1997/22. Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime

The Economic and Social Council

Recommends to the General Assembly the adoption of the following draft resolution:

"*The General Assembly*,

"*Recalling* its resolution 49/159 of 23 December 1994, in which it approved the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, adopted by the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994,[78]

"*Recalling also* Economic and Social Council resolution 1996/27 of 24 July 1996,

"*Recalling further* its resolution 51/120 of 12 December 1996 on the question of the elaboration of an international convention against organized transnational crime,

"*Convinced* of the importance of continuous action by Member States aimed at the full implementation of the Naples Political Declaration and Global Action Plan,

"*Reiterating* the need for increased technical cooperation activities and the provision of practical assistance to requesting Member States for the implementation of the Naples Political Declaration and Global Action Plan,

"1. *Takes note* of the reports of the Secretary-General, submitted to the Commission on Crime Prevention and Criminal Justice at its sixth session, on the implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime[79] and on the question of the elaboration of an international convention against organized transnational crime;[80]

"2. *Also takes note* of the forty recommendations elaborated and endorsed by the Senior Experts Group on Transnational Organized Crime, which met at Lyon, France, from 27 to 29 June 1996, which are contained in annex I to the present resolution;

"3. *Further takes note* of the report of the informal meeting on the question of the elaboration of an international convention against organized transnational crime, held at Palermo, Italy, from 6 to 8 April 1997,[81] and expresses its appreciation to the Fondazione Giovanni e Francesca Falcone for organizing and acting as host to the meeting;

"4. *Reiterates* the high priority accorded to the United Nations Crime Prevention and Criminal Justice Programme as well as to its work on action against organized transnational crime in general and the implementation of the Naples Political Declaration and Global Action Plan in particular;

"5. *Urges* States to continue to make every effort possible to implement fully the Naples Political Declaration and Global Action Plan by taking the most appropriate legislative, regulatory and administrative measures, including those aimed at prevention;

"6. *Requests* the Commission on Crime Prevention and Criminal Justice to continue its review of the implementation of the Naples Political Declaration and Global Action Plan as a matter of high priority;

"7. *Invites* developing countries and countries with economies in transition to undertake action against organized transnational crime and to promote international cooperation in this field as priorities of their development efforts and to include in their requests for assistance to the United Nations Development Programme, as part of the country programme framework of the Programme, projects on action against organized transnational crime and money laundering, with a view to upgrading national institutional capacities and professional expertise in these fields;

"8. *Calls upon* the United Nations Development Programme, the World Bank and other international, regional and national funding agencies to give favourable consideration to project proposals on strengthening national or regional capacities and creating the expertise required for the prevention and control of organized transnational crime and money laundering that are elaborated and submitted to them by the Crime Prevention and Criminal Justice Division of the Secretariat;

"9. *Requests* the Secretary-General to continue his work on the central repository established pursuant to Economic and Social Council resolution 1996/27, with a view to increasing, maintaining and updating the data and other information contained in the repository and making such information available to States and, for this purpose, to continue to collect information and material, taking into account the methodological points and categorization of data listed in annex II to the present resolution, including legislative and regulatory texts on the prevention and control of organized transnational crime, as well as reports on preventive measures;

"10. *Calls upon* all States and relevant international organizations and institutes affiliated and associated with the United Nations to assist the Secretary-General in the implementation of paragraph 9 above by providing him with data and other information, as well as legislative and regulatory texts, and to keep such data up to date;

"11. *Requests* the Secretary-General to continue to provide States with advisory services and other forms of assistance, on request, in the field of prevention and control of organized transnational crime;

---

[78] See A/49/748, annex, sect. I.A.

[79] E/CN.15/1997/7.

[80] E/CN.15/1997/7/Add.1.

[81] E/CN.15/1997/7/Add.2, annex.

"12. *Also requests* the Secretary-General to assist States in collecting and systematizing data and other information on the occurrence, dimensions and patterns of organized transnational crime by designing and undertaking a comparative study on the situation of organized transnational crime throughout the world;

"13. *Further requests* the Secretary-General to review the data submitted to the central repository and to take that data into account in developing model legislation against organized transnational crime as well as technical manuals for law enforcement and judicial personnel and for agencies engaged in preventive activities;

"14. *Decides* to establish an inter-sessional open-ended intergovernmental group of experts from within existing resources or, where possible, funded by extrabudgetary resources, if made available, for the purpose of elaborating a preliminary draft of a possible comprehensive international convention against organized transnational crime, which would submit a report thereon to the Commission on Crime Prevention and Criminal Justice at its seventh session;

"15. *Welcomes* the generous offer of the Government of Poland to organize and host a meeting of the intergovernmental group of experts;

"16. *Requests* the intergovernmental group of experts, when elaborating the preliminary draft:

"(*a*) To take into account existing multilateral instruments, the draft United Nations framework convention against organized crime presented by the Government of Poland at the fifty-first session of the General Assembly and contained in annex III to the present resolution, the report of the Chairman of the Working Group on the Implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime and the Question of the Elaboration of an International Convention against Organized Transnational Crime, contained in annex IV to the present resolution, the principles indicated in the forty recommendations mentioned in paragraph 2 above and the observations and proposals made by other Member States during the sixth session of the Commission on Crime Prevention and Criminal Justice, including those contained in annexes V and VI to the present resolution, as well as those contained in the report of the Secretary-General on the question of the elaboration of an international convention against organized transnational crime[80] and the principles contained in the report of the Secretary-General on measures to prevent trafficking in children;[82]

"(*b*) To give priority consideration to the following issues:

"(i) Measures for judicial and police cooperation, in particular in relation to mutual assistance, extradition, money laundering and confiscation of illicit assets, protection of witnesses, information sharing, training and other forms of technical assistance;

"(ii) Identification of the scope of application of the above-mentioned measures, having particular regard to the documents contained in annexes III and IV to the present resolution, referred to in subparagraph (*a*) above;

"(iii) Provisions related to criminal offences, in particular in the areas of criminal associations, conspiracy and money laundering;

"(*c*) Also to consider indicating the need for special provisions related to specific types of crime, such as trafficking in children, corruption, offences related to firearms, trafficking in illegal migrants and theft of motor vehicles, that may be the subject of international instruments, whether associated with or separate from the draft convention;

"17. *Requests* the Secretary-General to provide the Crime Prevention and Criminal Justice Division with adequate resources for the preparation and servicing of the meeting of the intergovernmental group of experts;

"18. *Requests* the Commission on Crime Prevention and Criminal Justice to report, through the Economic and Social Council, to the General Assembly at its fifty-third session on the progress achieved in its work on this question.

36th plenary meeting
21 July 1997

"ANNEX I

"Recommendations of the Senior Experts Group on Transnational Organized Crime of the Political Group of Eight

"To combat transnational organized crime efficiently, the members of the Senior Experts Group on Transnational Organized Crime of the Political Group of Eight recommended the following:

"1. States should review their laws governing criminal offences, jurisdiction, law enforcement powers and international cooperation, as well as their measures dealing with law enforcement training and crime prevention, to ensure that the special problems created by transnational organized crime are effectively addressed.

"2. With the aim of improving mutual assistance, States should, as needed, develop mutual legal assistance arrangements or treaties and exercise flexibility in the execution of requests for mutual assistance.

"3. States should, where feasible, render mutual assistance, notwithstanding the absence of dual criminality.

"4. States developing mutual assistance treaties should ensure that the treaties:

"(*a*) Provide a clear description of the scope of the assistance available;

"(*b*) Encourage a speedy process for assistance;

"(*c*) Are as comprehensive as possible in terms of assistance available;

[82] E/CN.15/1997/12.

"(*d*) Reflect the principle that evidence will be gathered in the manner sought by the requesting State, unless the procedures are contrary to the fundamental principles of the law of the requested State.

"In order further to facilitate cooperation against transnational organized crime, States should consider negotiating arrangements in areas that are not covered by mutual legal assistance treaties.

"5. States should establish a central authority structured to provide speedy coordination of requests. The central authority should provide a quality-control and prioritizing function for both incoming and outgoing requests to take into account both the seriousness of the offence and the urgency of the request. At the same time, the central authority should not be seen as an exclusive channel for assistance between States. Direct exchange of information between law enforcement agencies should be encouraged to the extent permitted by domestic laws or arrangements.

"6. States should prepare and distribute to other States materials that would describe the channels of communication for mutual assistance and extradition and the process for obtaining such assistance from them.

"7. In cases where a criminal activity occurs in several countries, States with jurisdiction should coordinate their prosecutions and the use of mutual assistance measures in a strategic manner so as to be more efficient in the fight against transnational criminal groups.

"8. States should be encouraged to develop, through treaties, arrangements and legislation, a network for extradition. They should modernize their extradition treaties by eliminating the lists of crimes and allowing for extradition for conduct punishable in both States by deprivation of liberty in excess of an agreed minimum period. They should make every effort to ensure that their domestic arrangements for extradition are flexible enough to permit extradition to States with a different legal tradition. They should seek to identify and eliminate obstacles to extradition, including those that may arise from the differences between legal systems, for example, by simplifying evidentiary and procedural requirements.

"9. States should ensure that their domestic arrangements for extradition are as effective and expeditious as possible. They should also consider the possibility of extradition without a treaty.

"10. If the extradition of nationals is not permitted by the requested State, and the extradition of one of its nationals is requested, the requested State should:

"(*a*) Allow for conditional extradition provided that it is only for trial and that its national will be returned promptly after trial to its territory to serve any sentence within the limits of the law of the requested State; or

"(*b*) Allow for transfer/surrender, when it is permitted by domestic law, only for trial and on condition that its national will be returned promptly after trial to its territory to serve any sentence within the limits of the law of the requested State; or

"(*c*) Apply the rule of *aut dedere aut judicare* by submitting the case,at the request of the requesting State, to its competent authorities in order that proceedings may be initiated if they are considered appropriate.

