner of Police to conclude.

<u>Slide 10 – Conclusion</u>

In conclusion, we would like to emphasise three [3] points:

1. While Police is already helping Government comply with many of the provisions of the Convention and the three [3] protocols, a lot more still needs to be done. To this extent, Police has contributed towards the development of Government's National Security Strategy and Police White Paper. Developing also a parallel National CTOC Strategy may also be considered to ensure there is a thorough approach towards ensuring full compliance with the Convention's requirements.

2. The Fiji Police Force is mindful of Government's Intent to make Fiji safer and more secure and to this extent we thank Government for its support in uplifting the capabilities of Police to counter transnational organised crime and indeed any other crime. We anticipate that all the recommendations made herein will achieve the following objectives:

   a. assist the FPF to effectively address transnational crime;
   b. contribute towards realising Government's Intent to make Fiji safer and more secure; and
   c. help Fiji meet its obligations to CTOC.

The Honourable Chair, members of the Standing Committee, that brings me to the end of this presentation. Thank you for listening. You are most welcome to ask questions.

Fiji Police Force & the UN Convention Against Transnational Organised Crime and its 3 Protocols

Presentation to the Parliamentary Standing Committee on Foreign Affairs & Defence
6th April, 2017

OBJECTIVES

- Overview of UN CTOC and implications
- FPF's steps to address Human Trafficking
- FPF's steps to address arms trafficking
- Recommendations

INTRODUCTION

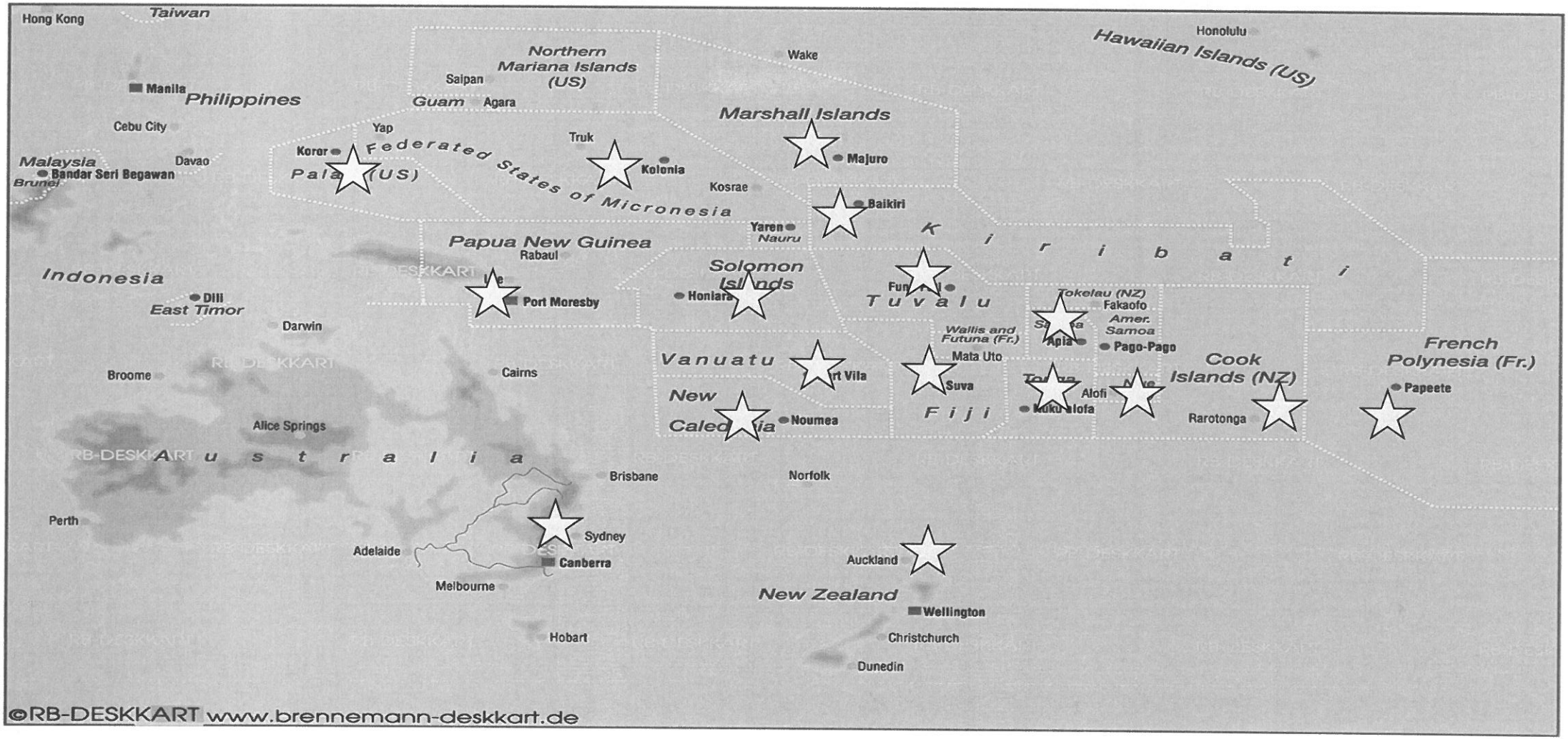
- FPF supports Government's intention to accede to UN CTOC

- Acceding to UN CTOC would enhance FPF's commitment to effectively combat transnational crime.

CRIME AND SECURITY LANDSCAPE

- 193 states parties since 2000 and when it came into effect in 2003
- States parties obligation to the Convention
- States parties obligations to the 3 Protocols
- Implications on Security Landscape
- Implications on Crime Landscape

TCU's REGIONAL NETWORK



PROTOCOL ON HUMAN TRAFFICKING

❖FPF's undertakings:

- investigated and prosecuted at least 4 cases
- established a Human Trafficking Unit [HTU] in 2009
- Sexual Offences Unit complementing HTU
- helped draft a National Action Plan 2010
- part of a Human Trafficking Working Group
- MOUs with other countries
- information sharing with Interpol
- standing intelligence-gathering directive
- national awareness
- enforcement of Extradition Act and treaties

PROTOCOL ON ILLICIT ARMS & AMMUNITIONS

❖FPF's undertakings:

- maintaining a national register of legally owned arms
- periodical inspections and survey of all legally owned arms
- national awareness
- investigated and prosecuted cases
- access to Interpol iArms database
- police cooperation with MSG member countries

DAILY CHALLENGES

- Insufficient awareness of current and emerging trends
- Technical capabilities for special investigative techniques
- Capabilities for normal investigative methods
- Insufficient storage capacity for proceeds of crime
- Lack of forensics accounting and terror financing investigations expertise

RECOMMENDATIONS

- Fiji to accede to UN CTOC
- Need for national written guidelines
- Law reform
- Administrative reform
- Operational Strengthening
- Developing a national CTOC strategy
- Training

CONCLUSION

- More work still needs to be done.
- Recommendations will assist the FPF to effectively address transnational crime and make Fiji safer and more secure.
- Strengthening FPF will help Fiji meet its obligations to UN CTOC.

