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**ACTION AGAINST NATIONAL AND TRANSNATIONAL ECONOMIC AND ORGANIZED
CRIME, AND THE ROLE OF CRIMINAL LAW IN THE PROTECTION OF
THE ENVIRONMENT: NATIONAL EXPERIENCES AND
INTERNATIONAL COOPERATION**

Working paper prepared by the Secretariat

Summary

In pursuance of Economic and Social Council resolutions 1993/32 and 1994/19 and General Assembly resolution 49/157, the present working paper provides an overview of the dangers posed by national and transnational organized and economic crime, outlining major trends and major developments. The working paper identifies a number of illicit activities that pose severe threats to the environment. In addition, it presents an analysis of the role that criminal law can play in the protection of the environment. Finally, it provides a review of present national and international initiatives taken to combat all these forms of criminality, thus providing the background for the discussion and identification of related strategies for crime prevention and control, which should further strengthen international cooperation.

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INTRODUCTION

1. At a time when the world is undergoing rapid and dramatic changes, the issue of transnational, economic and organized crime has assumed particular importance. Awareness of the impact that these forms of crime have on national efforts to develop free market economies and on international initiatives aimed at liberalizing world trade is growing, and is often accompanied by consternation over the difficulty of reacting effectively. Concern about criminal acts and gross negligence that result in environmental damage is increasing, particularly in view of the long-term implications that such damage can have.

2. Realization of the impact and cost of these forms of criminal behaviour is leading to an increased willingness of the international community to come to terms with them and to take action. Difficulties that vary in extent and nature are being encountered by States, depending on the degree of their economic development and on the capacity of their regulatory and criminal justice systems. The activities of the United Nations and other international bodies reflect both the increase in concern about the problem and the interest of the international community in overcoming difficulties and working together towards effective prevention and control of these forms of crime.

3. "Action against national and transnational economic and organized crime, and the role of criminal law in the protection of the environment: national experiences and international cooperation" was included as an item of the provisional agenda for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was finalized by the Commission on Crime Prevention and Criminal Justice at its second session and approved by the Economic and Social Council in its resolution 1993/32. Thus, the Ninth Congress will build on other major initiatives, such as the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: a Global Approach, held at Courmayeur, Italy, from 18 to 20 June 1994, and the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994. Corruption is another issue that is re-emerging as a priority concern of both Governments and international organizations. The Council, in its resolution 1993/32, decided to include in the programme of work of the Ninth Congress a one-day discussion in plenary meeting on experiences in and practical measures aimed at combating corruption involving public officials. The one-day discussion devoted to this matter will constitute a forum in which Governments, and intergovernmental and non-governmental organizations, as well as experts, will be able to exchange experiences and views on effective and concerted action. Closely related to the discussion on combating corruption involving government officials will be an introductory session on technical cooperation projects, to be held at the Ninth Congress prior to the convening of the workshops. There is a growing realization among the international community that effective action against forms of crime that are no longer contained by national frontiers should be a joint endeavour. The success of efforts against all forms of transnational crime depends, to a large extent, on the ability of all States to confront such forms of crime, which in turn hinges on the capacity of their criminal justice systems and of their regulatory mechanisms. Technical cooperation and assistance to increase that capacity to levels that would permit adequate responses to transnational crime are prerequisites to effective international cooperation at all levels. The discussion on technical cooperation will deal with the issue in all its aspects. The discussion in the present paper is, therefore, limited to the forms of practical assistance required for preventing and controlling organized and economic crime and for enhancing the role of criminal law in protecting the environment.

4. Economic and organized crime, as well as criminal offences against the environment, share certain key elements. For example, their impact is rarely limited to areas within national frontiers, even in cases where there are no transboundary aspects in the commission of such offences. They are all areas in which technology now plays a major role. Computer and communications technology is employed by transnational criminal organizations to orchestrate illicit activities around the world. Such technology is also used in commercial or large-scale fraud and computer crime. Technology also presents a constant challenge in regulating industry and in disposing of and treating the by-products of manufacturing processes in an effort

to ensure the protection of the environment. Another shared element is the reality that further international attention must be drawn to them without delay because of steady increases in their frequency, magnitude and severity.

5. The Ninth Congress will provide a unique opportunity for States to share their experiences in these areas and make progress towards greater international cooperation in dealing with them, by sustaining and further advancing the momentum built in recent initiatives of the United Nations.

6. The purpose of the present working paper is to set out the relevant background to each of the issues under item 4 of the provisional agenda for the Ninth Congress, to describe some of the recent developments relating to them and to offer some observations on measures that States may wish to discuss as possible means to deal with the issues.

I. BACKGROUND

7. The first involvement of the United Nations in the issue of the various forms of transnational crime dates back to the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva from 1 to 12 September 1975. Under item 5 of its agenda, the Fifth Congress examined the changes in forms and dimensions of criminality, transnational and national. The focus then was also on crime as business at the national and transnational levels: organized crime, white-collar crime and corruption. It was noted that, in addition to ordinary criminals who escaped detection, there were powerful perpetrators of harmful acts who wielded their power and influence with impunity to the detriment of the community as a whole. Crimes of corporations and "organized" or syndicated crime had many similarities; both might involve the corruption of law enforcement and political authority. They also tended to be characterized by a high degree of secrecy and, as "invisible" crimes, they were difficult to detect.¹

8. "Crime as business" was recognized as a more serious threat to society and national economies than traditional forms of crime. While crime as business was a serious problem in many developed countries, in developing countries the national welfare and economic development of the entire society might be drastically affected by such criminal conduct as bribery, price-fixing, smuggling and currency offences. Definitions of terms relating to that type of crime were often vague and ambiguous, as the issue had been neglected by criminologists.²

9. The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 25 August to 5 September 1980, in its discussion of agenda item 5, entitled "Crime and the abuse of power: offences and offenders beyond the reach of the law", added new elements to the international perception of organized crime. Emphasis was placed on the concept of abuse of power in its various forms: political, economic and social. Abuses of economic, social and political power were often interlinked. For example, economic crime served as a causal and aggravating factor in the corruption of the governmental process and of public officials.³

10. Among offences beyond the reach of law discussed under agenda item 5 of the Sixth Congress, there were those legally defined as crimes but with respect to which law enforcement agencies were relatively powerless because of the high economic and political status of their perpetrators, or because the circumstances under which they had been committed were such as to decrease the likelihood of their being reported or prosecuted. Organized crime, bribery and corruption were among the first examples mentioned in the discussion.⁴