"11. States should promote other techniques for mutual education that will facilitate mutual assistance and extradition, such as language training, secondments and exchanges between personnel in central authorities or between executing and requesting agencies. Training courses, joint seminars and information exchange sessions should be encouraged on a bilateral, regional and worldwide basis.

"12. Consideration should also be given to posting in other States representatives of prosecuting agencies or of judicial authorities.

"13. States should provide effective protection for individuals who have given or have agreed to give information or evidence, or who participate or have agreed to participate in an investigation or prosecution of an offence, and for the relatives and associates of those individuals who require protection because of risk to their security of person.

"14. States should consider, as appropriate, reciprocal arrangements for the protection of witnesses and other endangered persons.

"15. States should consider adopting appropriate measures to ensure the protection of witnesses during criminal proceedings. These might include such methods as testifying by telecommunications or limiting the disclosure of the address and identifying particulars of witnesses. Consideration should be given to the temporary transfer as witnesses of persons in custody, enlargement of the admissibility of written statements and the use of modern technology, such as video links, to overcome some of the current difficulties in obtaining the testimony of witnesses located outside the prosecuting State.

"16. States should review their laws in order to ensure that abuses of modern technology that are deserving of criminal sanctions are criminalized and that problems with respect to jurisdiction, enforcement powers, investigation, training, crime prevention and international cooperation in respect of such abuses are effectively addressed. Liaison between law enforcement and prosecution personnel of different States should be improved, including the sharing of experience in addressing these problems. States should promote study in this area and negotiate arrangements and agreements to address the problem of technological crime and investigation.

"17. States should take all other lawful steps available under domestic legislation to ensure that they do not provide safe havens for criminals.

"18. We commend the work done by the International Criminal Police Organization and the World Customs Organization, and call upon these organizations to maintain and develop their support for operational activity, facilitating as rapid as possible an exchange of information between law enforcement agencies. We also call upon them to focus on a strategic overview of the

methods of, and trends in, transnational organized crime for the benefit of all their member countries.

"19. In order to facilitate the work of law enforcement practitioners we will, on request, provide brief guides on our respective legal systems and on the mandates of relevant agencies.

"20. States should identify central contact points within their existing structures for the purpose of facilitating contact between their operational agencies. It may be useful to locate these points in liaison with the National Central Bureau of the International Criminal Police Organization.

"21. We stress the important contribution that liaison officers can make to the fight against transnational organized crime. We encourage States to make the most effective use possible of their liaison officers in other countries and to consider additional postings. We stress the need for liaison officers to have access, in accordance with the law of the host country, to all agencies of that country with relevant responsibilities.

"22. We reiterate our condemnation of drug trafficking, which is a major source of finance for transnational organized criminal groups.

"Therefore we:

"(*a*) Reaffirm the importance of the three United Nations conventions that are fundamental to action against illicit drugs, namely, the Single Convention on Narcotic Drugs of 1961 as amended by the Protocol of 1972,[83] the Convention on Psychotropic Substances of 1971[84] and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;[85]

"(*b*) Call upon all States to adopt and implement fully legislation in accordance with those conventions;

"(*c*) Believe in the value of giving the widest publicity to information issued by official international bodies, such as the International Narcotics Control Board, on illicit drug production, trafficking and the proceeds of the illicit drug trade;

"(*d*) Will work in all relevant forums to prevent the diversion of chemical precursors used in illicit drug production and take the necessary steps to implement fully all relevant international agreements;

"(*e*) Welcome and support the implementation of the recommendations of the United Nations International Drug Control Programme Working Group on Maritime Cooperation.

"23. In order to ensure more effective transnational crime prevention and foster public safety, we will develop strategies to identify and combat the illicit traffic in firearms. In furtherance of this goal, and in support of the specific recommendations contained in resolution 9 of 7 May 1995 of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995,[86] and Economic and Social Council resolution 1995/27 of 24 July 1995, we will review and encourage other States to review existing firearms laws and regulations to facilitate discussion at an international level. We will promote information exchange among our relevant law enforcement authorities. We will encourage States to enhance the exchange of information useful for law enforcement purposes (for example, data for the identification of illicit firearms and specific information on tests conducted on firearms and ammunition which have been used in the course of criminal activities).

"24. States should ensure that immigration services play their part in the fight against transnational organized crime. We note the involvement of transnational organized crime in alien smuggling and call upon all States to enact legislation to criminalize such smuggling of persons. Immigration services and other agencies should exchange information on the transnational movement of organized criminals, have as full as possible an exchange of information on forged and stolen documents used by traffickers and consider the most effective means for its communication. We will take the necessary steps to improve the quality of our travel documents. We encourage other States to improve theirs and will assist them in doing so.

"25. We support the exchange of law enforcement expertise regarding scientific and technological developments such as advances in the forensic sciences.

"26. We emphasize the relevance and effectiveness of techniques such as electronic surveillance, undercover operations and controlled deliveries. We call upon States to review domestic arrangements for those techniques and to facilitate international cooperation in these fields, taking full account of human rights implications. We encourage States to exchange experiences concerning their use.

"27. We emphasize the importance of giving the fullest possible protection to sensitive information received from other countries. The competent authorities of different States should advise each other on the requirements regarding the disclosure of information in the course of judicial and administrative proceedings and should discuss in advance potential difficulties arising from those requirements. A transmitting State may make conditions for the protection of sensitive information before deciding whether to transmit it. A receiving State must abide by the conditions agreed with the transmitting State.

"28. Building on current cooperative arrangements, the different agencies in our countries will develop their work together in specific law enforcement projects targeted on transnational organized crime. We have formulated practical guidance on project-based action and commend this approach to all States. Project-based

[83] United Nations, *Treaty Series*, vol. 976, No. 14152.

[84] Ibid., vol. 1019, No. 14956.

[85] See *Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November–20 December 1988*, vol. I (United Nations publication, Sales No. E.94.XI.5).

[86] See A/CONF.169/16/Rev.1, chap. I.

action involves bilateral and multilateral priority-setting, targeting, resourcing and assessment of law enforcement operations, drawing on the strength of the full range of competent agencies.

"29. We welcome the resolve of the Financial Action Task Force on Money Laundering to extend criminalization of money laundering to other serious offences.

"30. States should consider adopting legislative measures for the confiscation or seizure of illicit proceeds from drug trafficking and other serious offences, asset forfeiture, as required, and the availability of provisional arrangements such as the freezing or seizing of assets, always with due respect for the interests of bona fide third parties. States should also consider the introduction of arrangements for the equitable sharing of such forfeited assets.

"31. States should consider implementing measures to detect and monitor the physical transportation of cash and bearer-negotiable instruments at the border, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements.

"32. States should adopt the necessary legislative and regulatory measures to combat corruption, establish standards of good governance and legitimate commercial and financial conduct and develop cooperation mechanisms to curb corrupt practices.

"33. We agree to share information on practical anti-money-laundering techniques and to draw on the experience gained to adapt and improve national and international training activities in this area, in conjunction with the action of the Financial Action Task Force on Money Laundering.

"34. In order to improve understanding and information on the detection of financial networks linked to transnational organized crime (in particular, investments by transnational organized crime), we encourage States to take measures to gather financial information and, as much as possible, facilitate the exchange of such information, including exchanges between law enforcement agencies and regulatory bodies.

"35. We urge States to adhere to and implement fully the existing relevant multilateral conventions whose provisions effectively contribute to the fight against all forms of transnational organized crime, in particular the conventions concerning the control of illicit drugs.

"36. We will keep under review the possibility of supplementing existing conventions and adopting new instruments in response to developing needs in the fight against transnational organized crime.

"37. We support and encourage the provision and reporting of clear and accessible information on adhesion to and implementation of the main conventions.

"38. In order to avoid wasteful duplication and to ensure that limited resources are used to best effect, we urge international organizations to coordinate their programmes of work and to concentrate their efforts within their areas of competence on activities of practical value to member States.

"39. We will work together in the governing bodies of international organizations whenever possible in order to give more coherent impetus and coordination to the fight against transnational organized crime.

"40. We will seek to ensure that all international organizations that play an effective role in the fight against transnational organized crime have adequate resources to fulfil their mandate. We will also examine possibilities for providing appropriate financial resources for specific, practical and viable projects developed by the competent international organizations.

"ANNEX II

"Methodological points and categorization of data

"1. *Methodological points:*

"(*a*) Exploitation of methods to collect texts other than the issuance of notes verbales, especially taking into account potential burdens imposed on those States whose languages are not working languages of the United Nations or which do not have any texts translated into such languages;

"(*b*) Coordination with the work already done by other United Nations entities or relevant international organizations in order to avoid duplication;

"(*c*) Identification of access points to the depositories of the texts prepared by other United Nations entities and relevant international organizations.

"2. *Categorization of data:*

"(*a*) Substantial provisions:

"(i) Participation in a criminal organization (that is, conspiracy, criminal association);

"(*ii*) Confiscation and provisional measures;

"(iii) Money laundering;

"(iv) Sentencing;

"(*b*) Procedural provisions:

"(i) Search and seizure;

"(ii) Electronic surveillance;

"(iii) Undercover operations;

"(iv) Controlled delivery;

"(v) Immunity;

"(vi) Witness protection;

"(vii) Mutual assistance and extradition;

"(*c*) Other provisions:

"(i) Victim compensation;

"(ii) Bank secrecy;

"(iii) Reporting of suspicious transactions;

"(iv) Border control of proceeds of crime;

"(v) Immigration control;

"(vi) Control over criminal organizations.