Ministry of Defence & National Security

Presentation to Parliament Standing Committee on Foreign Affairs and Defence
on
United Nations Convention Against Transnational Organized Crime

Brief Overview

- The United Nations Convention on Transnational Organized Crime was adopted by the United Nations General Assembly resolution on 15 Nov 2000.
- This is the core international instrument in the fight against transnational organized crime.

Brief Overview cont'd

- The Convention represents a significant development in the fight against Transnational Organized Crime and signifies the recognition by members' States of the severity of the problems posed by it.
- There is also a need to foster and enhance close international cooperation in order to tackle these crimes.

Security & Criminal Landscape Implications

- There are three Protocols which target specific areas of organized crime:
  - 1. Trafficking in Persons - The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was adopted by General Assembly resolution 55/25. It entered into force on 25 December 2003.
  - 2. Smuggling of Migrants - The Protocol against the Smuggling of Migrants by Land, Sea and Air, adopted by General Assembly resolution 55/25, entered into force on 28 January 2004.
  - 3. Illicit Manufacturing and Trafficking in Fire Arms - The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition was adopted by General Assembly resolution 55/255 of 31 May 2001. It entered into force on 3 July 2005.

Security & Criminal Landscape Implications cont'd

- The Fijian Government has implemented various measures required under the Convention, Protocol 1 and Protocol 2 are well covered under the Crimes Act of 2009 and the Immigration Act 2003.
- Fiji has complied with the requirements of the Convention by way of domesticating it through legislations, National Policies and Procedures.

Positive Steps to address the prevention, suppression and punish trafficking in persons especially women and children

- Strengthened legislations for enforcement in the Crimes Act 2009 –minimum sentence of 12 years
- Meetings and workshops of National Combined Law and Security Agencies (NCLASA)
- Inception of the Border Police at Nadi Airport

Positive Steps to address the prevention, suppression and punish trafficking in persons especially women and children cont'd

- Procurement of 4 X-ray Machines at Nadi Airport
- K9 Unit through NZ – Fiji Programme.
- AIS (MSAF) – monitor movement of foreign vessels with transponder as they enter EEZ and internal waters.
- Currently formulating the Maritime Strategy
- NSS is an encompassing platform to address better coordination amongst border agencies.

Combating the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition

- Fiji has robust Law on Arms and Ammunition Act 2003 which deals with importation of arms and ammunitions in Fiji.
- Need for Training – FRCA (Customs) Officers needs to undergo training in weapons for examination and identification of arms, ammunition, parts and components.
- The obligations of the Protocol is enforced in Fiji's legislations under the Arms and Ammunition 2003 and Customs Act 1986 under the prohibited goods.

MOD response in the Coordination of national, regional and international fight against Transnational Organized Crime

- The National Security Strategy (NSS) is an overarching policy document for Fiji. The strategy provides the basis for establishing a strong, effective and modern security architecture and system that has the capacity and capability in responding to security issues. This also includes counter measures to counter transnational Organized Crime .
- As a member of the MSG PMM, Fiji is tasked to spearhead the Working Group in developing a framework on Regional Security Strategy (RSS) which was a key outcome during the meeting in Jakarta, Indonesia on 13-16 March, 2017.

MOD response in the Coordination of national, regional and international fight against Transnational Organized Crime cont'd

- Fiji is a member of the PTCCC through FPF and FRCA, which provides a proactive, interconnected and investigative capability to combat transnational crime in the Pacific region.
- Fiji is also a member of the INTERPOL and is an observer in the ASEANPOL.
- Fiji is a party to the UN Small Arms and Light Weapons and will soon accede to the Arms Trade Treaty .

Challenge

Given the porous nature of our borders, the challenge currently faced by the Ministry is the lack of coordination between border security agencies as they are displaced in other government Ministries inhibiting the crucial sharing of information at the operational level.

Way Forward

- NSS is envisaged to streamline Border management by collocating all border agencies under one roof for effective coordination etc.
- It is important for secondment and training with international border agencies to shape "best practices" domestically.

Way Forward

- Fiji must enhance its border surveillance capacity to detect and deter criminal elements associated with Transnational Organized Crime.
- Ceding to the Convention could see Fiji move from the Tier 2 status to Tier 1 under US Trafficking in Persons Report.

Conclusion

- The Ministry of Defence and National Security fully supports the move for Fiji to accede to the United Nations Convention against Transnational Organized Crime.

VINAKA.

PARLIAMENT STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

1. **Provide a brief overview on the Convention and the Security and Criminal Landscape implications in the security of Fiji's International Airports and Sea Ports**?

DOIs response

[Copy of the convention – our understanding]

The purpose of this UN Convention against Transnational Crimes is to promote cooperation to prevent and combat transnational organized crime more effectively.

Supplementing the United National Convention against Transnational Organized Crime are the following protocols:

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children;
- Protocol against the Smuggling of Migrants by Land, Sea and Air;
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

There are forty one (41) articles under this Convention:

Article 1	:	Statement of Purpose;
Article 2	:	Use of terms;
Article 3	:	Scope of application;
Article 4	:	Protection of sovereignty;

Criminalization

Article 5	:	Criminalization of participation in an organized criminal group – *Part 5 of the Immigration Act, 2003*
Article 6	:	Criminalization of the laundering of proceeds of crime;
Article 7	:	Measures to combat money-laundering – *Under Section 32 of the Immigration Act;*
Article 8	:	Criminalization of corruption;
Article 9	:	Measures against corruption;
Article 10	:	Liability of legal persons;
Article 11	:	Prosecution, adjudication and sanctions;

Confiscation – Proceeds of Crime

Article 12	:	Confiscation and seizure;
Article 13	:	International Cooperation for purposes of confiscation;
Article 14	:	Disposal of confiscated proceeds of crime or property;
Article 15	:	Jurisdiction;
Article 16	:	Extradition;

