

**PROPOSED UNITED NATIONS CONVENTION AGAINST
TRANSNATIONAL ORGANISED CRIME**

Note by the Commonwealth Secretariat

BACKGROUND

1. Ministers may be aware that the United Nations is in the process of negotiating an international convention to combat transnational organised crime (the TOC Convention). This process follows UN Resolution 53/111 of 9th December 1998, mandating:

- (a) the setting up of an open-ended intergovernmental committee to elaborate the convention; and
- (b) the negotiation of additional international instruments to address the important issues of:
 - (i) trafficking in women and children;
 - (ii) illegal trafficking of migrants; and
 - (iii) the illicit manufacture of, and trafficking in arms and ammunition.

2. The purpose of the TOC Convention is to promote international co-operation among states in combating transnational criminal activities which are becoming more sophisticated in their organisation and diverse in nature and are therefore a major concern of governments. Like the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the TOC Convention covers money laundering, extradition, mutual legal assistance, protection of witnesses and victims and co-operation between law enforcement agencies. The Convention also contains anti-corruption measures and requires specific measures at the national level to reduce the chances of criminal gangs being able to

participate in legal markets while acquiring illegal gains.

3. In addition to the TOC Convention, the three optional protocols are to cover areas requiring specificity. They are:

- (a) Draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children the title of which speaks for itself. The Protocol is aimed at promoting co-operation among member states to "prevent, investigate and punish international trafficking in women and children for the purpose of forced labour or sexual exploitation";
- (b) Protocol on the Illegal Trafficking of Migrants which includes specific co-operation measures designed to curb such activities by sea; and
- (c) Draft Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and other Related Materials which, as in the case of the other instruments, is designed to facilitate co-operation.

4. The participation of the Commonwealth Secretariat in the open ended intergovernmental committee follows from both the status of the Secretariat as a body invited to participate as a matter of course in United Nations work and the close collaborative links between the Legal and Constitutional Affairs Division and the United Nations Centre for International Crime Prevention.

THE NEGOTIATIONS

5. The most recent negotiating session (March 1999) concentrated on the draft text of

Articles 1 to 3 of the Draft Convention relating to:

- (a) Statement of objectives;
- (b) Scope of application/ Use of terms;
- (c) Participation in criminal organisations;

6. In essence, the discussions centred on the question whether the Convention should contain an indicative list of offences to which its substantive provisions would apply. The majority of delegates do not, at this stage, favour a list because of the difficulty of ensuring that the list keeps abreast of international criminal activity and also of the obvious impossibility of being able to list all possible transnational criminal activity. There were, however, a number of delegates who were of the view that an indicative list of offences was necessary to give a definitive scope to the Convention. It appears to the Commonwealth Secretariat that the general trend in international co-operation (and in Commonwealth Schemes) is to move away from lists of offences in instruments dealing with co-operation in combating international crime for the simple reason that it avoids the need to review the list every time a new form of criminal conduct surfaces.

7. Another issue of relevance arising during the deliberations concerned the relationship between the Draft TOC Convention and other international instruments. Some delegations were of the view that the TOC Convention should have supremacy over other relevant UN conventions. The Commonwealth Secretariat identified itself with those delegations who advocated a provision which allowed concurrent application of the TOC Convention with other bilateral and multilateral agreements and arrangements since this will take into account the Commonwealth's existing Schemes in the field.

8. Negotiations commenced on the Draft Protocol against Trafficking in Women and Children. It was generally agreed that the instrument should cover trafficking in all persons but that there should be specific

emphasis on women and children because they were the most vulnerable group to suffer this form of abuse¹. The Secretariat is of the opinion that it is important that it continues to collaborate with the United Nations on the development of this Protocol notwithstanding that the Protocol has a wider scope than the present work of the Secretariat.

FUTURE NEGOTIATIONS

9. The mandate of the Ad-Hoc Committee is that work on the Convention and additional Protocols should be completed by the end of the year 2000, and further sessions will be held. Documents relating to the meetings of the open ended intergovernmental group and copies of the Draft TOC Convention and related protocols can be found on the Web at <http://www.ifs.univie.ac/~uncjin/dcatoc.htm>.

POSSIBLE ACTION BY LAW MINISTERS

10. Law Ministers may wish to take note of the progress being made on this issue and express any views they may have on the possible development of common approaches by Commonwealth member countries to issues being considered during the negotiations.

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¹ The Commonwealth has already embarked upon a project for the development of an administrative and legislative guide on the commercial sexual exploitation of women and children, following the results of studies carried out in some of its member states on the issue