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Zvekić, Ugljesa Ugi

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Na estrutura das Nações Unidas existem duas relevantes entidades associadas à justiça criminal. Uma delas é a Convenção das Nações Unidas contra o Crime Organizado Transnacional (UNTOC). Outra é a Convenção das Nações Unidas Contra a Corrupção (UNCAC). Ambas funcionam hoje em velocidade de cruzeiro, pois têm mais de 20 anos e durante este tempo acumularam muita experiência. Na actualidade a corrupção organizada é de natureza transnacional e a grande corrupção, designadamente a ligada ao crime...

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GLOBAL CRIME GOVERNANCE UNTOC & UNCAC

Ugi Zvekic ²⁹

It is for me a great honor and pleasure to participate in this important event. I would like to express, of course, my gratitude to His Excellency the Rector of the University Lusíada, and of course, to my colleague and friend, Professor Marisa Araújo.

I somehow continue where Luis has started, talking about transnational crime and of course from a little bit different perspective. So, my topic is, actually, how do we make more effective efforts to fight transnational crime? I think today when we talk about transnational organized crime, we cannot really talk without talking about corruption, because organized crime groups are more often than not using corruption in order to, particularly place the profits of their illicit activities in the legal economy and we can today also not talk anymore about corruption without really talking about organised corruption, that is groups that are involved in carrying out corruption.

So, we really have changes in the traditional organised crime paradigm, any traditional corruption paradigm, and the two phenomena can be more and more linked, both at the national and regional level, but in particular at international level. This is represented of course, by this figure, there are only some triangles, so they are really many, many connections, but I don't want to spend your time on that.

²⁹ Head, Permanent Observer Office of the European Public Law Organization (EPLO) to United Nations (Vienna). A intervenção foi feita *online* em língua inglesa. (<https://doi.org/10.34628/79k4-jq14>)

What I want to focus on is that, as you know within the United Nations framework there are two what are called Mega Connexions, mega Criminal justice collections. One is the United Nations Convention against Transnational Organised Crime (UNTOC), another one United Nations Convention Against Corruption (UNCAC). Both of them became mature. They are more than 20 years old. So, there is a lot of experience with them and if we go back through to my introductory observations, what we have today is that organised corruption is actually transnational and the grand corruption, particularly when we talk about the riot of organised crime activities, is of transnational nature.

So, the transnational organised corruption is not just a mere linguistic play of words, that is coined term, but it is becoming the predominant manifestation of corruption and organised crime nexus at the international level and we should devote much more attention to that than it was in the past.

Of course, it is very important for all of us to understand crime and criminal. However, understanding every crime is even more important, because the two go together, right there is a sort of actual reaction relationship, but for social change and policy use perspectives, the anti-crime merits particular attention. Law, law enforcement, politics, civil society and academia involvement.

As I mentioned, we have these international normative and policy platforms. The two conventions that I have mentioned, UNTOC, UNCAC, represent these normative criminal justice-based platforms for the prevention and control of transnational organised crime and transnational organised corruption. On the other hand, they have a developmental platform which is represented by the Sustainable Development Goals 2030, particularly goal 16, 64, 65, 66, which all talk about the targets regarding significant reduction in all forms of organized crime and substantial reduction of corruption and bribery in all their forms. These actually mix between two normative platforms which are mandatory for all Member States that have ratified them and another political development platform which has been adopted by the General Assembly of the UN, represent, I would say, the basis from which international com-

munity deals with the nexus between organised crime and corruption at international level. Just shortly to remind you that UNTOC also known as Palermo Convention because it was adopted in Palermo, my Italian friends, of course, and others know the meaning that is very symbolical, of course, the title Palermo Convention. It is enforced from 2003 and 191 countries have ratified it. So, it is universal practically, and has also three supplementary protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air, the Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition.

The second one, United Nations Convention against Corruption, Merida Convention as it was adopted in Mexico. Merida is enforced since 2005 and is ratified by 117 states, so that is also almost universal. Both of these conventions establish certain mandatory offences, which means that the countries that have ratified these conventions have an obligation to incorporate those conventions in their domestic legislation. Basically, Criminal Code or Special Criminal Laws, and these are several of them as I don't want to go through all of them. UNCAC, differently from UNTOC, has two categories of offences, mandatory offences so, those countries that have ratified UNCAC must incorporate in domestic legislation and the so-called optional offences, those that are of facultative nature in other words, countries may not have to incorporate them into their national legislation.

All in all, when we look at these offences through the two mega conventions, we find even explicitly 3 categories which are the same. One is corruption, another one is money laundering and the third one is obstruction of justice.

These three categories of offences are present, both in Palermo and in Merida conventions, which of course, points out already to certain similarities that exist between these two. International cooperation in both conventions, because these are international conventions and their main purpose is actually to facilitate international cooperation against organised crime and against corruption. So,

the international cooperation category in both convention is almost the same, with the novelty in the Corruption Convention, and that regards international recovery of assets. This is an innovative approach to be even further promoted and used.