11. The issue was considered further by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985, under topic 1, entitled

"New dimensions of criminality and crime prevention in the context of development: challenges for the future". It was emphasized that multiple illicit operations carried out by international criminal networks represented a major challenge to national law enforcement and to international cooperation. National boundaries no longer constituted effective barriers against those criminal activities. By exploiting the discrepancies in the legislation of different countries, organized crime achieved a high degree of impunity.⁵

12. The Seventh Congress adopted the Milan Plan of Action,⁶ in which it recognized the international dimensions of crime and the need for a concerted response from the international community in reducing the opportunities to commit crime. It also emphasized how certain forms of crime could hamper the political, economic, social and cultural development of peoples and threatened human rights, fundamental freedoms, and peace, stability and security. The United Nations had a significant role to play and its contribution to multilateral cooperation in that field should be made more effective. States were urged to implement the Milan Plan of Action, as the collective endeavour of the international community to deal with a major problem whose disruptive and destabilizing impact on society was bound to increase unless concrete and constructive action was taken on an urgent and priority basis.⁶

13. In 1990, within the framework of its topic III, "Effective national and international action against: (a) organized crime; (b) terrorist criminal activities", the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Havana from 27 August to 7 September 1990, examined the problem of organized transnational crime in the light of new historic developments. The rapid increase in the number of independent countries, together with a true internationalization of criminal activities, had created the need for new international institutions that could introduce a measure of order and enhance the effectiveness of crime prevention efforts.⁷

14. More effective cooperation in crime prevention was possible, as had been demonstrated by some initiatives at the subregional level. Political will and the willingness to revise certain traditional approaches were necessary, together with substantial increases in technical cooperation at all levels. All countries had to be put in a situation in which they could participate effectively in the cooperative network. The United Nations crime prevention and criminal justice programme had to be strengthened to respond to the rising number of requests for assistance.⁷

15. A substantive step towards international cooperation was made in 1990, when the General Assembly adopted the Model Treaty on Extradition (Assembly resolution 45/116, annex), the Model Treaty on Mutual Assistance in Criminal Matters (Assembly resolution 45/117, annex), the Model Treaty on the Transfer of Proceedings in Criminal Matters (Assembly resolution 45/118, annex) and the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (Assembly resolution 45/119, annex). In its resolutions, the General Assembly invited Member States to take the model treaties into account when establishing treaty relations with other States, and urged them to strengthen international cooperation in criminal justice. The General Assembly also adopted resolution 45/123, on international cooperation in combating organized crime, in which it urged Member States to give favourable consideration to the implementation of the Guidelines for the prevention and control of organized crime,⁸ adopted by the Eighth Congress, and invited Member States to make available to the Secretary-General, on request, the provision of their legislation relating to money-laundering, the tracing, monitoring and forfeiture of the proceeds of crime and the monitoring of large-scale cash transactions and other measures so that they may be made available to Member States desiring to enact or further develop legislation in those fields.

16. On the basis of the above-mentioned appeals for cooperation in combating transnational crime, the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime was held at Smolenice,

Czechoslovakia,* from 27 to 31 May 1991. The Meeting, attended by experts representing the five geographical regions of the United Nations and by representatives of the International Criminal Police Organization (ICPO/Interpol), strongly emphasized the urgent need to respond more effectively to transnational criminality, as the legal tools available to Governments were often not suitable for effectively combating new transnational manifestations of criminality. The Meeting adopted a number of recommendations covering national, regional and international action to contribute to closer international cooperation (see Economic and Social Council resolution 1992/23, annex I). From 21 to 25 October 1991, law enforcement officials and experts from 15 countries and ICPO/Interpol attended an International Seminar on Organized Crime, held at Suzdal, Russian Federation. The practical measures against organized crime formulated during the seminar included considerations concerning the nature, extent and impact of the problem. The Seminar called for action in the fields of legislation, law enforcement methods, organizational structures, international cooperation and evaluation of the gravity of the threat posed by organized crime (see Economic and Social Council resolution 1992/23, annex II).

17. The General Assembly, in its resolution 46/152, took note of the report of the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme (see A/46/703 and Corr.1) and approved the statement of principles and programme of action, annexed to that resolution, which, *inter alia*, called for the establishment of a commission on crime prevention and criminal justice. The Economic and Social Council, by its resolution 1992/1, established the Commission as one of its functional commissions. On the recommendation of the Commission at its first session, the Council adopted resolution 1992/22. In section VI of that resolution, the Council underlined the importance of international cooperation to counteract crime and determined that one of the priority themes to guide the work of the Commission in the development of a detailed United Nations crime prevention and criminal justice programme should be national and transnational economic and organized crime, including money-laundering, and the role of criminal law in the protection of the environment.

18. On the recommendation of the Commission at its first session, the Economic and Social Council adopted resolution 1992/23, in which it took note of the recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime and the International Seminar on Organized Crime and requested the Secretary-General to continue the analysis of information on the impact of organized criminal activities upon society at large. The Commission, in its resolution 1/2, on control of the proceeds of crime, requested the Secretary-General, *inter alia*, to examine the possibility of coordinating efforts made at the multilateral level against the laundering of proceeds of crime and related offences and to propose means for rendering technical assistance to requesting Member States in drafting legislation, training law enforcement personnel, developing regional, subregional or bilateral cooperation and providing advice on relevant strategies and techniques.

19. The General Assembly, in its resolution 47/87, requested the Commission on Crime Prevention and Criminal Justice to organize the ongoing review and analysis of the incidence of transnational organized criminal activity and the dissemination of information thereon and called upon Member States, international organizations and interested non-governmental organizations to cooperate closely with the United Nations in organizing practice-oriented workshops, research projects and training programmes to deal with specific aspects of organized criminal activities.

*Czechoslovakia was an original Member of the United Nations from 24 October 1945. In a letter dated 10 December 1992, its Permanent Representative informed the Secretary-General that the Czech and Slovak Federal Republic would cease to exist on 31 December 1992 and that the Czech Republic and the Slovak Republic, as successor States, would apply for membership in the United Nations. Following the receipt of its application, the Security Council, on 8 January 1993, recommended to the General Assembly, that the Czech Republic and the Slovak Republic should be admitted to United Nations membership. The Czech Republic and Slovakia were thus admitted on 19 January 1993 as Member States. Smolenice is now in Slovakia.

20. The Economic and Social Council adopted a number of resolutions on the recommendation of the Commission at its second session. In its resolution 1993/29, the Council requested the Secretary-General to organize a World Ministerial Conference on Organized Transnational Crime, to be held in Italy in 1994, the Government of Italy having offered to act as host.