International Co-operations

Article 17	:	Transfer of sentenced persons;
Article 18	:	Mutual legal assistance;
Article 19	:	Joint investigations;
Article 20	:	Special investigative techniques;
Article 21	:	Transfer of criminal proceedings;
Article 22	:	Establishment of criminal record;
Article 23	:	Criminalization of obstruction of justice;

Protection and Assistance to victims of Trafficking

Article 24	:	Protection of witnesses;
Article 25	:	Assistance to and protection of victims;

Law Enforcement Cooperation

Article 26	:	Measures to enhance cooperation with law enforcement authorities;
Article 27	:	Law enforcement cooperation;
Article 28	:	Collection, exchange and analysis of information on the nature of organized crime;
Article 29	:	Training and technical assistance;
Article 30	:	Other measures: implementation of the Convention through economic development and technical assistance;
Article 31	:	Prevention;
Article 32	:	Conference of the Parties to the Convention – Bali Process/PIDC
Article 33	:	Secretariat;
Article 34	:	Implementation of the Convention;
Article 35	:	Settlement of disputes;
Article 36	:	Signature, ratification, acceptance, approval and accession;
Article 37	:	Relation with protocols (3);
Article 38	:	Entry into force;
Article 39	:	Amendment;
Article 40	:	Denunciation;
Article 41	:	Depositary and languages.

Fiji is not a signatory or party to the Convention, however, the country has put in place measures, drawn up policies and has provisions in the domestic laws to deal with transnational organized crimes.

It is encouraging to note that the country has implemented some articles in the Convention and is well covered in its domestic laws; namely; Part 5 of the Immigration Act, 2003, Proceeds of Crime Act, Crimes Decree 2009.

Fiji being a country bordered by sea and many islands still un-inhabited, the risk of having crime syndicates to infiltrate our country is very imminent. The need to secure our borders is vitally important and to equip our Border Control Officers with the best available resources for them to conduct their work effectively cannot be overstated.

There are articles in the Convention that allows or gives us the opportunity to work together with other stakeholders locally or internationally to build our capacities, align our policies and legislations, support one another technically, conduct joint investigations, information sharing even if we are not a signatory or party to the Convention.

2. **What are the positive steps the organization has taken in addressing cases involving in the protocol to prevent, suppress and punish trafficking in persons especially women and children?**

DOI's response

The Department engages in forums such as Bali Process, Pacific Immigration Directors Conference [PIDC], International Organization for Migration [IOM], United Nations High Commission of Refugee [UNHCR] – Refugee Status Determination [RSD] where best practices are shared on how to combat such activities at the border.

The Department of Immigration also engages in the conducting of awareness to the Bose ni Tikina, Roadshows, and Talkback shows;

Enacting of Part 5 of the Immigration Act "Human Trafficking and People Smuggling"; and the establishment of the National Plan of Action [NPA] – it details the scope of measures and programmes that various Government Agencies, NGOs to eradicate TIP and to develop a workable solution that would best address the issues

Strengthen the networking of relevant stakeholders. Example: FPF, NGOs

Presentation to staff - awareness by NGOs, Pacific Dialogue Limited.

Fiji's Successful Cases

i) Fiji successfully prosecuted its 1st case of Human Trafficking in 2010, involving an Indian National, Mr. Kadali Murti. Mr Murti was convicted of trafficking seven (7) Indian nationals to Fiji. He had promised them job opportunities in New Zealand (NZ) but this did not eventuate as they did not secure visas to travel to New Zealand and were later abandoned in the country. In the process, he obtained more than NZ$30,000 from the seven (7) victims. He was convicted of 1 count of trafficking in person and 7 counts of obtaining property by deception at the Suva High Court in 2010. He served 6 years in prison before he was deported in 2016.

ii) Three (3) Thai nationals were trafficked into the country and were forced into sex labour for approximately two (2) days. They were promised to work in a massage parlour but the Traffickers involving two foreigners (Asians) and a naturalized Fiji citizen but of Chinese origin. Investigations were conducted by the Law Enforcement agencies and signs of exploitation were evident which led to the Traffickers being convicted and sentenced at the Suva High Court in 2012, ranging from 8-10 years imprisonment. The Traffickers are still serving their terms in the Suva Prison.

iii) 4 Bangladesh Nationals

The following are currently accommodated at the Suva Safe House since 15th March, 2015:

	NAME	**DATE OF BIRTH**	**PASSPORT Number**
1.	Md. Nazrul Islam	1/2/1977	BB0504009
2.	Md. Safid Islam	25/02/1983	BB0483217
3.	Mohammed Juliash	01/12/1984	BB0498517
4.	Mohammed Noushad Ali	30/06/1994	AD8781137

They have claimed that they are the victims of Human Trafficking.

The case was forwarded to Fiji Police for further investigation. However, Fiji Police is still yet to apprehend Mr Govind Reddy, the Trafficker as he is still yet to be located.

The Bangladesh nationals are currently under the care of the Department of Immigration and all costs including food, accommodation, medical and other basic necessities.

3. **What are the positive steps the organization has taken in the protocol in combating the illicit manufacturing of Trafficking in Firearms, their parts and components and ammunition?**

DOIs response

Taking into consideration the risks involved, the Department of Immigration is closely working with the relevant authorities in combating the illicit manufacturing of trafficking in firearms, their parts and components and ammunition. However, it does not directly administer the relevant Act which is the Arms and Ammunition Act.

The Department is working together with all Border Control stakeholders to ensure we have the right equipment and training in identifying this illicit equipment if its intended to be trafficked into the country.

4. **What is the biggest challenge the Immigration Department encounters daily in combating the many faces of transnational organized crime on a daily basis?**

DOIs response

The biggest challenges are as follows:

- Unavailability of relevant resources needed in identifying such crime at the borders;
- Non collaboration of other stakeholders in sharing of information;
- Prolong in the apprehension of Traffickers which resulted in the delaying process of the Prosecution case; and
- Non-sharing of costs by relevant stakeholders.

Presentation to

Parliament Standing Committee on Foreign Affairs and Defence

on

United Nations Convention Against Transnational Organized Crime

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Fiji Revenue & Customs Authority

29 March 2017

Brief overview of the Convention

The Convention represents a major step forward in the fight against transnational organized crime and signifies the recognition by Member States of the seriousness of the problems posed by it.

States that ratify this instrument commit themselves to taking a series of measures against transnational organized crime and it will:

Brief overview of the Convention

1. Promote cooperation to prevent and combat transnational organized crime more effectively.
2. Protects Sovereign equality among the State parties.
3. Governs the:
   - Criminalization of participation in an organized criminal group
   - The laundering of proceeds of crime
     - Measures to combat money-laundering
   - Corruption

Brief overview of the Convention Cont.

