



Council of Europe Convention on Action against Trafficking in Human Beings

Background

Council of Europe Convention on Action against Trafficking in Human Beings ("Convention") was adopted on 16 May 2005 in Warsaw, Poland.

The Convention is a comprehensive treaty mainly focused on the protection of victims of trafficking and the safeguard of their rights. It also aims at preventing trafficking as well as prosecuting traffickers.

The Convention applies to all forms of trafficking; whether national or transnational, whether or not the victim, women, men or children related to organised crime and whoever and whatever the form of exploitation, sexual exploitation, forced labour or services, etc.

The Convention provides for the setting up of an independent monitoring mechanism ("GREITA") guaranteeing Parties' compliance with its provisions.

Concept

The objectives of this Convention, as set forth in the Article 1, are:

1. To prevent and combat trafficking in human beings, while guaranteeing gender equality;
2. To protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;

3. To promote international cooperation on action against trafficking in human beings.

Entry into force

This Convention entered into force after the 10th deposit of ratification by Signatory States, including 8 member States of the Council of Europe. Until the time being, there have been 40 Contracting Parties including 6 non-member states of the Council of Europe to the Convention.

Main Features

This Convention consists of Preamble and 47 articles.

1. Article 3 sets out the non-discrimination principle in order to promote the enjoyment of measures to protect the rights of the victims. There shall be no discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with national minority, property, birth or other status.
2. Article 4 sets out the definitions of the terms used in the Convention. It also explains about the consent of the victims which determines whether it fulfills the element of trafficking in human beings.
3. Chapter II (article 5-article 9) sets out the preventive measures and cooperation shall be taken by the Contracting States, including the establishment of various bodies responsible and the following policies and adoption of legislative for preventing and combating trafficking. It also requires a measure to discourage the demand of exploitation of persons by conducting a research and raising awareness through education.
4. Chapter III (article 10-17) sets out the measures to protect and promote the rights of victims, guaranteeing gender equality. The measures which are hereby intended are about providing trained and qualified persons in the competent authority to assist the identification of the victims. It also stipulates that each party conform an internal law to ensure those measures set up in this Chapter applicable.
5. Chapter IV sets out the criminalization of the act of trafficking and other relative ground while Chapter V sets out the investigation,

- prosecution and procedural law in relation to the previous chapter.
6. Chapter VI sets out that the parties shall take measure to co-operate with each other through application of relevant applicable international and regional instrument in accordance with the provisions of this Convention.
 7. Chapter VII sets out the establishment of Group of Experts on Action against Trafficking in Human Beings ("GREITA") as the monitoring mechanism of the implementation of this Convention by the Parties.
 8. Chapter VII sets out the relationship between the Convention with Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime specifically and other international instrument. The Convention shall not affect the rights and obligations derived from those instruments. It is intended to enhance the protection afforded by them and develop the standards contained therein. (DH)

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism

Background

The Laundering of the Proceeds from Crime and Financing of Terrorism Convention, also known as ETS No. 198, ("Convention") was adopted on May 16th 2005 in Warsaw, Poland as a continuation of Article 2 and 4 of the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

The 2005 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism is a modification of the 1990 Convention on Laundering, Search, Seizure

and Confiscation of Crime of the Proceeds from Crime. The newest Convention (ETS No. 141) takes into account the other international instrument in this area, particularly the recommendations of the Financial Action Task Force (FATF).

Concept

According to Article 2 of the Convention, the scope of this Convention in financing terrorism falls within the objectives of this Convention, such as:

- Provides States with enhanced possibilities to prosecute money laundering more effectively;
- Equips States Parties with further confiscation tools to deprive offenders of criminal proceeds;
- Provides important investigative powers including measures to access banking information for domestic investigations and for the purposes of international cooperation;
- Covers preventive measures, and the role and responsibilities of financial intelligence units and the principles for international co-operation between financial intelligence units;
- Applies all its provisions to financing of terrorism;
- Covers the principles on which judicial international co-operation should operate between Contracting States Parties.

Entry Into Force

This Convention is entry into force on the first day of the month following the expiration of a period of three months after the date on which 6 signatories, of which at least four are member of the Council of Europe and have expressly stated to be bound by the Convention States.