"ANNEX III

"Draft United Nations Framework Convention against Organized Crime

"*The States Parties to the present Convention,*

"*Concerned* about the growing threat of organized crime, including the illicit traffic in narcotic drugs and psychotropic substances, money laundering and the illicit traffic in arms, nuclear material and explosive devices, motor vehicles and objects of art,

"*Concerned also* about the increasing threat of organized crime to global security and criminal justice,

"*Aware* that organized crime, in its national and transnational dimensions, destabilizes international relations, including interregional, regional, subregional and bilateral cooperation, by exerting an influence on politics, the media, public administration, judicial authorities and the economy by establishing commercial or business-like structures,

"*Convinced* that a flexible and efficient framework for multilateral and bilateral cooperation is required to intensify law enforcement, criminal justice and crime prevention activities of Member States,

"*Recalling* General Assembly resolution 49/159 of 23 December 1994, in which it approved the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, adopted by the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994,[78]

"*Recalling also* the recommendations of the Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, held at Buenos Aires from 27 to 30 November 1995,[87]

"*Bearing in mind* the United Nations model legal arrangements, such as the Model Treaty on Mutual Assistance in Criminal Matters,[88] the Model Treaty on the Transfer of Proceedings in Criminal Matters,[89] the Model Treaty on Extradition,[90] the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released[91] and the Model Treaty for the Prevention of Crimes that Infringe on the Cultural Heritage of Peoples in the Form of Movable Property,[92]

"*Mindful* of other existing criminal justice and human rights instruments that provide legal protection to offenders and victims of crime,

"*Affirming* that the matters regulated by the present Convention continue to be governed by the rules and principles of general international law,

"*Have agreed* on the following:

"*Article 1*

"1. For the purpose of the present Convention 'organized crime' means group activities of three or more persons, with hierarchical links or personal relationships, which permit the group leaders to earn profits or control territories or markets, internal or foreign, by means of violence, intimidation or corruption, both in furtherance of criminal activity and to infiltrate the legitimate economy, in particular through:

"(*a*) Illicit traffic in narcotic drugs or psychotropic substances and money laundering, as defined in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;[85]

"(*b*) Traffic in persons, as defined in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949;[93]

"(*c*) Counterfeiting of currency, as defined in the International Convention for the Suppression of Counterfeiting Currency of 1929;[94]

"(*d*) Illicit traffic in or stealing of cultural objects, as defined in the United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970,[95] and the International Institute for the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects of 1995;[96]

"(*e*) Stealing of nuclear material, its misuse or threats to misuse it to harm the public, as defined in the Convention on the Physical Protection of Nuclear Material of 1979;[97]

"(*f*) Terrorist acts;

---

[87] E/CN.15/1996/2/Add.1.

[88] General Assembly resolution 45/117, annex.

[89] General Assembly resolution 45/118, annex.

[90] General Assembly resolution 45/116, annex.

[91] General Assembly resolution 45/119, annex.

[92] *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.1, annex.

[93] General Assembly resolution 317 (IV).

[94] League of Nations, *Treaty Series*, vol. 112, No. 2623.

[95] United Nations, *Treaty Series*, vol. 823, No. 11806.

[96] See Presidenza del Consiglio dei Ministri, Dipartimento per l'Informazione e l'Editoria, Rome, 1996, *Diplomatic Conference for the Adoption of the Draft Unidroit Convention on the International Return of Stolen or Illegally Exported Cultural Objects, Rome, 7–24 June 1995 – Acts and Proceedings.*

[97] United Nations, *Treaty Series*, vol. 1456, No. 24631.

"(*g*) Illicit traffic in or stealing of arms and explosive materials or devices;

"(*h*) Illicit traffic in or stealing of motor vehicles;

"(*i*) Corruption of public officials.

"2. For the purpose of the present Convention, 'organized crime' includes the commission of an act by a member of a group as part of the criminal activity of such an organization.

"Article 2

"1. Each Contracting State shall make the offences enumerated in article 1 of the present Convention punishable by appropriate penalties that take into account their grave nature.

"2. Each Contracting State shall make punishable acts consisting of participation in or association with an organized crime group whose purpose it is to commit offences.

"3. Each Contracting State shall take the necessary measures to create the possibility of the confiscation of the profits deriving from organized crime.

"Article 3

"Each Contracting State shall consider establishing in its domestic penal legislation the possibility of criminal liability of corporate persons who derive profits from organized crime or function as a cover for the criminal organization.

"Article 4

"Each Contracting State shall take legislative measures to recognize, in its domestic law, the previous foreign conviction for offences referred to in article 1 of the present Convention for the purpose of establishing the criminal history of the alleged offender.

"Article 5

"1. Each Contracting State shall take legislative measures to establish its jurisdiction over the crimes mentioned in article 1 of the present Convention in the following cases:

"(*a*) When the crime is committed in the territory of that State or on board a vessel or aircraft registered in that State;

"(*b*) When the alleged offender is a national of that State. Such jurisdiction shall be independent of the punishability of the act in the place of its commission;

"(*c*) When the alleged offender is present in its territory and it does not extradite him. Such jurisdiction shall be independent of the punishability of the act in the place of its commission.

"2. The present Convention does not exclude any criminal jurisdiction exercised in accordance with domestic law.

"Article 6

"1. The offences mentioned in article 1 of the present Convention shall be deemed to be included as extraditable offences in any extradition treaty between the Contracting States. The Contracting States undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.

"2. If a Contracting State that makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it shall consider the present Convention as the legal basis for extradition in respect of the offences mentioned in article 1 of the present Convention. Extradition shall be subject to the other conditions provided for by the law of the requested State.

"3. The Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offences mentioned in article 1 of the present Convention as extraditable offences between them, subject to the conditions provided by the law of the requested State.

"4. The Contracting States, subject to their domestic legislation, shall consider simplifying the extradition of consenting persons who waive formal extradition proceedings by allowing direct transmission of extradition requests between appropriate ministries and extraditing persons based only on warrants of arrest or judgements.

"Article 7

"1. Each Contracting State shall consider necessary legislative measures, including extradition of its nationals, if the extradition is requested in respect of any offence defined in article 1 of the present Convention.

"2. Extradition of a national may be granted on the condition that the sentence pronounced abroad will be executed in the requesting State.

"Article 8

"1. The offences mentioned in article 1 of the present Convention shall not be considered political offences for the purpose of extradition.

"2. Extradition shall not be granted if the requested Party has substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his or her race, religion, nationality or political opinion or that a person's position may be prejudiced for any of these reasons.

"Article 9

"Upon being satisfied that the circumstances so warrant, the Contracting State in whose territory the alleged offender is present shall take a person whose extradition is sought into custody, or take other appropriate measures under its domestic law, so as to ensure his or her presence for the purpose of extradition.

"*Article 10*

"1. The Contracting States shall afford one another the widest measure of mutual legal assistance, within the conditions prescribed by domestic legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences mentioned in article 1 of the present Convention, and shall exercise flexibility in the execution of requests for such mutual assistance.

"2. Subject to domestic legislation, legal assistance shall also include the delivery of information constituting bank secrecy.

"*Article 11*

"1. The Contracting States shall consider entering into bilateral and multilateral agreements, including direct cooperation between their police agencies and joint operations in the territory of each Contracting State.

"2. The Contracting States shall strengthen cooperation in law enforcement training and crime prevention to facilitate mutual assistance and extradition through, *inter alia*, language training, secondments and exchanges.

"3. In the case of existing bilateral and multilateral agreements, the Contracting States shall strengthen efforts to maximize operational and training activities within the International Criminal Police Organization and within other relevant bilateral and multilateral agreements or arrangements.

"*Article 12*

"1. The Contracting States shall consider entering into bilateral and multilateral agreements on cooperation between criminal justice authorities on the exchange of information concerning all aspects of the criminal activity of persons involved in organized crime as defined in article 1 of the present Convention, including information from their registers of convicted persons.

"2. The Contracting States shall facilitate such exchange of information on the basis of their domestic legislation.

"3. The Contracting States shall consider the establishment of a common data bank on organized criminality, including information on the activities of criminal groups and their members and information on convicted persons.

"4. The collection of information mentioned above shall be carried out with due regard for the need for legal protection of personal files, in accordance with domestic and international provisions.

"*Article 13*

"The Contracting States shall cooperate in the establishment and implementation of their respective witness protection programmes, including the protection of witness families, in particular by creating the possibility of the settlement of a foreign protected witness in their territories.

"*Article 14*

"A Contracting State may adopt stricter or more severe measures than those provided for by the present Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of organized crime.

"*Article 15*

"1. For the purpose of examining the progress made by the Contracting States in achieving the realization of the obligations undertaken in the present Convention, these States shall provide periodic reports to the Commission on Crime Prevention and Criminal Justice, which shall carry out the functions hereinafter provided.

"2. The Contracting States undertake to provide such reports within two years of the entry into force of the present Convention for the Contracting State concerned, and thereafter, every five years.

"3. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Commission with a comprehensive understanding of the implementation of the present Convention in the country concerned.

"4. A Contracting State that has submitted a comprehensive initial report to the Commission need not, in its subsequent reports submitted in accordance with paragraph 1 of the present article, repeat basic information previously provided.

"5. The Commission may request from the Contracting States further information relevant to the implementation of the present Convention.

"6. The Commission shall make its recommendations and submit to the Economic and Social Council reports on its activities, in accordance with existing provisions.

"7. The Contracting States shall make their reports widely available to the public in their own countries.

"*Article 16*

"In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the Convention:

"(*a*) Intergovernmental and non-governmental organizations in consultative status with the Economic and Social Council, and other invited multilateral organizations, shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Commission may invite the specialized agencies and other United Nations organs to submit reports on the implementation of the present Convention in areas falling within the scope of their activities;

"(*b*) The Commission shall transmit, as it may consider appropriate, to the intergovernmental and non-governmental organizations, to other multilateral organizations and to the specialized agencies, any reports from the Contracting States that contain a request, or

indicate a need, for technical advice or assistance, along with the observations and suggestions of the Commission, if any, on these requests or indications;

"(*c*) The Commission may recommend to the Economic and Social Council that it request the Secretary-General to undertake on its behalf studies on specific issues relating to the control and prevention of organized crime;

"(*d*) The Commission may make suggestions and general recommendations based on information received pursuant to article 14 of the present Convention. Such suggestions and general recommendations shall be transmitted to any Contracting Party concerned and reported to the Economic and Social Council, together with comments, if any, from the Contracting States.