21. In its resolution 1993/30, the Economic and Social Council requested the Crime Prevention and Criminal Justice Branch, *inter alia*, to consider the possibility of assisting Governments, at their request, in developing guidelines for the detection, investigation and prosecution of the laundering of the proceeds of crime and to provide technical assistance to Member States, upon request, in drafting, revising and implementing relevant legislation, in organizing special investigation teams and in training law enforcement, investigative, prosecutorial and judicial personnel. The Council, in its resolution 1993/31, and the General Assembly, in its resolution 48/103, reaffirmed the importance of the United Nations crime prevention and criminal justice programme and the crucial role it has to play in promoting international cooperation in crime prevention and criminal justice and in responding to the needs of the international community in the face of both national and transnational criminality.

22. Transnational crime was also discussed by the Commission at its third session. On the recommendation of the Commission, the Economic and Social Council adopted resolution 1994/12, on organized transnational crime. The annex to that resolution contained a discussion document on the World Ministerial Conference on Organized Transnational Crime, highlighted the importance of the World Ministerial Conference as a means of reaching agreement on the adoption of a series of measures against organized crime, including the establishment of a common perception of organized crime within the international community; the punishment, under national law, of participation in a criminal organization; confiscation of the proceeds of crime; the development of investigative methods to penetrate criminal organizations and of specialized investigative units; the development of international agreements on extradition, mutual legal assistance and improvement of the practical application of existing model treaties in those fields; the development of technical cooperation, including the international exchange of intelligence and the training of law enforcement personnel; economic compensation for victims; and the feasibility of elaborating international instruments, including conventions, against transnational crime.

23. On the recommendation of the Commission at its third session, the Economic and Social Council also adopted resolution 1994/13, on the control of the proceeds of crime. In that resolution, the Council recommended that the World Ministerial Conference on Organized Transnational Crime should take into account the conclusions and recommendations of the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: a Global Approach. The Council also requested the Secretary-General, taking into account the work already carried out by Member States and inter-governmental organizations, to cooperate with them in disseminating principles and issues that should be addressed in substantive and procedural legislation on prevention and control of the laundering of the proceeds of crime and the control of such proceeds for incorporation in national penal and procedural codes by Member States wishing to do so.

24. On the recommendation of the Commission at its third session, the Economic and Social Council also adopted resolution 1994/14, on criminal justice action to combat the organized smuggling of illegal migrants across national boundaries. In that resolution, the Council expressed its concern about the increasing activities of transnational criminal organizations that profit illicitly by smuggling humans. The Council called upon Member States and relevant specialized agencies and international organizations to cooperate at the bilateral and multilateral levels in addressing all aspects of the problem of the organized smuggling of illegal migrants; and it urged States to take prompt and effective steps to frustrate the objectives and activities of those organizing the smuggling of illegal migrants.

25. In its resolution 3/2, on international traffic in minors, the Commission, aware that international traffic in minors was carried out by criminal organizations that had transnational connections and calling upon Member States to consider ways of enacting legislation to combat such traffic and to promote cooperation among States, decided that international traffic in minors should be considered by the Commission at its fourth session in the context of its discussion on the question of organized transnational crime.

26. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,⁹ represented one of the first binding international instruments drawn up to combat transnational criminal organizations and one of their most lucrative activities. The 1988 Convention contains provisions on, *inter alia*, laundering of the proceeds of drug trafficking, a criminal offence, and on international cooperation and assistance, including extradition, mutual legal assistance and the transfer of proceedings. The General Assembly, in its resolution S-17/2, adopted the Political Declaration and the Global Programme of Action on international cooperation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances, activities that strengthened transnational criminal organizations.

27. As for the role of criminal law in the protection of the environment, the legislative developments that have resulted in this topic being included in the provisional agenda for the Ninth Congress date back to the formative years of the United Nations. In the Universal Declaration of Human Rights, article 25, adopted and proclaimed by the General Assembly in its resolution 217 A (III), it is stated that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.

28. The United Nations Conference on the Human Environment, held at Stockholm from 5 to 16 June 1972, recognized the right to a secure and ecologically balanced environment and the duty to protect and improve the environment. The Stockholm Conference acted as a catalyst for the establishment of the United Nations Environment Programme to assist in giving substance and content to the principles that the Conference espoused.

29. The United Nations Conference on Environment and Development, also referred to as the Earth Summit, was held at Rio de Janeiro, Brazil, from 3 to 14 June 1992, two decades after the Stockholm Conference. More than 170 States were represented at the Earth Summit, as well as a large number of non-governmental organizations. Two treaties were opened for signature: the United Nations Framework Convention on Climate Change (A/AC.237/18 (Part II)/Add.1 and Corr.1, annex I) and the Convention on Biological Diversity.¹⁰ In addition, the Earth Summit adopted the Rio Declaration on Environment and Development¹¹ and Agenda 21,¹² a guideline for future national and international action in the field of environment and development. The Earth Summit also agreed on new institutional arrangements to investigate the extent to which States were fulfilling their obligations under Agenda 21. The Economic and Social Council, in its decision 1993/207, having considered the note by the Secretary-General (E/1993/14), and in accordance with General Assembly resolution 47/191, decided to establish the Commission on Sustainable Development as a functional commission of the Council with the functions enumerated in paragraphs 3-5 of General Assembly resolution 47/191.

30. The Rio Declaration contained 27 principles on state and interstate behaviour that had not previously been universally accepted. Agenda 21 contained specific objectives and activities for the development of appropriate legal and regulatory measures.*

*See *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. 1: *Resolutions adopted by the Conference*, resolution 1, annex II, chap. 39. For an analysis of the results of the discussions at the Earth Summit and future directions, see L. Compiglio and others, eds., *The Environment after Rio: International Law and Economics* (London, Graham and Trotman, 1994).

31. It is against this background that the Commission on Crime Prevention and Criminal Justice and the United Nations congresses on the prevention of crime and the treatment of offenders have become involved in global efforts to protect the environment. The Eighth Congress adopted a resolution entitled "The role of criminal law in the protection of nature and the environment".¹³ Subsequently, within the framework of the United Nations crime prevention and criminal justice programme, a range of activities have been undertaken to enhance the protection that criminal law may afford in this area. As mentioned earlier, on the recommendation of the Commission at its first session, the Economic and Social Council adopted resolution 1992/22, in section VI of which it determined that national and transnational crime, organized crime, economic crime, including money-laundering, and the role of criminal law in the protection of the environment should be one of the priority themes to guide the work of the Commission in the development of a detailed programme.