Main Features

The Convention consists of Preamble, 56 Articles and 20 Appendixes. The scope of this Convention is to regulate preventive and investigative measures against financing terrorism in both national and international levels. Generally, at National level, the measures taken by Parties

are adopting its legislative to international standards set by (FATF) and establishing a Financial Intelligence Unit (FIU) (Article 12).

Measures taken at international level is based on the principle of International Cooperation (Article 13). Another measure is to give investigative assistance to each Party as set in Article 16 of this Convention.

Investigative assistances given to the Parties set in the Convention are:

1. Obligation to Assist; (Article 16)
2. Requests for Information on Bank Accounts; (Article 17)
3. Requests for Information on Banking Transactions; (Article 18)
4. Requests for the Monitoring of Banking Transactions; (Article 19)
5. Spontaneous Information (Article 20)

Corporate Liability

The scope of this Convention is not limited to natural person, but also accounted to legal person as set out in Article 10. It is stated that Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences, committed for their benefit by any natural person.

Financial Intelligence Unit (FIU)

An established FIU has the power to investigate at national level by given the access, directly, or indirectly, on a timely basis to the financial, administrative, and law enforcement information that it requires to properly undertake its functions, including the analysis of suspicious transaction reports. (AD)

Convention on Cybercrime and Additional Protocol to the Convention on Cybercrime, Concerning the Criminalization of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems

Background

The Convention on Cybercrime or also known as Budapest Convention is ruling the possibly crimes on internet and computer by harmonizing international and national laws, improving the investigation techniques and coordination among nations. This convention becomes more important while the digitalization, convergence and globalization of computer networks could not be stopped. Issue of computer networks and electronic information are particularly aware to be used for committing criminal offences. Protecting the use and development of information technologies are needed to establish the effective fight against cybercrime. Principally this convention aims at:

1. Enhancing the national criminal law with the international cooperation among nations of having the offence and connection in the area of cybercrime.
2. Providing the national criminal procedural law powers which necessary in order to create effective investigation and prosecution on any crimes committed on internet or electronic forms.
3. Tracing up a new strategy and effective regime of international cooperation.

This Convention has been supported by the Additional Protocol to the Convention on Cybercrime Concerning the Criminalization of Acts of a Racist and Xenophobic Nature Committed through Computer Systems in order to give a comprehensive protection on crimes committed by internet and computer systems.

Concept

In a general glance, this convention has provided the various kinds

of crimes committed on Internet and other computer networks, particularly on infringements of copyright, computer-related fraud, child pornography, hate crimes, violations of network security and a series of powers and procedures of lawful interception. The Convention on Cybercrime put efforts at the protection of society against cybercrime and improving the investigation techniques by adopting appropriate legislation and fostering international cooperation. The additional of this convention is mainly purpose to support the Convention on Cybercrime and establish racist and xenophobic materials through computer systems as criminal offences.

Entry into Force

The Convention enters into force following to the deposit of instruments of ratification by 5 Parties including 3 member States of the Council of Europe, which are Albania, Croatia, Estonia, Hungary and Lithuania on July, 1st 2004¹; this is in accordance to Article 10(1) of the Convention. As of September 2013, 40 states have ratified the Convention, and further 11 states had signed the Convention but not ratified it.²

Main Features

The Convention consists of Preamble and 46 Articles which specifically divided into 4 Chapters and has the main provisions on against cybercrimes, by:

1. Article 2-6 establish the offences against the confidentiality integrity and availability of computer data and systems with scope setting: illegal access; illegal interception; data interference; system interference; and misuse of devices.
2. Article 7-8 establish the computer-related offences which are consist of computer-related forgery and computer-related fraud.
3. Article 9 establishes the content-related offences which put concern on offences related to child pornography.

¹ Treaty Office Council of Europe, "Convention on Cybercrime CETS No.:185," available at: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CL=ENG>, accessed on November 22, 2013

² *Idem*.