"*Article 17*

"The present Convention shall be open to all States for signature from _____ to _____, and thereafter at the Headquarters of the United Nations in New York until _____.

"*Article 18*

"The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

"*Article 19*

"1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification, acceptance, approval or accession.

"2. For each Contracting State ratifying, accepting, approving or acceding to the present Convention after the deposit of the twentieth instrument of such action, the Convention shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument.

"*Article 20*

"1. A Contracting State may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the Contracting States with a request that they indicate whether they favour a conference of Contracting States for the purpose of considering and voting upon the proposal. In the event that, within four months from the date of such communication, at least one third of the States favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of Contracting States present and voting at the conference shall be submitted to the General Assembly for approval.

"2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of Contracting States.

"3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other Contracting States still being bound by the provisions of the present Convention and any earlier amendments they have accepted.

"*Article 21*

"1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by Contracting States at the time of ratification, acceptance, approval or accession.

"2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

"3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

"*Article 22*

"A Contracting State may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

"*Article 23*

"The Secretary-General of the United Nations is designated as the depository of the present Convention.

"*Article 24*

"The original of the present 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 the present Convention.

"ANNEX IV

"Report of the Chairman of the Open-ended Working Group of the Commission on Crime Prevention and Criminal Justice on the Implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime and the Question of the Elaboration of an International Convention against Organized Transnational Crime

"1. The Open-ended Working Group of the Commission on Crime Prevention and Criminal Justice on the Implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime and the Question of the Elaboration of an International Convention against Organized Transnational Crime was established pursuant to Economic and Social Council resolution 1996/27 of 24 July 1996 and its mandate was set out in paragraph 10 of that resolution. The General Assembly, in its resolution 51/120 of 12 December 1996, requested the Commission on Crime Prevention and Criminal Justice to consider as a matter of priority the question of the elaboration of an international convention against organized transnational crime, taking into account the

views of all States on that matter, with a view to finalizing its work on this question as soon as possible. The Commission was also requested to report, through the Economic and Social Council, to the General Assembly at its fifty-second session on the results of its work on that question. The Working Group was therefore given the task of assisting the Commission in implementing the above-mentioned requests of the General Assembly.

"2. The Working Group had before it the following documents:

"(*a*) Report of the Secretary-General on the implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime;[79]

"(*b*) Report of the Secretary-General on the question of the elaboration of an international convention against organized transnational crime;[80]

"(*c*) Report of the informal meeting on the question of the elaboration of an international convention against organized transnational crime, held at Palermo, Italy, from 6 to 8 April 1997;[81]

"(*d*) Report of the Intergovernmental Expert Group Meeting on Extradition, held at Siracusa, Italy, from 10 to 13 December 1996.[98]

"3. The Working Group was also provided with the following documents:

"(*a*) Views of the Government of the United States of America on the most effective means for discussion by the Commission on Crime Prevention and Criminal Justice at its sixth session of the issue of the elaboration of conventions (annex V);

"(*b*) Views of the Government of Germany on an alternative solution for a draft United Nations framework convention on combating organized transnational crime (annex VI);

"(*c*) The forty recommendations elaborated and endorsed by the Senior Experts Group on Transnational Organized Crime of the Political Group of Eight, which met at Lyon, France, from 27 to 29 June 1996 (annex I);

"(*d*) Non-paper containing a tentative idea of the Japanese delegation in relation to the elaboration of a convention on measures against organized crime.

"4. The Working Group first discussed the question of the elaboration of an international convention against organized transnational crime. The Working Group was of the view that its contribution would be most useful to the Commission if it considered the scope and content of such a convention, rather than engaging in a drafting exercise, which would be outside the mandate given by the Council and the Assembly and would require significantly more time than was available. The Working Group felt that organized crime presented grave global dangers to development and security and that the challenges it posed were becoming greater with time. In determining the scope and content of such a convention, the international community could draw on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[85] but should be able to come up with new and more innovative and creative responses.

"5. The Working Group recognized that it was desirable to develop a convention that would be as comprehensive as possible. In this connection, several States indicated that their remaining reservations on the effectiveness and usefulness of a convention were contingent upon its scope of application and the measures for concerted action that such an instrument would include. Several States stressed the importance they attached to the nature of a convention as a framework instrument. One difficult issue would be arriving at an acceptable definition of organized crime. It was indicated, however, that that issue was not insuperable, especially in the presence of a strong and sustained political will. Several States were of the view that the definition was not necessarily the most crucial element of a convention and that the instrument could come into being without a definition of organized crime. In this connection, it was also suggested that the phenomenon of organized crime was evolving with such rapidity that a definition would limit the scope of application of a convention by omitting activities in which criminal groups might engage. Other States felt that the absence of a definition would send the wrong signal regarding the political will and commitment of the international community. In addition, avoiding the issue would eventually create problems regarding the implementation of a convention. In view of all this, concerted efforts to arrive at a solution should be made. There were several very important advances made at the regional level, where the matter of some of the constituent elements of a workable definition had been satisfactorily resolved. One example was the solution found for defining participation in organized criminal groups, used in the European Convention on Extradition.[99] The problem of definition could be solved by looking at each of its elements separately. It was suggested that a first step towards a definition might be to use the definitions of offences contained in other international instruments. It was agreed that the work required in connection with the definition could not be carried out by the Working Group but should be undertaken by governmental experts at a future time. There was also discussion about whether, in elaborating the definition, the focus should be on the transnational aspects of organized crime or on organized crime in general. It was pointed out that the mandate of the Commission was related to organized transnational crime but that the issue required further serious consideration in the context of determining the overall scope of a convention.

"6. In the context of the discussion on whether such a convention should include a list of offences, some States expressed their support for the inclusion of terrorist acts in such a list. Many States were of a contrary view, recalling the initiatives currently under way in the United Nations and other forums on terrorism and the conclusions of the Commission at its fifth session.

[98] E/CN.15/1997/6 and Corr.1, annex.

[99] Council of Europe, *European Treaty Series*, No. 24.

"7. The Working Group agreed that it would be useful to focus on widely accepted constituent elements of organized crime. In the discussion that ensued, the elements identified included some form of organization, continuity, the use of intimidation and violence, a hierarchical structure of groups, with division of labour, the pursuit of profit and the exercise of influence on the public, the media and political structures.

"8. The Working Group decided that the best way to proceed for the purpose of advancing the issue was to seek common ground, utilizing as many previous contributions as possible and building on the positive experience and valuable work done at other forums, such as the European Union and the Senior Experts Group on Transnational Organized Crime of the Political Group of Eight. The draft United Nations framework convention against organized crime (annex III) was a useful point of departure and a good basis for further work. In this connection, the Working Group decided to discuss matters related to international cooperation in criminal matters that would form an essential part of an international legally binding instrument. The overriding concern would be to equip the international community with an effective instrument to strengthen action against organized crime.

"9. The Working Group agreed that extradition was crucial to international cooperation against organized crime and, as such, it would form a central component of such a convention. A number of States indicated that the extradition of nationals presented several legal and constitutional problems. While some States were in the process of studying the matter in depth, with a view to finding more efficient solutions and improving international cooperation, it would be difficult for them to comply with a provision envisaging extradition of nationals. It was consequently deemed important to incorporate in a convention a more detailed provision regarding the application of the principle *aut dedere aut judicare*. Since there were a number of countries where extradition of nationals was possible and it was also believed that a trend in that direction might develop in the future, it was agreed that the provision of article 7 of the draft United Nations framework convention was a good basis for discussion and should be retained. It was also agreed that the option of extraditing nationals should be left open, while specifying that extradition would be governed by national constitutional and legal provisions. It was suggested that, in finding an acceptable solution to this matter, the formula regarding extradition contained in the draft convention on terrorist bombings[100] could be relied upon. Inspiration could also be drawn from the statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.[101] In addition, reference was made to article 6 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[85] which could be used as a model to arrive at a more comprehensive extradition regime.

"10. On the question of corporate criminal liability (contained in article 3 of the draft United Nations framework convention), several States indicated that the concept was still not reflected in their legislation. In those States, criminal liability was personal and corporate entities could be held accountable only under civil and administrative law. Even where the concept of corporate criminal liability had begun to be introduced, such liability was attached to the person of the executive responsible for the management of the corporate entity. It was explained that the problem was one of legal tradition and philosophy, while it was recognized that corporate criminal liability was a powerful deterrent, in particular in view of the tendency of criminal groups to operate using corporate entities, either infiltrated or set up for the purpose of masking the nature of their illicit activities. The issue of corporate criminal liability was considered important but it required further clarification and elaboration in order to take into account the varying legal traditions of countries.

"11. Regarding the recognition of foreign convictions (contained in article 4 of the draft United Nations framework convention), it was indicated that there were a number of issues that required clarification and further work. It was clarified that the term 'conviction' was used in the sense of a finding of guilt and that the article tried to capture the essence of and build upon the concept reflected in paragraph 5 (*h*) of article 3 of the 1988 Convention. While the issue of prior criminal history was deemed important, because of its potential usefulness to the expeditious judicial processing of organized crime cases, it was necessary to discuss in detail the modalities for the exchange of the relevant information and the weight to be given to previous convictions within the framework of each jurisdiction. It was also indicated that the matter was directly related to the scope of application of such a convention, in particular regarding substantive law. It was important to formulate a provision on this issue that would ensure avoidance of problems related to double jeopardy or to offences existing in one jurisdiction but not in another.