32. The Economic and Social Council, in its resolution 1994/15, invited Member States and relevant bodies, when developing criminal laws related to the environment, to consider the recommendations concerning the role of criminal law in protecting the environment, made by the Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime, held at Vienna from 7 to 10 December 1993,* contained in the annex to that resolution. According to one of those recommendations, environmental criminal law should be aimed at promoting all the important components of the environment; it should be directed, in particular, to the regulation, control and, where necessary, the complete prohibition of hazardous activities, including the establishment and operation of hazardous installations, and the illegal import, export, movement and disposal of hazardous materials and wastes.

II. ORGANIZED CRIME

33. Concern about the impact and effect of organized crime has increased in recent years. There are three main reasons for this. First, there has been an increase in the ease with which various activities can be carried out across borders. This is explained, in part, by technological advances in such areas as international transportation and communication. While these advances have created opportunities for legitimate economic growth through trade and international cooperation in many areas, they have also facilitated illicit activities.

34. Secondly, transnational criminal organizations have increased in size, sophistication and economic power in recent years. Many of them resemble major multinational corporations and often have a similar managerial hierarchy. At the same time, however, their structures are typically fluid, permitting them to relocate or to react quickly to law enforcement efforts or to the emergence of new opportunities for making illicit profits. In some cases, criminal organizations enter into strategic alliances with other entities, just as businesses or governments do. This gives them a further opportunity to benefit from economies of scale in their operations as well as the flexibility needed to enter and exit a market swiftly.

35. Thirdly, transnational criminal organizations are involved in activities of an increasingly dangerous nature. The primary concern 20 years ago was the drug trafficking industry. At present, concerns relate to such activities as the smuggling of nuclear material, the illicit disposal of hazardous waste and trafficking in human organs. In addition, organized crime has long been involved in other activities, including prostitution, racketeering, "protection" schemes, illegal gambling, extortion, lending money at exorbitant interest rates and drug trafficking.

*The present working paper is based to a substantial degree upon the deliberations of the Ad Hoc Expert Group and upon those of the International Meeting of Experts on the Use of Criminal Sanctions in the Protection of the Environment, Internationally, Domestically and Regionally, held at Portland, Oregon (United States of America), from 19 to 23 March 1994.

36. As a result of these factors combined, the overall impact of transnational crime on society has been growing and, in the absence of strong international efforts to curtail it, will continue to grow.

A. Major trends and developments

37. It would be impossible to draw up a list of all the activities that transnational crime encompasses. Some of them, however, particularly deserve attention.

38. In addition to being a major source of income for most transnational criminal organizations, illicit drug activities can best be understood as an industry, with distinct stages of production and distribution at the wholesale and retail levels. It is also a lucrative industry, largely because there is limited competition among the entities concerned and little threat of substitute products emerging and because both the supplier of the raw materials and the consumers of the final product have limited power.* The money from the drug trafficking industry goes largely to the trafficking organizations. The peasants who actually cultivate the coca bushes and the opium poppy receive a modest income, though it is higher than the profits to be made growing other crops. The emergence of drug trafficking as an industry with annual profits measured in billions of United States dollars has given a great boost to the development of transnational criminal organizations and has also led to the emergence of money-laundering. There are also increasing signs of a growing linkage with other kinds of trafficking, especially arms trafficking. Furthermore, drug money has been a major source of the government corruption that helps to provide secure home bases for transnational criminal organizations.

39. One of the most serious developments in transnational crime has been the increase in trafficking in people. There are several dimensions to this, the first of which concerns the issue of illegal migrants. It has been estimated that criminal organizations are attempting to smuggle as many as 1 million people a year out of poorer countries and into wealthier countries. Not only does this threaten a basic ingredient of national sovereignty, but it also places the migrants themselves in grave danger.

40. Moreover, the migrants are subjected to hardship, deprivation and indignities. The more vulnerable persons among them, particularly women, are often forced into sexual slavery. Even those who arrive at their destination often owe money to their smugglers and are forced to engage in criminal activities to pay off their debts. Although this problem has received a great deal of attention in some countries, largely in relation to Chinese migrants, it is not only a problem in the United States of America or in countries in Europe and it does not involve only Chinese migrants.**

41. According to some estimates, migrants from China form only 20 per cent of those in a pipeline that encompasses India, Iran (Islamic Republic of), Iraq, Pakistan, Romania, Sri Lanka and Sudan. Those in transit include 60,000 Chinese in Moscow, 80,000 or more Africans and Asians in Romania and a significant number of other migrants in staging areas such as Guatemala, the Netherlands and Spain. The scale of the problem is also revealed by the fact that in 1993 there were 1.2 million attempts to enter the United States illegally. Moreover, smuggling organizations offer substantial bribes to officials and are ingenious at developing new smuggling routes through Mexico and the Caribbean. One estimate has suggested that such trafficking yields an annual profit of some US\$ 3.5 billion.¹⁴

42. For the destinations, and sometimes for the transit States, however, such trafficking imposes significant unexpected costs in terms of medical care, food, housing and transportation for the illegal migrants. The

*For a fuller analysis of the industry, see Phil Williams, "International drug trafficking: an industry analysis", *Journal of Low Intensity Conflict and Law Enforcement*, forthcoming.

**For an overview of measures to combat the smuggling of aliens, see the report of the Secretary-General (A/49/350).

problem has reached such levels that it is in danger of provoking a major backlash against legal immigrants and legitimate refugees.

43. The difference between the licit and the illicit supply of armaments is not always clear. As with chemical capabilities and the capabilities required to develop nuclear weapons, it often has more to do with who the end-user is than with the product itself. In some cases, the end-user may be a rogue State that the international community is trying to isolate; in others, it may be an ethnic group trying to circumvent an arms embargo. Whoever the end-user may be, however, arms deals on the black market have three characteristics: they are covert, a large part of their cost is related to the surreptitious nature of the transaction and the profits that they yield are laundered.¹⁵

44. In addition to their other ramifications and the sizeable profits that they generate, such transactions can have a significant effect on local and regional conflicts and on the capacity of terrorist groups to pursue their goals and to threaten peace and security. The involvement of ethnic groups in drug trafficking for the purpose of purchasing weapons seems to be increasing. As noted in the discussion guide for the Ninth Congress (A/CONF.169/PM.1 and Corr.1, para. 40):

"There is abundant evidence that organized crime is involved in the illegal arms trade and subversive activities that tamper with the rule of law in different parts of the world. The weight of the evidence indicates that it contributes to the political turmoil and upheaval occurring throughout the world. Drugs for weapons deals have become common in the world of organized crime, and many ethnic and political conflicts are aggravated by this unholy alliance."