4. Appropriate use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations.

5. Enhance cooperation with law enforcement authorities between each state party.

6. Each State Party shall, initiate, develop or improve specific training programmes for its law enforcement personnel and customs personnel.

FRCA's response to Prevent, Suppress and Punish Trafficking in persons especially women and children.

1. Information of known individuals association with human trafficking is shared across border agencies both domestic and international.
2. Frontline Customs officers are also trained to recognize trafficking offenders and potential victims. Continual training is provided in-house and by other overseas LEA
3. A Customs referral guideline exists which is in alignment with the Immigration Act 2003 and the Immigration Regulation 2007.

Combating the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition

1. The FRCA Intelligence unit analyses information and intelligence received to target suspect shipments and/or individuals.

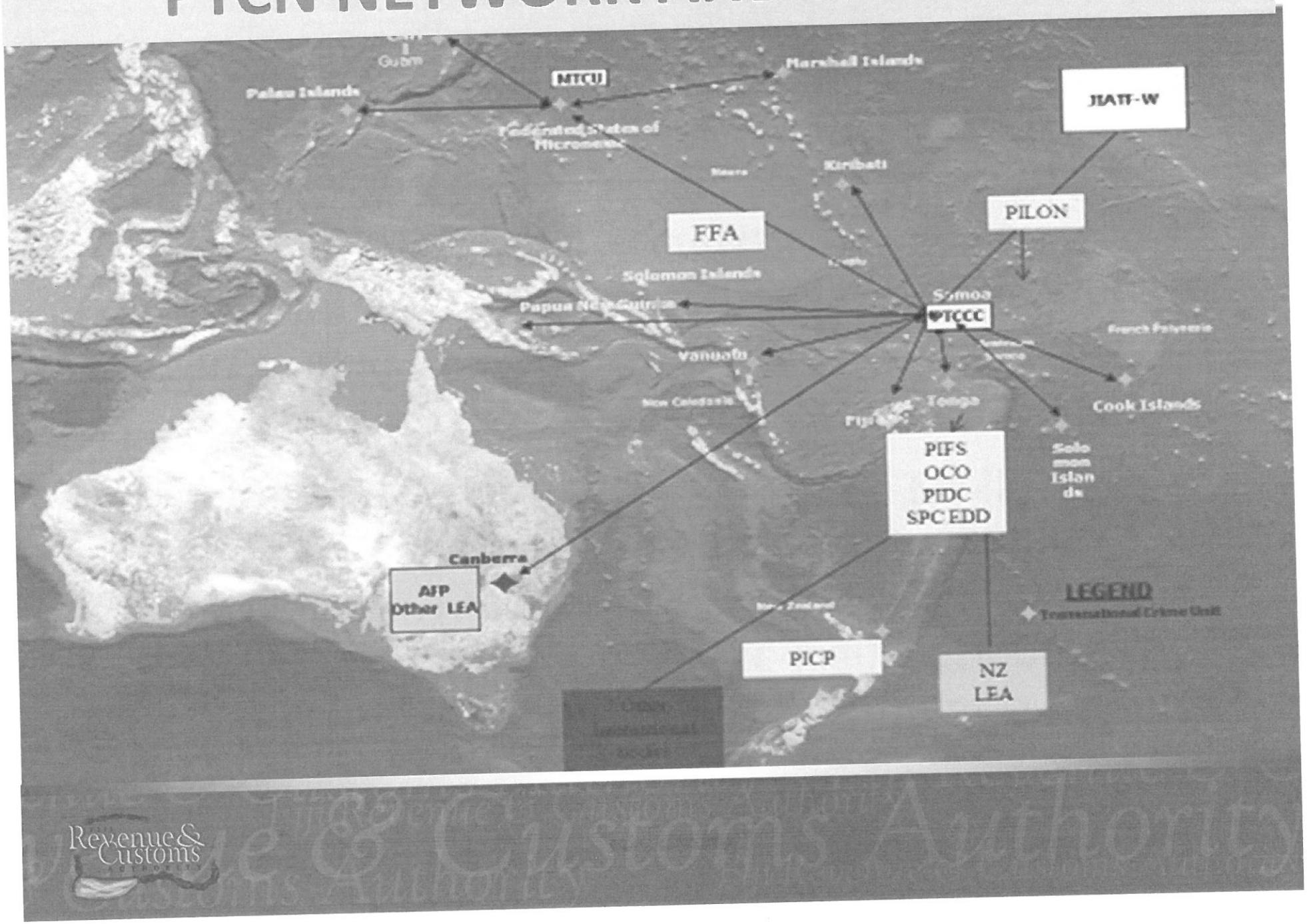
2. The Transnational crime unit (TCU) based at FRCA office shares information with all relevant law enforcement agencies domestic and internationally to identify illicit manufacturing and movement of firearms, parts and ammunition utilizing the Interpol database – as well as individuals associated with such activity.