"12. On police cooperation (article 11 of the draft United Nations framework convention), the issue of joint police operations merited further discussion, as it created a number of concerns for several countries. The desirability of closer cooperation between law enforcement agencies had been expressed in the Naples Political Declaration and Global Action Plan,[78] but it was deemed important to stress that such cooperation would be pursued in accordance with national legislation. Similar provisions were included in the 1988 Convention and could be useful to the discussion of this question. With regard to paragraphs 2 and 3 of article 11, it was pointed out that the concept they contained was valid, but further work would be necessary in specifying modalities for application, especially in the context of a legally binding instrument such as a convention.

"13. Regarding article 12 of the draft United Nations framework convention, it was agreed that the idea was very important in view of the essential role reliable information played in action against organized crime.

[100] The International Convention for the Suppression of Terrorist Bombings was adopted by the General Assembly by its resolution 52/164 of 15 December 1997.

[101] See *Official Records of the Security Council, Forty-eighth Year, Supplement for April, May and June 1993*, document S/25704, annex.

The provision, however, required considerably more work because the issue of databases involved a number of important matters, such as accessibility, protection of data and safeguards related to the protection of privacy, in addition to costs for the creation and maintenance of such databases. All these issues needed to be resolved in a manner acceptable to all, while retaining the usefulness of a database.

"14. There was general acceptance of the importance of witness protection (reflected in article 13 of the draft United Nations framework convention). Some States took the opportunity to indicate their intention to establish witness protection programmes, while others advised caution in approaching the matter, because of the risks associated with this mechanism, which related to the social conditions prevailing in countries and the possibility of diminished credibility of certain witnesses.

"15. The Working Group then discussed the issue of mutual legal assistance (article 10 of the draft United Nations framework convention), which was deemed one of the most important cooperation mechanisms to feature in a convention against organized crime. Article 10 was similar to the provisions of other United Nations instruments, but in view of the more comprehensive nature of the proposed convention, the provisions on mutual assistance should be more detailed and more innovative. The 1988 Convention could be used as a source of inspiration in order to arrive at the level of detail that was necessary. In this connection, reference was also made to the report of the informal meeting held at Palermo, which had discussed this issue extensively and included material for further consideration.

"16. The Working Group agreed that considerable work was required on the issue of the convention. For this purpose, it proposed that an open-ended intergovernmental inter-sessional group of experts should be established to consider all pending proposals related to the issue of conventions, as well as all elements thereof and appropriate cooperation modalities and mechanisms.

"17. The Working Group discussed and endorsed the proposals of the Secretary-General on the follow-up action for the implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime. The Working Group expressed its support for the maintenance and expansion of the central repository on national legislation and other information and data related to organized transnational crime. It was suggested that the Secretariat should make efforts to identify methods for collecting information and legislative texts rather than merely addressing requests to States in the form of notes verbales. Concern was expressed regarding the resources necessary to undertake the activities required for follow-up action. In this connection, the importance attached to practical action to foster the implementation of the Naples Political Declaration and Global Action Plan was reiterated.

"ANNEX V

"Views of the Government of the United States of America on the most effective means for discussion by the Commission on Crime Prevention and Criminal Justice at its sixth session of the issue of the elaboration of conventions

"1. The Government of the United States of America considers it very important that discussion of all proposals for the elaboration of multilateral conventions to combat criminal conduct, in particular the question of the elaboration of an international convention against organized crime, take place in the Open-ended Working Group of the Commission on Crime Prevention and Criminal Justice on the Implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime and the Question of the Elaboration of an International Convention against Organized Transnational Crime. Such a discussion will be useful as a means for stimulating thought on the extent to which the various proposals can and should be incorporated into a single instrument. In addition, it will enable delegations to focus on the priority to be set concerning the criminal conduct governed by these different proposals.

"2. In addition to the proposal presented by the Government of Poland for a United Nations framework convention against organized crime (annex III), the following five proposals for multilateral conventions are either the subject of draft resolutions to be considered by the Commission on Crime Prevention and Criminal Justice at its sixth session or have been broached in informal discussions among Member States: the proposal presented by the Government of Argentina for a convention to combat trafficking in children, the recommendation of the Buenos Aires expert group on combating corruption, a possible multilateral convention on firearms,[102] a possible convention on trafficking in illegal migrants[103] and a possible convention on theft of motor vehicles.[104] However, the framework convention on organized crime proposed by Poland is intended to cover all of the other proposals, in whole or in part, by including, under article 1, trafficking in persons, corruption of public officials, illicit trafficking in or stealing of arms and illicit trafficking in or stealing of motor vehicles. Thus, these or any other potential single-issue conventions may be to some degree duplicative of the proposal made by Poland and, if consensus is reached on inclusion of such types of criminality in a framework convention on organized crime, it may subsequently be unnecessary to negotiate further instruments.

---

[102] The Government of Mexico introduced a proposal for such a convention to the Organization of American States.

[103] It is the understanding of the Government of the United States of America that a member of the Group of Western European and Other States is exploring the possibility of introducing such a proposal.

[104] The Government of Poland has introduced a draft resolution calling for the adoption of a model treaty on combating this form of criminality.

"3. Moreover, as is more fully set forth in the appendix to the present annex,[105] certain types of cooperation mechanisms cannot be dispensed with in combating organizations that engage in multiple forms of criminality; such mechanisms include law enforcement information exchange, training and technical assistance, mutual assistance, asset seizure and forfeiture, witness protection, extradition and harmonization of substantive criminal laws. The international community may decide that a single instrument would best ensure that all of these areas are addressed with sufficient consistency, that limited resources for negotiating conventions and fighting organized crime are used most efficiently and that the fight against organized crime is carried out in a comprehensive and logical fashion. If so, it would be inadvisable to continue to discuss the elaboration of other instruments separately.

"4. Finally, discussion of the merits of all potential instruments in the Working Group will be useful for the purpose of comparing the gravity of the various forms of criminality and determining which aspects constitute the most significant transnational criminal problems. The discussion of the level of prioritization that should be given to each form of criminality may assist the Commission in determining the extent to which other multilateral conventions should be pursued separately from a framework convention on organized crime, or whether they should be pursued at all.

"*APPENDIX*

"Implementation of recommendations 35 and 36 of the Senior Experts Group on Transnational Organized Crime of the Political Group of Eight

"Recommendations for combating transnational organized crime: the supplementation of existing multilateral conventions or adoption of new conventions to assist in the fight against transnational organized crime

"INTRODUCTION

"1. Recommendation 35 of the Senior Experts Group on Transnational Organized Crime of the Political Group of Eight calls for States to adhere to and implement relevant existing multilateral conventions whose provisions contribute to the fight against all forms of transnational organized crime, while recommendation 36 contemplates a review of the feasibility of updating existing conventions and adopting new instruments in order to enhance the ability of States to fight transnational organized crime.

"2. Among the existing conventions that the Senior Experts Group has catalogued for the purpose of considering whether updating is feasible are: the Slavery Convention of 1926 as amended by the 1953 Protocol,[106] the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956,[107] the International Convention for the Suppression of Counterfeiting Currency of 1929,[94] the Forced Labour Convention adopted in 1930 by the General Conference of the International Labour Organization,[108] the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949,[93] the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970[95] and the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences of 1977.[109,110]

"3. In addition, the Government of Poland introduced, at the fifty-first session of the General Assembly, a draft United Nations framework convention against organized crime. The proposal raises issues regarding the feasibility of adopting a single convention to combat transnational organized crime, in contrast with the updating of existing instruments or the adoption of a number of new instruments, each dealing with a separate type of criminal conduct.

"4. Various options available for using multilateral instruments to fight transnational organized crime are briefly analysed below. Section I discusses the above-mentioned existing conventions, outlining some of the modifications that would be required to update them effectively to address contemporary phenomena of transnational organized crime. Section II examines additional multilateral instruments that could be adopted in order to combat transnational organized crime. Finally, section III contains a discussion of the potential benefits and drawbacks arising from the elaboration of a single consolidated framework convention on organized crime.

"I. UPDATING EXISTING INSTRUMENTS

"A. SLAVERY CONVENTION OF 1926 AS AMENDED BY THE 1953 PROTOCOL AND THE SUPPLEMENTARY CONVENTION ON THE ABOLITION OF SLAVERY, THE SLAVE TRADE AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY OF 1956

"5. The Slavery Convention of 1926 as amended by the 1953 Protocol[106] defines slavery and slave trading, obligating States parties to take various actions, including criminalization, to suppress those practices. The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956[107] defines a number of practices akin to slavery (including debt bondage, serfdom, marriage

[105] The appendix was submitted to stimulate discussion in the Senior Experts Group on Transnational Organized Crime on the means of implementing recommendations 35 and 36 of its forty recommendations for combating transnational organized crime.

[106] United Nations, *Treaty Series*, vol. 212, No. 2861.

[107] Ibid., vol. 266, No. 3822.

[108] See *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.94.XIV.1 (Vol. I, Part 1)).

[109] United Nations, *Treaty Series*, vol. 1226, No. 19805.

[110] The Senior Experts Group also included in its inventory of main international conventions dealing with organized crime the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. Given that the 1988 Convention is one of the most up-to-date and effective conventions dealing with organized crime and that it effectively supplements the 1961 Convention and the 1971 Convention, the merits of updating any of these instruments are not discussed below.

practices exploitative of women's labour and exploitation of children's labour by their parents or guardians); it also obligates States parties to abolish those practices, criminalize certain specified conduct integral to the perpetuation of slavery and the slave trade and cooperate with each other in carrying out the purposes of the Convention. The conventions have been widely ratified.