45. The importance of these activities lies in their potential for major disruption and the consequent threat that they pose to security and stability at the national and international levels. There is no telling whether organized criminal groups will resort to creating political turmoil as a defence against successful efforts of law enforcement agencies.

46. The illicit traffic in firearms has also reached alarming proportions. The implications of such activity are numerous, ranging from an increase in violent crime to a direct threat to national security, depending on the volume and the end-users of the firearms. National efforts at curtailing the production and at controlling the availability of firearms are becoming more intense worldwide. Recent initiatives have attracted considerable debate and, in some instances, have already begun to yield positive results. There appears to be a steady increase in crime involving firearms in a growing number of countries, suggesting that control mechanisms aimed at domestic firearm production and distribution may not be adequate to deal with the movement of firearms across borders. It is becoming more and more necessary for the international community to focus its attention on the flow of firearms across national frontiers, to increase and consolidate its knowledge of the issue and to consider concerted action against illicit trafficking in firearms.

47. Trafficking in nuclear material is a major problem that has provoked considerable alarm. The possibility that weapon-grade nuclear material might be passed to terrorist groups or pariah States attempting to acquire some kind of strategic nuclear capability is a matter of considerable concern to the global community. The Bundeskriminalamt of Germany made a detailed analysis of the problem, part of which was made public in a testimony by the President of the German Federal Police. According to the testimony, in Germany in 1992, there were 59 fraudulent offers of radioactive material, 99 cases involving illicit trafficking in such material and 18 seizures of such material. In 1993, there was in Germany a total of 241 cases, comprising 118 fraudulent offers of radioactive material and 123 cases involving illicit trafficking in such material, and 21 seizures of such material (3 of which involved material from Germany and not from the former Union of Soviet Socialist Republics). In 1993, 545 suspects were identified, 47 per cent of whom were non-German, predominantly Czech, Polish and Russian nationals.¹⁶

48. The threat appears to be a serious one, a point underlined by recent developments. According to reports in July 1994, German police searching for counterfeiters found one fifth of an ounce of weapon-grade plutonium, the first case to involve fissile material.¹⁷ The seizure of the plutonium in 1994 as well as that of the neutron emitter, californium 252, in 1993 suggests that the material being trafficked is becoming more diverse. On 10 August 1994, German police seized 350 grams of weapon-grade nuclear material (mixed-oxide fuel for reactors, containing plutonium enriched to 87 per cent) and arrested one Columbian and two Spaniards. Another incident, involving a considerably smaller quantity of nuclear material, but of the same quality, occurred two days later.¹⁸ The presence of individuals of different nationalities adds an alarming element to the issue, leading the authorities to speculate on the involvement of organized criminal groups from various countries and the possibility of links and cooperation arrangements between them. On 29 August 1994, the Hungarian authorities seized nuclear material in a hotel room at Budapest, an incident suggesting that the illicit trafficking in nuclear material is not confined to certain countries. The German and Russian authorities reacted to the smuggling of nuclear material by concluding a bilateral cooperation agreement on 25 August 1994.

49. Trafficking in nuclear material has considerable potential for extortion, as well as for significant environmental damage, if only as a result of improper handling of the material. Although there are questions about whether there is actually an illicit end-user market, at least in Germany, there is a danger that the organization responsible may try another tack if purchasers cannot be found and the material is available; extortion may then appear particularly attractive. The fact that nuclear material is often procured from government-controlled installations in the Russian Federation suggests the involvement of criminal organizations in search of profits. If they cannot obtain the profits in one way, then attempting to obtain them through some kind of nuclear blackmail is only a small step away. As nuclear disarmament continues, the availability of nuclear material is likely to increase rather than decrease.

50. Prostitution has long been a major element in the activities of criminal organizations at the national level, and it is no surprise that it also has major international dimensions. Both the Chinese triads and the Japanese Yakuza are particularly active in this area and have held women as slaves in the sex tourist industry in the Philippines, the Republic of Korea and Thailand. Such trafficking treats women as commodities that have a market value: "Sex work is not there by accident, sex work plays a great part in the world economy where women and children are seen as sources of pleasure and spare parts for the developed world."¹⁹

51. A variant on this, but one that tends to be more tangential to criminal organizations, involves parents selling their children as brides, often to wealthy men from other countries. Adoption, too, is something that needs more careful scrutiny and regulation as, according to several reports, international adoption has become a million-dollar business, in which babies from Central and South America fetch up to US\$ 20,000. In Guatemala, for example, there have been about 30 cases a year involving false mothers offering their children for adoption. Concern about trafficking in babies has created a climate of suspicion and hysteria in some countries and has led to attacks on foreigners wrongly suspected of kidnapping.

52. One reason for the climate of suspicion about kidnapping has been concern that abducted children will be killed for their body parts. Although there is little evidence that that has taken place, there is a lucrative trade in human body parts on the black market, especially in Argentina and the Russian Federation. In Argentina, for example, there have been serious transplant abuses, often involving the removal of corneas from patients who had been declared brain-dead following fabricated brain scans.²⁰

53. The problem of trade in human body parts is perhaps even greater in the Russian Federation, especially as there have been as many as 4,000 unclaimed bodies in Moscow morgues. One investigation found a company that had extracted 700 organs such as kidneys, hearts and lungs, over 1,400 liver sections, 18,000 thymus organs, 2,000 eyes and over 3,000 pairs of testicles. Moreover, one Moscow forensic detective considered such activities to be firmly under the control of organized crime, which he suggested

had elaborate criminal structures for kidnapping children and adults, using their organs for transplants and for medical experiments. He even suggested that human organ transplantation was the most profitable business in the Russian Federation and that it would continue to grow.²¹

54. There have also been cases of human organs being exported using false documents and confirmed cases of trafficking in human body parts in Argentina, Brazil, Honduras, Mexico and Peru, largely involving German, Italian and Swiss buyers. The potential for corruption in medical communities is enormous and will remain so until rules governing the purchase or sale of human organs are systematically developed and implemented.

55. Another significant problem involves the theft and smuggling of motor vehicles. The prevailing pattern in motor vehicle smuggling is the opposite of that in illicit drug trafficking, the cars being stolen in developed States and sent to developing countries or countries in transition. This has proved to be a big problem in the territory of Hong Kong, where luxury cars are stolen and transported to China on extremely fast boats. It has also become a big problem in Europe, where the number of motor vehicle thefts almost tripled between 1989 and 1993. The proportion of stolen motor vehicles that are permanently missing - at present more than 40 per cent - is an indicator of the amount transported to other countries. It is also a serious problem in many African countries.