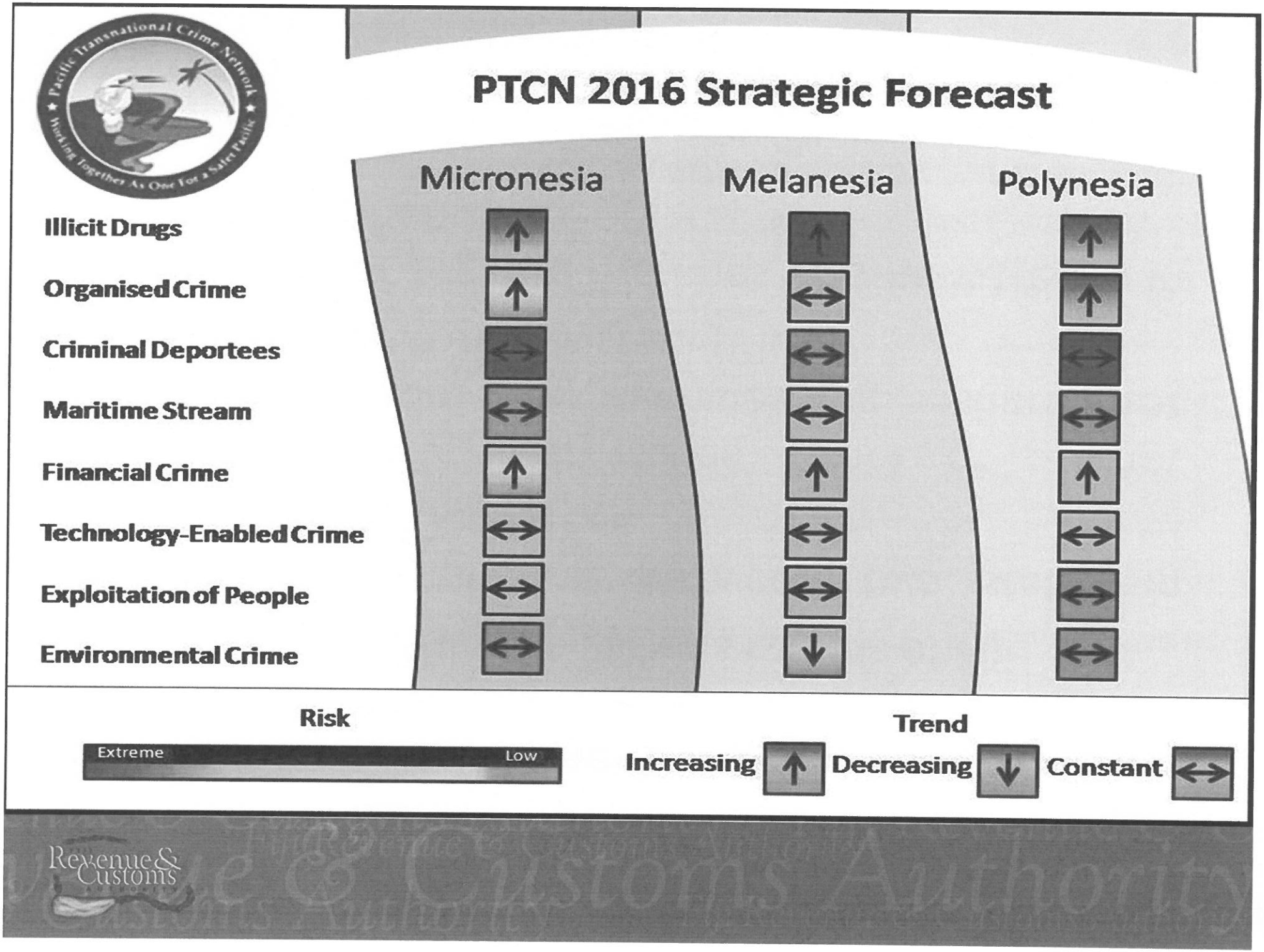
3. MOU with RFMF for training of frontline Customs Officers and identification and examination of arms, ammunition and parts.

Response to the present and future Transnational Organized Crime Trends

1. Pacific Transnational Crime Coordination Centre (PTCCC) is part of the Pacific Transnational Crime Network (PTCN) which provides a proactive, interconnected and investigative capability to combat transnational crime in the Pacific region.
2. TCU and PTCCC are Intelligence based Task Forces and therefore Intelligence Briefs are the main fundamental tool utilised to respond to Transnational Crime Trends. This allows FRCA to focus activity at a Strategic or Operational level.

PTCN NETWORK AND PARTNERS




PTCN 2016 Strategic Forecast
Micronesia
Melanesia
Polynesia
Illicit Drugs
Organised Crime
Criminal Deportees
Maritime Stream
Financial Crime
Technology-Enabled Crime
Exploitation of People
Environmental Crime
Risk
Extreme
Low
Trend
Increasing
Decreasing
Constant
Revenue & Customs

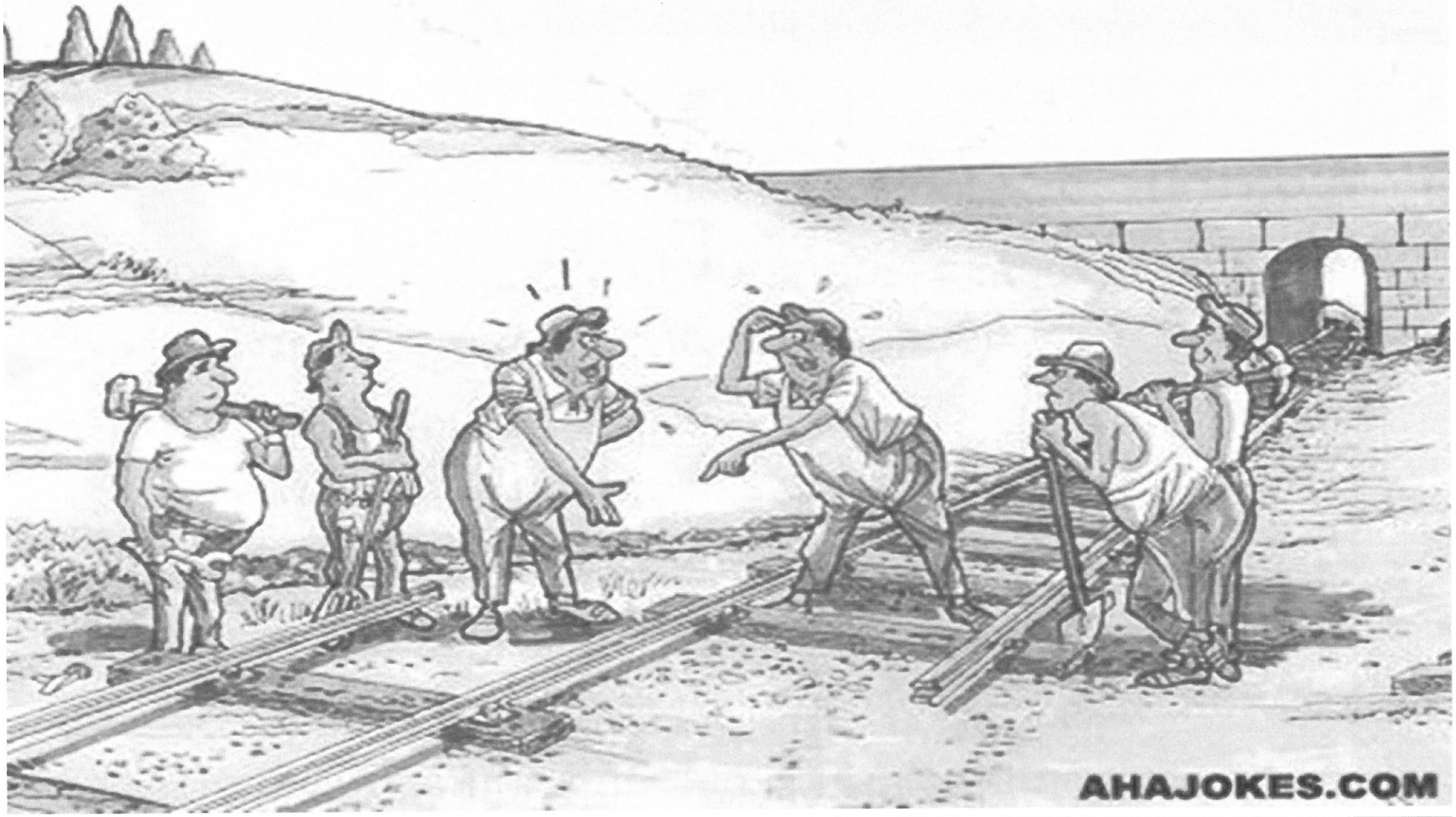
Challenges the FRCA encounters in combating the many faces of transnational organized crime on a daily basis.