"6. Neither the Slavery Convention nor the Supplementary Convention as currently drafted deals specifically with transnational organized crime, nor can they readily be interpreted as imposing an obligation upon States parties to criminalize such related manifestations of modern organized crime as the exploitation of illegal immigrants by organized criminal groups that have smuggled them across international boundaries, the use by criminal groups of compulsion as part of their perpetuation of the international prostitution trade or the compelling of minors to participate in international pornography rings. However, amendment of these instruments may be of assistance in combating these forms of trafficking in persons.[111]

"7. Effective broadening of these conventions will require States to reach agreement both on the need to criminalize a number of additional classes of conduct and on general definitions of those offences. In addition, since both the Slavery Convention and the Supplementary Convention lack specific cooperation mechanisms between national law enforcement authorities to suppress such conduct, supplementation would require the drafting of a number of such mechanisms.[112]

"8. On balance, effective modernization would appear to require negotiation of a significant number of new provisions. Negotiating a supplemental instrument could also be complicated if some States regarded the occasion as an opportunity to reopen the debate on issues resolved at the time the conventions were originally concluded. Given these factors, the Senior Experts Group should weigh whether supplementation would be preferable to the elaboration of a new instrument or instruments to combat these forms of criminal conduct.

"B. Forced Labour Convention of 1930

"9. The Forced Labour Convention of 1930[108] limits the conditions under which 'forced or compulsory labour' can be required and obligates States parties to suppress and criminalize those forms of compelled labour not sanctioned by the Convention.

"10. Although the exploitation of compelled labour by criminal groups described in section I.A above may be violative of the terms of the Forced Labour Convention in its present form, few States parties have established these forms of exploitation as discrete offences or have provided for enhanced penalties to deter sophisticated criminal groups from committing such offences. Thus, to be an effective means of suppressing the exploitation of persons controlled by organized criminal groups, the Convention would have to be amended accordingly.

"11. As in the case of the slavery conventions, given the need to define and punish additional classes of criminal conduct and to include provisions related to law enforcement cooperation, the adoption of a supplemental or amended instrument may require as extensive an effort as the elaboration of a separate new instrument or instruments.

"C. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949

"12. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949[93] obligates States parties to criminalize the procuring of persons to engage in prostitution and other conduct integral to the propagation of prostitution. It contains more extensive provisions for law enforcement cooperation than the Slavery Convention or the Forced Labour Convention, including provisions requiring: (*a*) covered offences to be considered extraditable between States parties; (*b*) prosecution of offenders by a State party that declines to extradite on the basis of the nationality of the offender; (*c*) cooperation by States parties (subject to domestic law) in the execution of letters of request regarding covered offences; (*d*) establishment of central authorities to coordinate implementation of the Convention and cooperate with other States; and (*e*) sharing of information regarding offences and offenders between States parties.

"13. Effective updating of this Convention could prove difficult, given that a significant number of States have not ratified it. In any case, substantial modification seems required to ensure the broad criminalization of such phenomena as the exploitation of minors in conjunction with the production of pornographic materials or sex tourism and to ensure that States parties are obligated to impose suitably enhanced punishment on participants in organized criminal schemes to engage in such conduct. Moreover, although this instrument focuses on

---

[111] It may be that these and other similar activities engaged in by organized criminal groups also could be appropriately included under the Forced Labour Convention adopted in 1930 by the General Conference of the International Labour Organization or the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

[112] In addition to cooperation measures frequently provided for in more modern multilateral instruments, such as designating covered offences as extraditable between States parties, non-application of the political offence doctrine and the imposition of general obligations to cooperate, the Senior Experts Group recommended a number of additional mechanisms for consideration, including: the provision of mutual assistance, notwithstanding the absence of dual criminality (recommendation 3), the gathering of evidence in the manner sought by the requesting State (recommendation 4), strategic coordination of prosecutions and mutual assistance measures where a criminal activity occurs in several countries (recommendation 7), allowance for the possibility of transfer or conditional extradition of nationals (recommendation 10), exchanges of information and personnel between law enforcement agencies of different countries (recommendations 11, 12, 21, 23–28 and 34), witness protection arrangements (recommendations 13–15), the use of investigative techniques such as electronic surveillance, undercover operations and controlled deliveries (recommendation 26), the confiscation of proceeds of crime (recommendation 30) and the monitoring of financial instruments (recommendations 31 and 34).

cooperation mechanisms to a greater extent than either the Slavery Convention or the Forced Labour Convention, many additional forms of cooperation recommended by the Senior Experts Group as useful in fighting transnational organized crime are not currently included and a number of them could presumably be inserted.[113]

"D. International Convention for the Suppression of Counterfeiting Currency of 1929

"14. The International Convention for the Suppression of Counterfeiting Currency of 1929[94] obligates States parties to criminalize the counterfeiting or alteration of domestic or foreign currency, as well as the distribution of counterfeit or altered currency. It also provides for: (*a*) confiscation of such currency; (*b*) covered offences to be considered extraditable between States parties; (*c*) prosecution of offenders by States parties that decline to extradite on the basis of the nationality of the offender; (*d*) cooperation between States parties (subject to domestic law) in the execution of letters of request regarding covered offences; (*e*) establishment of central authorities to coordinate implementation of the Convention and cooperate with States; and (*f*) sharing of information between States parties regarding offenders and evidence of offences.

"15. The application of this instrument is limited in scope to counterfeit or altered currency. Significant supplementation or the adoption of new instruments would be required to address such issues of concern as counterfeiting or alteration of credit cards, electronic transfers and other negotiable instruments and the need to provide for enhanced cooperation mechanisms in combating such criminal conduct.

"E. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970

"16. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970[95] obligates States parties to suppress illicit traffic in archaeological, historical, artistic and other property designated by States as being of particular cultural value, without explicitly requiring criminalization of proscribed conduct. The Convention also provides for, *inter alia*, the confiscation and return of cultural property to States parties from which it was removed and the designation of authorities for implementation of the Convention.

"17. Effectively updating this Convention could prove difficult in practice, for a significant number of States have not ratified it. In addition, given that it contains no explicit criminalization or law enforcement cooperation requirements, modernization seems to entail as much effort as would the creation of new instruments governing other related areas.

"F. International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences of 1977

"18. The International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences of 1977[109] provides a broad framework for joint investigation, exchanges of information and other mutual assistance between States parties in connection with violations of customs laws, including smuggling of narcotics, cultural property and other contraband. It does not obligate States to criminalize particular forms of conduct.

"19. The Convention has been ratified by three members of the Political Group of Eight and thirty-one other States. Although additional States have expressed an interest in ratifying the Convention since it was amended in 1995 to permit contracting parties to make reservations, permitting reservations may hamper any effort to achieve broad implementation. Nonetheless, many of the forms of cooperation set forth in the Convention are useful mechanisms for international law enforcement and can serve as examples of cooperation mechanisms that might be drafted for insertion in other instruments governing transnational smuggling.

"II. ADOPTION OF INSTRUMENTS ADDRESSING OTHER FORMS OF CRIMINAL CONDUCT

"20. In addition to supplementing and modernizing existing conventions, Senior Experts Group recommendation 36 calls for consideration of the adoption of new instruments to respond to developing needs in the fight against transnational organized crime. In a number of other recommendations, the Senior Experts Group has already identified additional forms of criminal conduct for which there is a need for a concerted international law enforcement response to the infiltration of organized crime. Similar expressions of concern have been made in other international forums and by various States in their individual efforts to combat transnational organized crime. Some of the areas in which the need for action may be particularly acute and regarding which the Senior Experts Group may wish to evaluate the utility of adopting a new instrument or instruments are as follows:

"(*a*) Extortion and other violent crimes carried out by organized groups for profit;

"(*b*) Bribery and other corrupt practices;

"(*c*) Smuggling of and trafficking in nuclear materials for weapons of mass destruction;

"(*d*) Intellectual property violations;

"(*e*) Money laundering;

"(*f*) Crimes involving computers and other advanced technologies;

"(*g*) Illicit trafficking in firearms;

"(*h*) Auto theft.

[113] For a more complete inventory of potential cooperation mechanisms that could be provided for, see footnote 112.

"21. Such an evaluation will require weighing such factors as the likelihood of elaborating an instrument that will enjoy widespread acceptance within the international community, the likely degree of effectiveness the instrument will have in aiding the suppression of the targeted conduct and the commitment of time and resources that will be required to elaborate a series of instruments governing these types of criminal conduct.[114]

"III. ADOPTION OF A SINGLE INSTRUMENT ON TRANSNATIONAL ORGANIZED CRIME

"22. Consideration could also be given to the alternative approach of adopting a single integrated instrument on various forms of criminal conduct engaged in by transnational groups. As previously stated, the Government of Poland introduced such a draft convention at the fifty-first session of the General Assembly.

"23. The major advantage of a single instrument creating obligations to criminalize and cooperate in combating a number of categories of conduct is the advantage it offers in terms of preserving time and resources over the negotiation of a series of new or supplemental instruments, each addressing a limited class of criminal conduct. Since each separate convention would be likely to contain a number of similar (if not identical) provisions, for example, with regard to the extradition of fugitives, legal assistance and other cooperation mechanisms, the negotiation of a single instrument could be expected to save considerable time and avoid needless renegotiation of such common provisions. In addition, the promulgation of a single instrument seems useful in order to arrive at an integrated response to particularly serious forms of transnational organized crime, since specialists in a number of law enforcement disciplines would collaborate in devising an effective unified strategy for cooperation in combating these phenomena and since a single secretariat administering the convention would be more easily able to identify and correct practical problems arising in the implementation of the strategy.

"24. The structure of the convention itself could take several possible forms. One approach could be for it to address a specific list of offences of the type set forth in section II above. Another approach might be to draft a convention that, like the proposal by the Government of Poland, seeks to define the term 'organized crime', and to include specific types of conduct under its rubric.