56. Eastern Europe has become one of the main areas for the movement of stolen motor vehicles, Poland being the central point of the illegal transport route. From there, the motor vehicles are taken to Estonia, Kazakhstan, Latvia, Lithuania, Russian Federation or Ukraine, or even to the Caucasus. Bulgarian and Russian criminal groups have become a major force in this area of transnational crime. The same problem also exists in the United States, where the low apprehension, prosecution and conviction rate of auto thieves make this crime a booming industry, with high profits and low risks. The results are evident in the receiving countries: for example, in one Caribbean country, a survey conducted by various law enforcement agencies determined that approximately one out of every five motor vehicles on the docks awaiting clearance showed clear signs that it had been stolen and shipped from the United States. For vehicles worth over US\$ 15,000, the rate increased to nearly four out of five.²² While less serious than some of the other activities of organized crime, car theft is an additional source of revenue that helps organized criminal groups to consolidate their positions in certain countries.

57. Not all the activities undertaken by transnational criminal organizations have been mentioned. For example, the illegal animal trade, the theft of and trafficking in cultural objects or art, and precious metals smuggling have all been omitted, as have activities such as the kidnapping of businessmen or the theft of intellectual property through large-scale software piracy. Other areas of criminal activity are old-fashioned piracy on the high seas, for instance in the Straits of Malacca, counterfeiting and activities such as moving stolen cattle across national borders in Africa. This is not to denigrate the importance of those activities, all of which deserve much more attention. The intent, however, has been to provide a sample of the range of major operations that fall under the category of transnational crime and that are undertaken by transnational criminal organizations.

B. Transnational criminal organizations and terrorism

58. Terrorist operations, at both the national and international levels, attempt to destroy institutions and to undermine public administration at all levels. Terrorist attacks appear to have a common element: they take advantage of the horror created by disproportionate, organized and extreme violence in surroundings that, by themselves, create a sense of helplessness. The indiscriminate loss of life is not always ancillary or incidental to the achievement of the intended objective; it is a calculated result, intentional and foreseen. It is aimed at making the act sensational enough to attract publicity. The underlying concepts are that violence and death are the price for supporting policies and that the responsibility for government actions lies with all its citizens.

The technique has been used extensively by terrorist groups in efforts to mobilize support and to find some justification for their action.

59. The problem of terrorist criminal activities has been a focus of international attention and debate for decades. Its political complexity and the divergence of views on the subject have hindered effective counteraction. In recent years, efforts aimed at achieving consensus had been frustrated by unfavourable conditions in international relations and the rift caused by the cold war. In spite of long-standing efforts in various forums and earnest attempts on the part of numerous scholars to assist in the process, the formulation of a universally acceptable definition of terrorism has to date eluded the international community.

60. One approach that has been advanced in the past and partly adopted in efforts to combat terrorism is based on the principle that terrorist violence in all its forms and manifestations, irrespective of reasons, goals or motivation, should be considered to be of a criminal nature and, as such, should be condemned and should be subject to prosecution. The approach consists in identifying particular acts of terrorism on which agreement exists and in establishing measures against them. It presents the practical advantage that, because of the impact of certain acts, Governments agree, or may be willing to agree, on proscribing as crimes in their national legislation certain forms of conduct. Describing such acts would provide a basis on which to build consensus and to establish mechanisms for the effective prevention and control of the phenomenon, while theoretical endeavours to formulate an all-encompassing definition continue.

61. In view of the growing transnational dimension of the phenomenon, measures against terrorism are needed both nationally and internationally. Studies of the patterns and methods of operations used by terrorists reveal well-established channels for cooperation and the exchange of information between terrorist groups; the cooperation includes providing refuge or safe passage, as well as financial and in-kind support. Effective counteraction requires a degree of bilateral and multilateral cooperation in all cases. In certain regions, the bilateral and multilateral cooperation is even more important either because of efforts to achieve economic and political integration, which makes movement across borders easy, or because of problems related to other forms of crime and the relative capacity of criminal justice systems.

62. Certain widely acceptable principles should always be kept in mind when designing measures against terrorism. Constitutional guarantees and respect for individual rights should be of primary concern. The unwavering commitment of Governments to protect the rights of their citizens is as important as the defences against victimization. Terrorists seek to attract publicity and support for their actions; therefore, developing public support should be central in government efforts against terrorism. The role of the media in this respect is critical. In addition to using reasonable self-restraint, the media should assist in educating the public and keeping it informed of the problem and of ways of solving it. Terrorist atrocities place terrorism in perspective.

63. Legislation is equally important. Terrorist activities should be made criminal offences for which severe penalties are prescribed, and appropriate publicity should be given to them so that the perpetrators will be fully prosecuted. Training law enforcement personnel or special units is essential, as is improving judicial response by affording members of the judiciary the independence and protection necessary for exercising their functions without fear of violence or other forms of intimidation.

64. National measures should include specialized training of personnel entrusted with the extremely sensitive tasks of negotiating with terrorists, especially in situations involving hostages. The knowledge and flexibility required to handling such situations should be emphasized in the basic training of law enforcement officials.

65. Efforts against terrorism must protect its victims. Initiatives in certain countries to include in their legislation specific provisions affording victims of terrorist acts special protection and additional compensation

could serve as useful models in other interested countries. The implementation of such measures would significantly increase public support.

66. In considering the activities of transnational criminal organizations, both the use of terror tactics and the links with terrorist and guerrilla organizations are recurring themes. Although transnational criminal organizations often resort to terror and develop alliances of convenience with terrorist organizations, the two kinds of organization have different objectives. Transnational criminal organizations engage in terror simply to provide a more congenial environment for their criminal enterprises. They are generally willing to work within the existing system as long as it can be manipulated. Insofar as they have political objectives, these are aimed against specific law enforcement policies rather than representing part of an effort to overthrow the existing power structure (much of which they may have already corrupted). Terrorist groups, in contrast, pursue political objectives often aimed at overthrowing the status quo at the national or international level. Insofar as terrorist groups engage in criminal activity such as drug or arms trafficking, this is usually designed to provide resources to enable them to pursue more effectively their political agendas. Although the means and ends of criminal and terrorist organizations may presently be different, there is a growing, and perhaps irreversible, trend towards convergence.