1. **Operating Environment-** High potential for cross border movement of illegitimate people, goods and craft within the various islands of Fiji
2. Information sharing between two states in relation to "**Deportees**"
3. Inter Agency trust issues - lack of prompt response from Inter Agencies; e.g. – sharing for Vessel Monitoring System (VMS)
4. Evolving of organized crimes and new trends in criminal offending.

Lessons Learnt

1. Timely dissemination and sharing of information.
2. Developing a common platform for informed decision making.
3. Importance of secondments and training with international border agencies to shape "best practice" domestically.
4. Importance of effective coordination approach with other domestic and international Border Agencies.

Team Work



Revenue & Customs

Way Forward

- FRCA's view is that ratification of the Convention will be a positive step forward for Fiji, however there will need to be a concerted effort to create better domestic connectivity between Agencies to ensure full benefit is achieved Internationally.
- International understanding, agreement and collaboration is vital to tackle Transnational Organized Crime but must start at home.

Conclusion

FRCA fully supports the ratification of the United Nation Convention Against Transnational Organized Crime (UNCATOC)

Vinaka !

APPENDIX 2

WRITTEN SUBMISSION

UNITED NATIONS CONVENTION AGAINST TRANSNATIOINAL ORGANIZED CRIME AND THREE SUPPLEMENTING PROTOCOLS

The Republic of Fiji Military Forces is guided by the 2013 Constitution of Fiji under section 131(20. The section provides:

"It shall be the overall responsibility of the Republic of Fiji Military Forces to ensure at all times the security, defence, and well - being of Fiji and all Fijians".

For any 'law and order issues' in Fiji, the Fiji Police Force is the frontline agency that deals with the issue as it is their legislated work. The Republic of Fiji Military Forces is often the second line of defence when the Police cannot control the crime or when it is anticipated that the issue would become broader and would result in the destabilization of security, defence, and well - being of Fiji and Fijians.

There is no legislation which clearly demarcates the line where the Police will call the military for assistance. It is only under military aid to civil power situations. This system is similar to that of the United Kingdom.

1. **Provide a brief overview of the Convention and the Security and Defence Landscape implications in maintaining law and order?**

The geographical characteristics and landscape of our Island nation due to its vast maritime distant will allow it to be a probable hot spot which can be utilized as thoroughfare for transnational crime issues.

As have been alluded to earlier for any "Law and Order issues" in Fiji, the Fiji Police Forces will always be the frontline agency to deal with law and order issues, as it is their legislated work.

However the Republic of Fiji Military Forces, through the Fiji Navy is involved in:

(i) Protection of Fiji's Maritime Sovereignty;
(ii) Protection and Security of Fiji's Maritime Boundary; and
(iii) Assist in the protection and management of marine resources.

In addition to the naval roles when going out to carry out naval patrols within Fiji's Economic Exclusive Zone, the Fiji Navy also play the roles of the following line agencies:

(i) Boarding Officers on suspicious ships within Fiji's EEZ;
(ii) Fisheries Officer;
(iii) Customs Officer;
(iv) Immigration Officer; and
(v) Bio Security Officer

The Fiji Navy will act accordingly on any breaches within its Economic Exclusive Zones and on return to shore will direct the respective breaches encountered to the line agency concerned.

2. **How has the Convention impacted in the manner the RFMF has implemented the Defence White Paper?**

The Defence White Paper process is currently in its consultation stages with its own secretariat; however when it's completed the Republic of Fiji Military Forces will ensure that it will also include and enhance how best it will be able to tackle the issue of Transnational Organized crimes.

3. **What are the positive steps the institution has taken in addressing cases involving in the protocol to prevent, suppress and punish trafficking in persons especially women and children?**

The positive step the Republic of Fiji Military Forces has taken to address these issues are:

(i) Through its Navy by conducting surveillance patrol of Fiji's Economic Exclusive Zone;

(ii) The Navy has trained their personnel to conduct boarding of suspicious ships within the Fiji Economic Exclusive Zone and to search arms, illegal people, and drug;

(iii) Training through defence partners, Australia, New Zealand, USA, China and India.

4. **What are the positive steps the RFMF Organization taken in the protocol in combating the Illicit Manufacturing of Trafficking in Firearms, their parts and Components and Ammunition?**

The Republic of Fiji Military Forces through its navy have trained its personnel to carry out boarding of suspicious ships to search for any trafficking of firearms, parts, components and ammunitions.

The RFMF also has a component of Explosive Ordinance experts at the Nadi International Airport checking and monitoring for any suspicious Firearms and ammunition smuggled into the country through its international airport.

An officer within the RFMF has just returned from five year training in China as a specialist in identification of weapons and its accessories.

The RFMF has also started to provide training to FIRCA recruits on leadership skills and identification of weapons. This was done after RFMF

and FIRCA signed a Memorandum Of Understanding.

5. **What is the biggest challenge the RFMF encounters in combating the many faces of transnational organised crime on a daily basis?**

The challenges the Republic of Fiji Military Forces encounters in countering transnational crimes are:

(i) RFMF Navy does not maintain continuous presence at sea as Fiji EEZ is vast;
(ii) The budgetary allocation to carry out the Patrolling of the EEZ;
(iii) There is a lack of assets and platforms to assist us to stay longer at sea;
(iv) RFMF will rely on planned maritime surveillance patrol offered by our Defence partners such as New Zealand, Australia, France and the United States; and
(v) No information sharing capability or data base available for monitoring.