"25. The former approach, by virtue of being less complex, may enjoy some advantages over the latter. Initially, it may be difficult to arrive at a definition of 'organized crime' that enjoys widespread acceptance. As illustrated in the inventory of documents prepared by the Senior Experts Group, numerous different definitions of the term 'organized crime' have been devised. Given the great diversity among modern criminal groups, reaching a single meaningful definition will probably prove elusive and may interfere with the successful conclusion of the convention. Moreover, great care would have to be taken to ensure that the definition of 'organized crime' did not inadvertently legitimize actions by undemocratic Governments to suppress legitimate political opposition.

"26. In addition, a number of States may wish the definition of 'organized crime' to encompass terrorism,[115] leading to problematic results. For example, the inclusion of terrorism may lead to an effort to define it more precisely, a task that will be extremely difficult, given the traditional divide between those States that consider acts of violence carried out by 'national liberation movements' to be permissible and those that wish to proscribe such conduct. The effort to define terrorism will thus divert attention from other issues and ultimately will not be conducive to achieving consensus. The inclusion of terrorism may also result in the duplication of provisions contained in the significant number of existing instruments aimed at combating terrorism.[116]

"27. Even if no effort is made to define these terms, there may be some difficulty in reaching agreement on the list of conduct to be proscribed under the convention. The convention may be seen by some States as an opportunity to seek the inclusion of modes of criminality with respect to which there can be at best a marginal claim that they constitute a significant transnational criminal problem. For example, a small number of States have called for conventions to combat illicit international adoption, trafficking in body parts or racial hatred. However, any effort to broaden the convention too greatly would divert focus from types of criminality that need to be addressed most urgently and could also make it more difficult to identify appropriate cooperation mechanisms for combating the conduct proscribed by the convention.

"28. The Government of the United States has prepared a discussion draft of a convention for the suppression of transnational organized crime, illustrating how a convention adhering to the recommendations of the Senior Experts Group could be structured. It is hoped that consideration of that document, together with the proposal by Poland, may be useful to the discussion of this issue.

"29. It is conceivable that there are other approaches that might be viable in this area, including the elaboration of a single instrument addressing a much more limited list of criminal activities than that described either in the discussion draft of the United States, presented below, or in the proposal by Poland, on which there is clear consensus that immediate criminalization and enhanced cooperation are required.

[114] A supplemental or alternative approach to dealing with some of the areas listed above could be the development and widespread dissemination of model legislation, accompanied by multilateral and bilateral technical assistance to facilitate enactment and enforcement of the new laws.

[115] For example, the proposal made by Poland includes "terrorist acts" as a manifestation of organized crime.

[116] The Senior Expert Group on Terrorism is also currently considering a United States proposal for a United Nations convention for the suppression of terrorist bombings.

"DRAFT CONVENTION FOR THE SUPPRESSION OF TRANSNATIONAL ORGANIZED CRIME

"*The States Parties to the present Convention,*

"*Deeply concerned* about the threat posed by the rapid development of transnational organized crime,

"*Convinced* that the rapid growth and geographical extension of transnational organized crime is a major concern of all countries and that it calls for a concerted response from the international community,

"*Desiring* to conclude an effective international convention directed specifically against serious transnational organized crime,

"*Have agreed* as follows:

"*Article 1*

"*Offences and sanctions*[117]

"1. Each State Party shall make punishable, by appropriate penalties that take into account their grave nature, the following conduct:[118]

"[*Insert definition of transnational organized crime or offences covered by the present Convention*]

"2. The provisions of the present article shall not affect the obligations regarding the criminalization of offences pursuant to any other multilateral treaty.

"*Article 2*

"*Establishment of jurisdiction*

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 of the present Convention when the offence is committed in the territory of that State.

"2. A State Party may also establish its jurisdiction over any such offence when:

"(*a*) The alleged offender is a national of that State;

"(*b*) The offence was committed against a national of that State; or

"(*c*) The offence has substantial effects in that State.

"3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is present in its territory and it does not extradite or transfer that person for trial pursuant to article 5, paragraph 6, of the present Convention to any of the States Parties that have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.

"4. The present Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

"5. The provisions of the present article shall not affect the obligations with regard to the establishment of jurisdiction over offences pursuant to any other multilateral treaty.

"*Article 3*

"*Extradite or prosecute*

"1. The State Party in the territory of which the offender or the alleged offender is found, if it does not extradite that person or transfer that person for trial pursuant to article 5, paragraph 6, of the present Convention shall be obliged, upon request of the State Party seeking extradition or transfer, in cases where article 2 above applies without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

"2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 1 of the present Convention shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which that person is present.

"*Article 4*

"*Additional requirements*

"1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its laws, take that person into custody or take other measures to ensure the presence of that person for such time as is necessary to enable any criminal or extradition proceedings to be instituted. Such State shall immediately make a preliminary inquiry, in accordance with its own laws.[119]

"2. Any person regarding whom the measures referred to in paragraph 1 of the present article are being taken shall be entitled:

"(*a*) To communicate with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to establish such communication or, if that person is a stateless person, the State in the territory of which that person habitually resides;

[117] Title used in article 3 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, defining the crimes covered by that Convention.

[118] Many of the offences on the list may already be punishable under the laws of States parties, but without enhanced punishment if a part of organized criminal activity. It may be necessary to draft additional language to ensure such enhanced punishment.

[119] International Convention against the Taking of Hostages (General Assembly resolution 34/146, annex), art. 6, para. 1.

"(*b*) To be visited by a representative of that State.[120]

"3. The rights referred to in paragraph 2 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 1 of the present article are intended.

"*Article 5*

"*Rules relating to extradition*[121]

"1. The offences set forth in article 1 of the present Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

"2. If a State Party which 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, the requested State Party may, at its option, consider the present Convention as a legal basis for extradition in respect of the offences set forth in article 1 above. Extradition shall be subject to the other conditions provided by the law of the requested State.

"3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 1 of the present Convention as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

"4. The offences set forth in article 1 of the present Convention shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.[122]

"5. For purposes of extradition between the States Parties, none of the offences set forth in article 1 of the present Convention shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives.

"6. If a State Party denies extradition to another State Party for an offence set forth in article 1 of the present Convention because the person sought is a national of the requested Party, the requested Party shall, upon request of the requesting Party, transfer the person to the requesting Party for trial or other proceedings and the person transferred shall be returned to the requested Party to serve any sentence imposed in the requesting Party as a result of the trial or proceedings for which transfer was made.

"7. With respect to the offences as defined in the present Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent necessary to give effect to the provisions of the present Convention.

"*Article 6*

"*Mutual legal assistance*

"1. States Parties shall afford one another the greatest measure of assistance in connection with proceedings brought in respect of the offences set forth in article 1 of the present Convention, including assistance in obtaining evidence at their disposal that is necessary for the proceedings.

"2. States Parties shall carry out their obligations under paragraph 1 above in conformity with any treaties on mutual assistance that may exist between them or pursuant to domestic law.[123]

"3. For offences established in accordance with the present Convention, a State Party shall not decline to render mutual legal assistance on the ground of bank secrecy or on the ground that there is an absence of dual criminality.[124]

"4. States Parties shall adopt measures sufficient to enable a person in the custody of one State Party, whose presence in another State Party is requested for purposes of assistance under the present Convention, to be transferred if the person consents and if the competent authorities of both States agree. For purposes of the present paragraph:

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

"(*b*) The State to which the person is transferred shall return the person to the custody of the State from which the person was transferred as soon as circumstances permit or as otherwise agreed by the competent authorities of both States;

"(*c*) The State to which the person is transferred shall not require the State 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 imposed in the State from which

[120] Vienna Convention on Consular Relations of 1963 (United Nations, *Treaty Series*, vol. 596, No. 8638), art. 36, para. 1 (*a*).

[121] Senior Experts Group recommendation 10.

[122] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (International Maritime Organization, document SUA/CONF/15/Rev.1), art. 11, para. 4.

[123] Given the potentially broad scope of the present Convention and the possibility that it will be open to ratification or accession by any State, narrower legal assistance obligations of the kind set forth here may be appropriate.

[124] Senior Experts Group recommendation 3; see also the 1988 Convention, art. 7, para. 5.

he was transferred for time served in the custody of the State to which he was transferred.

"5. In order to ensure the protection of witnesses, States Parties shall, on request, limit disclosure of the addresses or identifying particulars of persons who testify. States Parties shall also adopt measures to permit, upon request, persons to testify by telecommunications or video link or use other modern technology in order to provide testimony to the prosecuting State.[125]

"*Article 7*

"*Confiscation*[126]

"1. States Parties shall adopt such measures as may be necessary to enable confiscation of:

"(*a*) Proceeds derived from offences set forth in article 1 of the present Convention or property, the value of which corresponds to that of such proceeds;

"(*b*) Property, equipment or other instrumentalities used in or intended for use in offences set forth in article 1 of the present Convention.

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

"3. The State Party that has custody over proceeds or instrumentalities of offences shall dispose of them in accordance with its laws. A Party may transfer all or part of such assets or the proceeds of their sale to another Party, to the extent permitted by the laws of the transferring Party and upon such terms as it deems appropriate.

"4. The provisions of the present article shall not be construed as prejudicing the rights of third parties.

"*Article 8*

"*Transfer of proceedings*[127]

"States Parties shall give consideration to transferring to one another proceedings for criminal prosecution of offences established in accordance with the present Convention in cases where such transfer is considered to be in the interests of a proper administration of justice.