67. One element in the trend towards convergence is the direct use of terroristic tactics by transnational criminal organizations. Some transnational criminal organizations, such as the Italian Mafia and the Colombian cartels, have used terrorist attacks against the State and its representatives in an attempt to disrupt investigations, to deter the introduction or continuation of vigorous government policies, to eliminate effective law enforcement officials, to coerce judges into more lenient sentencing policies and to create an environment more conducive to criminal activity. A second element is the willingness of transnational criminal organizations to develop direct links with groups that engage in the widespread use of violence for political purposes. In some cases this may be unavoidable. The narcotic drug traffickers in Peru, for example, have had little choice but to deal with Sendero Luminoso (Shining Path) guerrillas. And Shining Path guerrillas operating in the upper Huallaga valley have provided protection for the coca-bush growers and narcotic drug traffickers in return for a levy on narcotic drugs. For the traffickers, Shining Path involvement has made decisive government action much more difficult. For Shining Path, the levy has provided funding for its campaign to overthrow the Government. In effect, the linkage is a business relationship in which each side uses the other to achieve its respective goals.²³ Other examples of such symbiosis exist elsewhere. In Colombia, for example, the cartels and revolutionary movements such as the Revolutionary Armed Forces of Colombia (FARC) and M-19 have developed complex cooperative links in spite of a basic ideological antipathy.

68. Another factor leading towards convergence between international terrorism and transnational criminal activity is the changed political context. With the end of the cold war, international terrorism has lost much of the sponsorship it enjoyed in the past. State-sponsored terrorism still exists, but it has become far less important. As noted in a report by the Federal Bureau of Investigation,²⁴ state sponsors of terrorism are less anxious to be connected to terrorist acts, and more countries are attempting to avoid fitting the criteria for inclusion on the state sponsors of terrorism list. Yet this should not lead to complacency. As terrorist organizations find that government financial support is drying up, they are likely to turn to criminal organizations and activities as an alternative source of funds. In such circumstances, deals involving weapons for illicit products or services are likely to become more prevalent. Terrorist groups will almost certainly be increasingly willing to engage in criminal activities to fund political terrorism.

69. Another source of convergence is technological opportunity. The theft of nuclear material and its potential use for large-scale extortion and blackmail suggest that the distinction between crimes of extortion and political terrorism will become increasingly blurred. The theft of nuclear material by transnational criminal organizations and its purchase by terrorist organizations is one possibility. Another is that the groups that steal plutonium will themselves use it to blackmail Governments. In short, the motives of terrorist

groups and criminal organizations may differ, but the strategies they adopt to achieve their objectives could become indistinguishable if not inseparable. Moreover, the links between them will make both traditional law enforcement efforts and counter-terrorist strategies more difficult. The prospect is a formidable one on which Governments need to focus their attention.

C. Action against transnational crime

1. *World Ministerial Conference on Organized Transnational Crime*

70. United Nations activities aimed at countering transnational crime have been concentrated on encouraging States, both collectively and individually, to take measures against such crime. Given that rapid changes in technology and communications will continue to facilitate the commission of transnational crime, international cooperation and attention and the vigilance of individual States must increase correspondingly.

71. The World Ministerial Conference on Organized Transnational Crime held at Naples, Italy, from 21 to 23 November 1994, was organized by the Government of Italy and the International Scientific and Professional Advisory Committee, under the auspices of the Crime Prevention and Criminal Justice Branch, pursuant to Economic and Social Council resolutions 1993/29 and 1994/12. It represented a milestone in United Nations action in strengthening international cooperation against transnational crime. The World Ministerial Conference was attended by 142 States. The heads of State of Cyprus, Guinea-Bissau and Italy attended, as well as a number of deputy heads of State, prime ministers and deputy prime ministers. Most (86) of the delegations were led by a government minister. The number of participating States, as well as the level of representation, was higher than that for any other United Nations conference in the field of crime prevention and criminal justice. That fact reflected the importance attached by Governments to the issue, as well as their commitment and the timeliness of the event. Both developed and developing countries were well-represented. Non-governmental organizations and intergovernmental organizations also attended. There was extensive coverage of the World Ministerial Conference by the news media (1,050 accredited journalists were present), attesting to the fact that substantial public attention was focused on the event.

72. Most participants noted with alarm the rapid growth of transnational crime, in terms of extent, incidence and impact. A number of practical suggestions were put forward, including the development of a common concept of organized crime; the harmonization of legislation; the introduction of institutional reforms; the strengthening of cooperative arrangements such as joint task forces and information-sharing; the development of common strategies for investigation and prosecution; and the elaboration of new international instruments. The importance of fully utilizing the existing United Nations model treaties in crime prevention and criminal justice, especially the Model Treaty on Extradition (General Assembly resolution 45/116, annex) and the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex), was highlighted.

73. The Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex, chap. I, subsect. A), unanimously adopted by the World Ministerial Conference, was approved by the General Assembly in its resolution 49/159. In that resolution, the Assembly urged States to implement the Political Declaration and Global Action Plan as a matter of urgency. The Assembly also urged all entities of the United Nations system, including the regional commissions and the specialized agencies, and the relevant intergovernmental and non-governmental organizations to extend to the United Nations crime prevention and criminal justice programme their full support in fulfilling its tasks. It invited Governments to contribute to the United Nations Crime Prevention and Criminal Justice Fund in order to enable the programme to respond to the most urgent needs of States in the field of the prevention of and control of organized transnational crime. It also requested the Secretary-General to transmit the Political Declaration and Global Action Plan to the Commission on Crime Prevention and Criminal Justice for appropriate action, while recommending a higher level of priority for the United Nations crime prevention

and criminal justice programme within the framework of the United Nations. The General Assembly resolved to take decisions at its fiftieth session on the allocation of further resources to the United Nations crime prevention and criminal justice programme on the basis of proposals for the modification of the programme to be submitted by the Secretary-General, taking into account the responsibilities entrusted to the United Nations pursuant to the Political Declaration and Global Action Plan.

74. In the Political Declaration, heads of State and Government, ministers responsible for criminal justice systems and other high-level representatives of Governments expressed, among other things, their resolve to protect their societies from organized crime in all its forms through strict and effective legislative measures and operational instruments. In addition, they expressed their determination to join forces and fight together against the expansion and diversification of organized transnational crime, directing particular efforts towards defeating the economic power of criminal organizations.

75. In the Political Declaration, the participants of the World Ministerial Conference strongly recommended that continued priority attention be accorded to strengthening international cooperation against organized transnational crime in the United Nations crime prevention and criminal justice programme, while acknowledging that limited resources placed constraints upon implementation of its mandates. They urged the Secretary-General to allocate adequate financial and human resources for the United Nations activities in the fight against organized transnational crime. They expressed their desire to strengthen and enhance, whenever possible, the capabilities of States, as well as of the United Nations, to achieve more effective international cooperation against the threats posed by organized transnational crime, particularly in relation to closer alignment of legislative texts concerning organized crime; strengthening international cooperation at the investigative, prosecutorial and judicial levels in operational matters; establishing modalities and basic principles for international cooperation at the regional and global levels; elaborating international agreements on organized transnational crime; and adopting measures and strategies to prevent and combat money-laundering and to control the use of the proceeds of crime.