4. Article 10 establish the offences related to infringements of copyright and related right.
5. Article 11-13 establish the ancillary liability and sanctions whether as legal person acting either individually or as part of an organ of the legal person who has a leading position.
6. Article 25-28 put concern on international cooperation through extradition and mutual assistance. This Convention also as legal basis with respect to any criminal offence for Parties. While the mutual assistance affords for the purpose of investigations or proceedings. The procedures pertaining to mutual assistance requests in the absence of applicable international agreements are possible with the requirements stated in this Convention
7. Based on Article 29-35, mutual assistance between Parties is encouraged by this Convention regarding to preserved traffic data; accessing of stored computer data; real-time collection of traffic data; and interception of content data.

Additional Protocol to the Convention on Cybercrime, Concerning the Criminalization of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems

This additional protocol encourage the Parties to adopt such legislative and other measures as may be necessary to establish as criminal offences of racist and xenophobic material to computer systems. The criminal committed in this Additional Protocol are dissemination of racist and xenophobic material through computer systems; racist and xenophobic motivated threat; racist and xenophobic motivated insult. The articles in the Convention are applied *mutatis mutandis* to the Protocol. (FA)

Council of Europe Convention on the Prevention of Terrorism

Background

The Council of Europe Convention on the Prevention of Terrorism was concluded in Warsaw, Poland in 2005. The establishment of this convention is a response from European community to the terrorist attacks of unprecedented violence committed in United States of America back in 11 September 2001.

The purpose of this convention is to enhance the efforts of the Parties in preventing terrorism and its negative effects on the full enjoyment of human rights, in particular the right to life, both by measures to be taken at national level and through international cooperation, with due regard to the existing applicable multilateral or bilateral treaties or agreements between the parties.

Scope of the Convention

As stipulated in Article 1 paragraph 1, the convention rules about the terrorist offence, which the terms of "terrorist offence" means any offence within the scope of the 11 conventions listed in the appendix.

Concept

In order to prevent any terrorist offence, in line with that purpose, this convention divides the concept of prevention into 2 perspectives; the national prevention and the international cooperation. National prevention, as stated in Article 3 of this convention, which contains 4 paragraphs, obliges the state to take appropriate measurements by :

- a. trains the law enforcement authorities and other bodies about the law including the aspects of education, culture, information, media, etc.
- b. improves and develops cooperation among national authorities
- c. promotes tolerance by encouraging an inter-religious and cross cultural dialogue between the citizens
- d. pushes the public awareness to the existence of terrorism activity.

International Cooperation stated in article 4 of this convention, which stipulates that every state responsible to support each other to combat terrorism by exchanging information as well as by training or other methods.

Entry into Force

The convention enters into force on 1 June 2007 after Albania, Bulgaria, Romania, Russia, Slovakia and Ukraine expressed their consent to be bound by this convention, this is based on the Article 23 of this convention regarding the entry into force matter, which states that this convention enters into force after 6 ratifications including at least 4 members of Council of Europe. As May 2013, this convention is in force in 30 states.

Main Feature

The convention consists of 32 articles which contains some important provisions :

- a. Besides rules about the "terrorist offence" that set forth in article 1, this convention also stipulates provisions that also need to take appropriate measures; articles 5 which provides provision regarding public provocation to commit a terrorist offence, article 6 which provides provision regarding recruitment for terrorism, article 7 which provides training for terrorism, and article 9 which provides provision regarding ancillary offences.
- b. Jurisdiction. Article 14 sets the provision regarding which jurisdiction can be exercised if there is any kind of terrorist offence occurs in a territory of a party. Furthermore in paragraph 4, states that this convention does not exclude any criminal jurisdiction exercised in accordance with national law.
- c. Extradite or Prosecute. Article 18 sets provision for state which wants to prosecute or extradite the offender. If the state unlikely to extradite, state shall be prosecute the offender immediately in accordance with its national criminal law. In addition, article 19 stipulates on how to conduct the extradition with or without the extradition agreement.

- d. Article 20 of this convention stipulates that all of the offenses that set forth in this convention shall not be related to any political issues, e.g. political offense, an offence connected with political offence or an offence inspired by political moves.

Dispute Settlement

This convention includes the provision about the settlement of dispute arising between states as from the interpretation or implementation of this convention. Pursuant to Article 29, states shall settle their dispute by negotiation or other methods based on concensus between parties in a peacefull way. The dispute also can be brought before the Arbitral tribunal or International Court of Justice within agreement between the disputed party. (AIS)