6. **Lesson Learnt**

Despite the respective government agencies responsible for monitoring issues on transnational crimes there are gaps within the agencies which needs to be addressed which are:

(i) No coordination with the relevant line agencies, as this different agency's carry out their own roles and functions individually;
(ii) Lack of information and intelligence sharing with the relevant agencies;
(iii) There is no system in place to be able to monitor ships entering Fiji's Economic Exclusive Zone; and
(iv) The line government agencies concerned needs to work together in monitoring and coordinating Transnational Crime issues.

7. **Way Forward**

The way forward in arresting and monitoring the issues on Transnational Crime will be:

(i) Memorandum of Understanding with line ministries and agencies such as Fisheries, FIRCA, Police in sharing of information and intelligence on Transnational crime issues;
(ii) Maritime Surveillance Patrol Aircraft request to Defence Partners;
(iii) Use of high technology PPB patrol boats with more increased patrol range to sustain longer stay out at sea;
(iv) The use of long range drones for surveillance of our Economic Exclusive Zone; and

(v) Managing of Economic Exclusive Zone by the use of high technology equipment's to monitor ships entering the Economic Exclusive Zone similar to those being used by Aircraft Control Towers to monitor aircraft entering our airspace.

FijiFIU

Fiji Financial Intelligence Unit

WRITTEN SUBMISSION

OF THE FINANCIAL INTELLIGENCE UNIT TO THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE IN RELATION TO THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

30th March 2017

Financial Intelligence Unit

1. Mr Razim Buksh, Director Financial Intelligence Unit.
2. Mrs Caroline Pickering, Manager Policy and Compliance.
3. Mr Avaneesh Raman, Acting Manager Intelligence Management.

Honorable Chairman and members of the Parliamentary Standing Committee on Foreign Affairs and Defence.

United Nations Convention Against Transnational Organized Crime and its Implication on Money Laundering & Law and Order in Fiji.

The United Nations Convention Against Transnational Organized Crime has strong implications on money laundering. The Convention is aimed at combating transnational organized crime which is directly linked to money laundering. This Convention is also called the Palermo Convention.

The ultimate goal in any transnational organized criminal activity, whether it be drug trafficking, human trafficking, corruption or cybercrime, is to generate proceeds which can be laundered and ultimately enjoyed by the perpetrators.

Conducting international trade has become much easier and efficient due primarily to technological advancements and open borders. Financial transactions are executed with ease and speed across borders from the comfort of your home using a portable device. You are connected with others, your friends and relatives, international partners, and those that you do business with. At the same time, access to internet and the World Wide Web has become the gateway for criminals to prey on the vulnerable and the weak, our women, men and children, for sexual exploitation and trafficking. International criminals and their syndicates are thoroughly organised and resourced to orchestrate their criminal activities with maximum complexity and sophistication that is sometimes beyond the reach of the law enforcement authorities.

Fiji is part of the globalized economy. Fiji is a global and committed partner in the fight against organised crime. Adequate measures that are comparable with international requirements and best practices must be taken by Fiji.

I am pleased to report that the peer assessment of Fiji's anti-money laundering and combatting the financing of terrorism framework by the Asia Pacific Group noted that Fiji has already taken several steps to address the issue of transnational organised crime. However, the 2016 APG report as well as the World Bank 2006 mutual evaluation report noted that Fiji was among the few countries that have not ratified the UN Convention Against Transnational Organized Crime. In fact, the two reports recommended that the ratification of this Convention should be a priority for Fiji.

Money laundering enables the criminals to hide and disguise the proceeds of their transnational crime using legitimate businesses such as banks, non-bank financial institutions and other businesses such as lawyers, accountants and real estate agents.

Fiji has criminalised all the series of crime-control measures provided in the Palermo Convention into our domestic laws, including the criminalizing of money laundering. Furthermore, the definition of a predicate crime or "serious offence" in Fiji includes offences with 6 months imprisonment which exceeds the 4 years penalty threshold provided in the Palermo Convention. This allows Fijian authorities to extend money laundering investigation and prosecution for other financial crimes such as tax evasion.

The FIU plays a critical role in combating money laundering in Fiji. In this role, the FIU is tasked to implement measures in Fiji that identifies not only the suspicious transactions but also the perpetrators who want to abuse the financial system to hide and launder their illicit ill-gotten wealth. Time permitting, I intend to discuss a few cases that the FIU contributed to the investigations that involved international organised crimes related to advanced fee fraud, international drug and human trafficking, exploitation of a Fijian mother on the social media in an online romance scam, and online banking and email hacking.

The FIU is established under the Financial Transactions Reporting (FTR) Act and its vision is "*protecting Fiji from money laundering*". The FIU achieves this vision through the following key functions:

1. receive financial transactions and other information from financial institutions;
2. gather additional information from financial institutions, government and other stakeholder agencies;
3. analyse information;
4. develop intelligence;
5. refer intelligence and information of possible money laundering activities or other serious offences to appropriate law enforcement and regulatory agencies;
6. assist domestic and foreign law enforcement agencies in their investigation and prosecution of money laundering and other serious criminal activities;
7. develop AML/CFT policies, guidelines and advisories under the FTR Act;
8. enforce compliance by financial institutions with the requirements of the FTR Act;
9. provide education and training to its stakeholders;
10. maintain networking and information sharing with domestic and foreign partner stakeholders and agencies.

The FIU has powers to provide intelligence (sourced from financial institutions and other databases) to law enforcement agencies which will enable them to investigate and prosecute organized crime. The FIU has assisted the Fiji Police Force in investigations related to money laundering and other serious crimes such as drug trafficking and fraud.

Challenges

There are challenges in terms of the changing and evolving domestic and global crime landscape and risks. Criminals are getting more sophisticated in their modus operandi (method of operation). There is increasing use of the internet and technology to carry out their criminal activities.

As a result there is an increasing demand for FIU intelligence from law enforcement authorities such as the Fiji Police Force, Fiji Revenue and Customs Authority, and FICAC. Given the constantly changing crime types, there is also demand for the FIU to provide accurate and complete intelligence as soon as possible. This is sometimes difficult in the view of the many competing functions of the FIU and its set resources. Another challenge is the need to continuously build capacity and technical knowledge across agencies especially law enforcement agencies to be able to keep up with the changing criminal environment.

There is also a challenge in building and maintaining partnerships with foreign FIUs and law enforcement agencies. Transnational crime occurs across multiple jurisdictions and therefore

efforts of law enforcement agencies from various jurisdictions is required in order to successfully investigate and prosecute these transactional crimes.

Value of Proceeds of Crime Generated in Fiji

The FIU estimates that approximately $100 million flows in and through Fiji's financial system annually that are suspected to be illicit proceeds available for laundering. These are proceeds linked to tax evasion, corruption, fraud and other financial crimes.