"*Article 9*

"*Other forms of cooperation and assistance*[128]

"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 offences set forth in the present Convention. Each State Party shall, in particular, adopt effective measures:

"(*a*) For the purposes of carrying out the cooperation and assistance provided for under the present Convention, including the making and receiving of requests for cooperation and assistance, to designate a central authority that shall communicate directly with the central authorities of other States Parties;[129]

"(*b*) To establish and maintain channels of communication between their competent authorities, agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of the offences set forth in the present Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;[129]

"(*c*) To cooperate with one another in conducting inquiries, with respect to offences set forth in the present Convention, concerning:

"(i) The identity, whereabouts and activities of persons suspected of involvement in the offences set forth in the present Convention;

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

"(*d*) In appropriate cases and if not contrary to domestic law, to establish joint teams, taking into account the need to protect the security of persons and operations, in order to carry out the provisions of the present paragraph. Officials of any State Party participating in such teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place; in all such cases, the States Parties involved shall ensure that the sovereignty of the Party in whose territory the operation is to take place is fully respected;

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

"(*f*) To establish arrangements for electronic surveillance, undercover operations and controlled deliveries[130] with a view to gathering evidence and taking legal action against persons involved in the offences set forth in the present Convention;[131]

"(*g*) To provide protection for persons who have given or have agreed to give information or evidence or who participate or who have agreed to participate in an investigation or prosecution of an offence established in accordance with the present Convention and for the relatives and associates of such persons who require protection because of risks to their security of person. States Parties should consider, as appropriate, reciprocal arrangements for the protection of witnesses and other endangered persons;[132]

"(*h*) To permit the competent authorities, when considering punishment, to consider as a mitigating

[125] Senior Experts Group recommendation 15.

[126] Senior Experts Group recommendation 30.

[127] 1988 Convention, art. 8.

[128] Ibid., art. 9.

[129] Senior Experts Group recommendation 5.

[130] 1988 Convention, art. 11.

[131] Senior Experts Group recommendation 26.

[132] Senior Experts Group recommendations 13–15.

factor the extent of cooperation provided by an accused in the investigation and prosecution of other persons or the ability and intention of the accused to provide such cooperation;

"(*i*) To facilitate effective coordination between their competent agencies and services and to promote the exchange of personnel and other experts, including the posting of liaison officers.

"*Article 10*

"*Law enforcement training*[133]

"1. Each State Party shall, to the extent necessary, initiate, develop or improve a specific training programme for its law enforcement personnel, including prosecutors and investigating magistrates, and other personnel charged with the suppression of the offences set forth in the present Convention. Such programmes shall deal, in particular, with the following:

"(*a*) Methods used in the detection and suppression of the offences set forth in the present Convention;

"(*b*) Techniques used by persons suspected of involvement in offences set forth in the present Convention;

"(*c*) Detection and monitoring of the movements of proceeds, property and instrumentalities derived from offences set forth in the present Convention and methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities;

"(*d*) Collection of evidence;

"(*e*) Modern law enforcement techniques.

"2. States Parties shall assist one another to plan and implement research and training programmes designed to share expertise in the areas referred to in paragraph 1 of the present article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and stimulate discussion on problems of mutual concern.[134]

"3. States Parties shall promote other techniques for mutual education that will facilitate extradition and mutual legal assistance, including language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.[135]

"*Article 11*

"*Transparency of transactions*[136]

"1. States Parties shall implement measures to detect and monitor the physical transportation of cash and bearer-negotiable instruments at the border, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements.

"2. In order to improve understanding and information on the detection of financial networks linked to transnational organized crime, States Parties shall take measures to gather financial information and, as much as possible, facilitate the exchange of such information, including exchanges between law enforcement agencies and regulatory bodies.

"*Article 12*

"*Other forms of cooperation*

"1. States Parties shall cooperate closely in the prevention, investigation and prosecution of the offences set forth in article 1 of the present Convention. In particular, they shall, in accordance with their domestic laws or pursuant to bilateral or multilateral agreements or arrangements:

"(*a*) Take all appropriate measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories;

"(*b*) Exchange information in accordance with their national law and coordinate administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 1 of the present Convention.

"2. States Parties shall consider the establishment of a common data bank concerning transnational organized crime, including information gathered regarding activities of criminal groups, their members and convicted persons.[137]

"*Article 13*

"*Application of cooperation provisions to other multilateral conventions*

"States Parties may apply articles 3 to 12 of the present Convention to other multilateral conventions to the extent agreed between States Parties.

"*Article 14*

"*Dispute settlement*

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

"2. Each State may, at the time of ratification or

[133] Senior Experts Group recommendation 11; see also the 1988 Convention, art. 9, paras. 2 and 3.

[134] Senior Experts Group recommendation 11, which states: "Training courses, joint seminars and information exchange sessions should be encouraged on a bilateral, regional and worldwide basis." Senior Experts Group recommendations 25 and 26 are also relevant.

[135] Senior Experts Group recommendations 11, 12 and 21.

[136] Senior Experts Group recommendations 31 and 34.

[137] Draft United Nations framework convention against organized crime, art. 12, para. 3.

accession to the present Convention, declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by paragraph 1 of the present article with respect to any State Party which has made such a reservation.

"3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to [the Secretary-General of the United Nations].

"Article 15

"Signature, ratification, accession

"1. The present Convention shall be open for signature by all States until [date] at [United Nations Headquarters in New York].

"2. The present Convention is subject to ratification. The instruments of ratification shall be deposited with [the Secretary-General of the United Nations].

"3. The present Convention is subject to accession by any State. The instruments of accession shall be deposited with [the Secretary-General of the United Nations].

"Article 16

"Entry into force

"1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the [twenty-fifth] instrument of ratification or accession with [the Secretary-General of the United Nations].

"2. For each State ratifying or acceding to the present Convention after the deposit of the [twenty-fifth] instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

"Article 17

"Denunciation

"1. Any State Party may denounce the present Convention by written notification to [the Secretary-General of the United Nations].

"2. Denunciation shall take effect one year following the date on which notification is received by [the Secretary-General of the United Nations].

"Article 18

"Languages and depositary

"The original of the present 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], who shall send certified copies thereof to all States.

"IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention, opened for signature at [place] on [date].

"ANNEX VI

"Views of the Government of Germany on an alternative solution for a draft United Nations framework convention on combating organized transnational crime

"1. Organized transnational crime threatens both the economic and the political structures of States. It is a global menace endangering industrial and developing societies alike and requires a global response. The draft United Nations framework convention against organized crime, submitted to the General Assembly by the Government of Poland (annex III), offers a good basis for discussion of this urgent problem by the Commission on Crime Prevention and Criminal Justice.

"2. So far, national and international efforts to produce a workable definition of organized transnational crime have been unsuccessful. The definition contained in article 1 of the draft United Nations framework convention is, from the perspective of the Government of Germany, in part too narrow, in part too broad. Germany considers organized transnational crime not as a clearly definable criminal offence but as a complex phenomenon of criminality. Elements of a description could probably be agreed upon and set out in the preamble of such a convention. It is problematic even to give a paradigmatic list of specific crimes because, whereas everyone can agree on what constitutes murder, there is no international consensus on what constitutes, for example, corruption of public officials. This would lead to insuperable difficulties in penalizing such criminal behaviour and establishing jurisdiction.

"3. From the point of view of the Government of Germany, these difficulties could be circumvented by the following alternative solution:

"(*a*) The elaboration of a comprehensive United Nations convention on organized transnational crime should be based on the Model Treaty on Extradition[90] and the Model Treaty on Mutual Assistance in Criminal Matters;[88]

"(*b*) Such a convention should refrain from reference to specific crimes but the point of reference would be the framework given by article 2 of the Model Treaty on Extradition, at least for extraditable offences. For the granting of legal assistance, probably no specific point of reference would be necessary;

"(*c*) A gap in the international armoury against organized transnational crime seems to stem from the fact that some legal systems do not penalize criminal behaviour that is not directly aimed at a concrete crime and therefore cannot qualify as participation in a crime, whereas the laws of Germany, France and Italy, for example, penalize participation on the basis of membership in a 'criminal association'. The convention ought to contain an obligation to penalize on these lines. This could follow the formulation of article 3, on conspiracy and association to commit offences, of the Convention, drawn up on the basis of article K.3 of the Treaty on European Union, relating to extradition

between the member States of the European Union of 27 September 1996,[138] for example:

> 'Each party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the participation as an accomplice in or the organization or direction of others to commit an offence in the field of drug trafficking or other forms of organized crime';

"(*d*) Adequate provisions for skimming off the proceeds of crime are indispensable for an effective fight at the national and international levels against organized transnational crime. The convention should, therefore, oblige Member States to legislate to this effect;

"(*e*) In all international forums, there is general agreement that the scope for the imposition of penalties for money laundering in connection with drug trafficking is unsatisfactory. The convention should provide that, in principle, any other serious offence, in addition to drug-related offences, can be considered a predicate offence for money laundering;

"(*f*) Following the model of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[85] the convention should contain provisions for the domestic implementation of foreign forfeiture measures;

"(*g*) A precondition for fighting organized transnational crime at the national or international level is an effective witness protection programme; in this regard, see the relevant European Union recommendations, the forty recommendations of the Senior Experts Group on Transnational Organized Crime of the Political Group of Eight (annex I) and the idea underlying article 13 of the draft United Nations framework convention submitted by the Government of Poland;

"(*h*) In addition, the convention should make provision for police cooperation and training (see article 11 of the draft United Nations framework convention and article 9 of the 1988 Convention);

"(*i*) Finally, some new ideas put forward by the Council of Europe, the European Union and other international forums in the area of extradition and mutual assistance could be taken up in a United Nations convention."

[138] See *Official Journal of the European Communities*, C313, 23 October 1996.

[139] See *Official Records of the Economic and Social Council, 1996, Supplement No. 10* and corrigenda (E/1996/30 and Corr.1-3), chap. I, sect. D.

[140] Ibid., *1997, Supplement No. 10* and corrigendum (E/1997/30 and Corr.1).

[141] Ibid., chap. II.

[142] Ibid., para. 15.