However, this concept and instrument is not present in UNTOC. Now, what we have is the common features between these two mega conventions as I already mentioned, universality of ratification, criminalisation, at least of the three, categories of offenses, money laundering, corruption and obstruction of justice. Both have chapters or articles devoted exclusively to prevention of organised crime and corruption. Both have very well-developed categories of international cooperation and mutual legal assistance, including, as I mentioned, international assets recovery. Both have established their own governance arrangements, and one of them is called COP.

Please don't be confused. COP is a conference of parties and COSP is a conference of state parties. They just wanted to make the difference. Actually, all the countries that have ratified the Convention, of course, those that have signed can also participate in that, and both of these conventions have adopted their own review mechanisms. Now, the conference, the governance arrangements that we have today as I mentioned, COP and COSP have very similar mandates and they're held in alternative years. For example, COP was held last time in 2020 and this year will be held in October in Vienna, while COSP was held in 2001, in December, in Sharm El Sheik, Egypt, and the next one in 2023 will be in the United States. So, they have these very similar government arrangements.

I would also point out that both conventions have review mechanisms, based on peer review, so other countries review the performance of subject matter. There is a very well-developed mechanism for the selection of countries and the rounds to which is done, but I must say that corruption Convention has started with review mechanism application not too much earlier than UNTOC. Actually, UNCAC is already at the end, almost at the end of the second cycle of the review. The UNTOC review mechanism, unfortunately, was adopted with lots of delay, after almost 18 years, when the Convention became mature.

I must make here, a political note of observation. Both of these conventions were adopted in 2000, in the time that I called The Golden Age of International Cooperation. It was still the time after the fall of Berlin wall, with all the consequences. Review mechanisms were made after that, already in a very much changed, intense, straight, international atmosphere and that is one of the reasons why it took 18 years for the review mechanism of UNTOC to be adopted. However, both have started already, so tomorrow actually will be the first constructive dialogue, which includes also the civil society, in Viena, about the implementation of the Firearms Protocol, that is one of the protocols of the Palermo Convention. Both review mechanisms share many common characteristics, but I must say that, both of them fall very much behind the human rights review mechanism UPR, particularly when it comes to the role and position of the civil society. Again, it is a reflection of the changed political situation and geopolitics of today. However, what I have to say is that there is a need for much closer fertilisation and mutual reliance between UNTOC and UNCAC, in particular review mechanisms.

On a substantive point of view, I must say that UNTOC Palermo's Organized Crime Convention has shown more opening to the new phenomenon. For example, the last COP has adopted three very important resolutions, recognizing environmental crime, manufacturing trafficking, falsified medical products, combating crimes against cultural property, as pertaining to the category of transnational organised crime. This is a substantive, I would say, novelty because these crimes really did not exist and do not exist in Palermo convention. On the other hand side, Merida Convention, the corruption convention, has not shown clear signs of opening talks, new forms of transnational corruption, such as above mentioned, organised corruption and grant corruption. It has altered for a need to increase anti-corruption awareness and capacity to deal with increased corruption threat in urgent situations such as COVID and this was one of the messages from Sharm El Sheikh COSP in December 2021.

In January 2022, the works of an *ad hoc* committee started to elaborate the Comprehensive International Convention of Countering

the Use of Information and Communications Technologies for Criminal Purposes, known as UN Cybercrime Convention. This is an excellent opportunity towards furthering efforts to integrate global responses to global crime challenges and towards more effective integration and international cooperation.

So, we have international cooperation based on the same principles and instruments of prevention and control, regarding transnational organized crime, corruption, money laundering, access recovery and the abuse of new technologies and information for criminal purposes and this is the potentially most powerful international crime governance response.

What we have today is actually unfortunately a divorce between the Convention Against Transitional Organised Crime and Corruption convention. They have their own governance bodies; their own review mechanisms and they do not talk to each other. This is very, very much lowering the level of the effectiveness and fruitfulness in international cooperation against transnational organised crime and corruption. We're actually lacking strategic and integrated global track governance and this is the future, in my view, we have to devote much more efforts to transnational organized crime, and corruption, and technological information challenges, which do request an integrated and strategic international trade governance response.

(Resumo em português)

Na estrutura das Nações Unidas existem duas relevantes entidades associadas à justiça criminal. Uma delas é a Convenção das Nações Unidas contra o Crime Organizado Transnacional (UNTOC). Outra é a Convenção das Nações Unidas Contra a Corrupção (UNCAC). Ambas funcionam hoje em velocidade de cruzeiro, pois têm mais de 20 anos e durante este tempo acumularam muita experiência.

Na actualidade a corrupção organizada é de natureza transnacional e a grande corrupção, designadamente a ligada ao crime organizado, é de tal natureza. A corrupção organizada transnacional

não é, portanto, apenas um nome, um mero conjunto de palavras, mas um conceito com conteúdo. A exposição descreve os objectivos e o funcionamento das duas Convenções e o seu papel na atualidade, fazendo realçar criticamente o que considera ser a deficiente ligação entre ambas. Nela se chama ainda a atenção para a elaboração da Convenção sobre o Cibercrime.