Several people in Fiji have been convicted of money laundering offence and wealth derived from illegal activities have been restrained and forfeited.

In 2016, the FIU received 579 suspicious transaction reports. The value of these suspicious transactions was $74.7 million, or an average value of $128,968 per suspicious transactions. It should be noted that not all of these suspicious transactions are criminal in nature.

Total Value of Transactions Reported as Suspicious 2012-2016

	2012	2013	2014	2015	2016
Total Value ($ million)	20.0	29.4	69.4	82.7	74.7
Number of STRs	579	522	383	516	579
Average Value reported ($ per STR)	35,000	56,000	181,205	160,373	128,968

The results of the FIU's analysis of STRs are disseminated to relevant law enforcement agencies in a case dissemination report (CDR). In 2016, 195 CDRs were referred to law enforcement agencies. The value of CDRs issued to our key law enforcement agencies for the period January to December 2016 are is as follows:

- FRCA (Tax evasion): $113.50 million;
- FRCA (Customs): $ 8.44 million; and
- Fiji Police Force: $ 73.21million

The top crimes in Fiji which generate proceeds that are available for laundering in and through Fiji's financial system are:

- drug trafficking;
- tax evasion/fraud;
- deception and fraud;
- corruption; and
- cybercrime.

Official sources have reported that the value of cannabis seized in Fiji over the years have totalled over millions of dollars. These sums would have to be laundered if the drugs were sold on the markets. It is reported that the annual tax not collected as a result of the "unofficial economy[1]" in Fiji is $716.2million.

[1] Business activities in the economy not registered with the tax authorities and not subject to tax.

The FIU has made a number of intelligence disseminations to law enforcement agencies, namely the Fiji Police Force relating to alleged drug trafficking and human trafficking. There also have been a number of requests for information from Police related to investigation of transnational criminal activities involving foreign nationals. As a result of FIU's collaboration and assistance, a number of cases have been successfully investigated and prosecuted for drug trafficking and human trafficking.

Let me share with you a few transnational organised criminal cases that the FIU was instrumental in the intelligence development and provided financial investigative assistance:

Exploitation of a Fijian mother on the social media in an online romance scam

An organised cybercriminal syndicate was able to exploit an unemployed mother aged 43 years who got involved in on the Facebook in an online romantic relationship with the cybercriminal syndicate. The daughter Natasha Nilma Singh managed the mother's Facebook account and was communicating with the cybercriminal. Natasha believed that he would marry her mother and would be able to settle in USA. In the process, the cybercriminal sent $72,000 that was stolen online from Australian bank accounts. Natasha was charged and convicted for possession of proceeds of crime under the Proceeds of Crime Act.

Fraud Websites of Commercial Banks

International criminals created bogus lookalike websites of a commercial bank, tricked customers to divulge bank account numbers and passwords, and made unauthorised transfers. Johnny Albert Stephen, a Vanuatu national living in Fiji was convicted for money laundering for facilitating the laundering of stolen funds of some $38,000 through his bank account and sending money to the international criminal syndicates in Nigeria.

Unlawful importation and possession of illicit drugs

Several persons charged and convicted in Fiji for unlawful importation and possession of illicit drugs.

Credit Card scam

Several persons charged and convicted in Fiji for credit card, debit card and EFPTOS fraud.

Transnational organised crimes averted by FIU

The FIU was able successfully avert several transnational scams and prevented Fijians and businesses losing their money to international criminals.

- A group of international fraudsters setup a business purporting to be a commercial bank, namely "Native Bank of Fiji", in Namaka, Nadi. FIU's intelligence was used by authorities that foiled the unlicenced bank and averted several Fijians, in particular, landowners from losing their money to the fraudsters.
- Business email intercept scams. While several businesses have lost funds totalling $1.4 million to international criminals, the FIU was able to avert many transactions being remitted to fraudulent exporters overseas. This was achieved through the close networking and partnership of the FIU and commercial banks.
- Commercial banks and foreign exchange dealers in Fiji have been instructed by the FIU to exercise enhanced due diligence and not remit funds for suspected advance-fee, lottery scams, employment scams, investment/inheritance scams.

These facts indicate that serious crime and money laundering is a concern for domestic authorities.

However, it should be noted that Government has in place strong legislative and institutional measures to combat money laundering in Fiji. These include laws such as, the FTR Act, Proceeds of Crime Act, Mutual Assistance in Criminal Matters, Crimes Act, and institutions such as, the FIU, Reserve Bank of Fiji, Fiji Police Force, Office of the Director of Public Prosecutions, FRCA and FICAC).

Lessons Learnt & Way Forward

Drawing on the information that the FIU has and our own experience, we can strongly conclude that Fiji cannot be complacent in dealing with serious crimes. Multiple efforts from various authorities and strong laws are needed for us to tackle transnational crime effectively.

While Fiji has not yet ratified the Palermo Convention, the Fijian Government has implemented various measures required under the Palermo Convention, thus indicating its strong commitment to its obligations under this Convention. Some of the measures implemented as required under the Palermo Convention are:

1. Criminalising of money laundering under the Proceeds of Crime Act;
2. Criminalising of terrorism financing;
3. Criminalising of cyber and computer crimes;
4. Implementation of preventative measures for commercial banks, non-banks and designated non-financial businesses and professions such as lawyers, accountants and real estate agents;
5. Framework for regulation and supervision of financial institutions for AML/CFT purposes;
6. Establishment of FIU;
7. Establishment of FICAC;
8. Fiji Police Force AML Unit dedicated to investigating money laundering offences;
9. Border currency reporting framework;
10. Criminalising of corruption and unexplained wealth provisions under anti-corruption and anti-money laundering framework;
11. Provisions for the liability of legal persons under the Crimes Act and the FTR Act;
12. Forfeiture and restraining of proceeds of crime, including non-conviction based forfeiture;
13. Legal framework for mutual legal assistance and extradition;
14. Criminalisation of obstruction of justice under the Crimes Act and Proceeds of Crime Act;
15. Joint investigations with law enforcement agencies of foreign jurisdictions in major transactional crime cases.

The Palermo Convention formally endorses and supports the various measures already put in place by the Fijian Government to tackle transnational organised crimes in Fiji. The ratification of the Palermo Convention and the three supplementing Protocols would further strengthen Fiji's commitment, compliance, and global partnership in addressing transnational organized crime and money laundering.

Honorable Chairman, thank you for the opportunity to address you and your Committee this morning.

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