

条約の立法ガイド（国連発行）より抜粋

43. National drafters should focus on the meaning and spirit of the Convention rather than attempt simply to translate Convention text or include it verbatim in new laws or amendments. The drafting and enforcement of the new offences, including legal defences and other legal principles, are left to the States parties (see art. 11, para. 6). Therefore, they must ensure that the new rules are consistent with their domestic legal tradition, principles and fundamental laws. This avoids the risk of conflicts and uncertainty about the interpretation of the new provisions by courts or judges.

51. The Convention aims at meeting the need for a global response and at ensuring the effective criminalization of acts of participation in criminal groups. Article 5 of the Convention recognizes the two main approaches to such criminalization that are cited above as equivalent. The two alternative options of article 5, paragraph 1 (a) (i) and paragraph 1 (a) (ii) were thus created to reflect the fact that some countries have conspiracy laws, while others have criminal association (*association de malfaiteurs*) laws. The options allow for effective action against organized criminal groups, without requiring the introduction of either notion—conspiracy or criminal association—in States that do not have the relevant legal concept. Article 5 also covers persons who assist and facilitate serious offences committed by an organized criminal group in other ways.