76. In the Political Declaration, participants also stated that they would strive to improve financial and other assistance for programmes in developing countries and countries in transition and to mobilize funds from overall official development assistance and other official sources for programmes addressed to the fight against organized crime.

77. In the Global Action Plan, the participants identified measures to be implemented by States in order to counter organized transnational crime. The United Nations had an especially important role in facilitating, upon request, the provision of technical cooperation and assistance, in particular drafting legislation, providing specialized training for criminal justice officials, gathering, analysing and exchanging information, and as a forum for the exchange of experiences and expertise.

78. In the Global Action Plan, it was also stated that the United Nations should develop practical models of and practical guidelines for substantive and procedural legislation, based on the experience and expertise of States and drawing on contributions from relevant organizations. To prevent and control money-laundering and the proceeds of crime, the United Nations should assist States in needs assessment, treaty formulation and the development of criminal justice infrastructure and human resources. To reinforce common regulatory and enforcement strategies in that area, it should also join efforts with other international organizations and mechanisms, such as the Financial Action Task Force, established by the heads of State or Government of the Group of Seven major industrialized countries and the President of the Commission of the European Communities.

79. The World Ministerial Conference also adopted a resolution (A/49/748, annex, chap. I, sect. B) on setting up an international task force to elaborate proposals on the feasibility of establishing an international training centre for law enforcement and criminal justice personnel. The Government of Italy would organize

and host the task force, at no cost to the United Nations, drawing on the expertise of Member States and in consultation with the United Nations crime prevention and criminal justice programme. In the same resolution, the World Ministerial Conference invited the Government of Italy to submit the results of the task force's work to the Commission at its next session.

2. *Other initiatives at the international level*

80. The General Assembly, in its resolution 49/53, on the establishment of an international criminal court, noted that the International Law Commission at its forty-sixth session in 1994 had adopted a draft statute for an international criminal court. Also in that resolution, the Assembly decided to establish an ad hoc committee to review the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and, in the light of that review, to consider arrangements for the convening of an international conference of plenipotentiaries. In accordance with the draft statute, an international criminal court would have jurisdiction, *inter alia*, over crimes pursuant to treaties, which are exceptionally serious crimes of international concern.

81. The General Assembly, in its resolution 49/60, approved the Declaration on Measures to Eliminate International Terrorism, contained in the annex to that resolution. In the Declaration, the Assembly declared that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes were in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial ethnic, religious or any other nature that might be invoked to justify them. States were urged to take effective and resolute measures for the speedy and final elimination of international terrorism. The Assembly also declared that, in order to combat effectively the increase in, and the growing international character and effects of, acts of terrorism, States should enhance their cooperation in that area. States that had not done so were urged to consider, as a matter of priority, becoming parties to the international conventions and protocols related to various aspects of international terrorism. In addition, States were encouraged to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism, with the aim of ensuring that there was a comprehensive legal framework covering all aspects of the matter. The Assembly also declared that the Secretary-General should assist in the implementation of the Declaration by taking practical measures to enhance international cooperation, including a review of existing possibilities within the United Nations system for assisting States in organizing workshops and training courses on combating crimes connected with international terrorism.

3. *Future directions*

82. At its fourth session, the Commission on Crime Prevention and Criminal Justice is expected to provide guidance on the implementation at all levels of the conclusions and recommendations of the World Ministerial Conference, based on the action taken by the General Assembly at its forty-ninth session. The Commission, at the same session, will initiate the process of requesting the views of Governments on the impact of a convention or conventions against organized transnational crime and on the issues that could be covered therein. Pursuant to General Assembly resolution 49/159, the Commission is expected to review regularly the progress made in the implementation of the Political Declaration and Global Action Plan. The Ninth Congress will present an opportunity to discuss what additional measures the international community may take to deal with the problem of transnational crime.

83. The Economic and Social Council, in section III of its resolution 1994/19, on preparations for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, invited the Ninth Congress to further develop measures for the prevention and control of new forms of national and transnational economic and organized crime, including the strengthening and possible creation of special departments within police agencies to deal with organized crime and the establishment of relationships

between such special departments through an international communications network. This issue is also central to the Global Action Plan according to which States should strengthen technical cooperation activities designed to assist developing countries and countries in transition, upon request, in enhancing the capability of their law enforcement and judicial systems.

III. ECONOMIC CRIME

A. Forms of economic crime

84. Economic crime is a term used to describe a variety of illicit activities. While fraud, in all its forms, is among its most common manifestations, economic crime includes large-scale theft, embezzlement, violations related to trading in securities and commodities, illicit activities that involve investment and financial institutions, and tax offences. The term is often deemed to include laundering of the proceeds of crime and corruption. Many experts refer to such activities as white-collar crime, business crime or commercial crime, approaching the issue from the point of view of the actors. The rationale behind that approach lies in the fact that the persons involved in such illicit activities differ from the persons responsible for other, more traditional forms of crime. The former often are respectable members of society or the business community, "in the good company of those we implicitly trust".²⁵ This is also related to the fact that they are often committed in the context or in the course of otherwise legitimate activities and do not usually involve direct physical violence.

85. Economic crime has generally received less attention at the national and international levels than other forms of crime. There are two reasons for that. First, many forms of economic crime are relatively invisible, compared with violent crime, for example. Even compared with other non-violent forms of crime, such as drug offences, the effects on society of economic crime are hidden. Public fear and concern are heightened in cases involving crime that affects personal security and the well-being of communities more directly. It is understandable, then, that the attention of members of the public, Governments and the international community has generally focused on the more manifest forms of criminal behaviour rather than on economic crime.

86. Secondly, economic crime in its modern forms presents an enormous challenge to law enforcement authorities. Increasingly, economic crimes involve the use of sophisticated technology, including computers or telecommunications devices (or both), to carry out unlawful commercial transactions, to disturb databases or computer systems or to orchestrate massive frauds. At the same time, such technology enables the perpetrators of such crime to obscure the means by which they have carried out their actions. New technologies create new opportunities for criminal conduct, which can be highly profitable and relatively low-risk. Combating such forms of economic crime requires significant expertise, resources and international cooperation.

87. Action at the international level is essential to combating economic crime. The more prevalent forms of economic crime and their scale are discussed below. Some forms of economic crime, such as bribery of government officials or tax evasion, are frequently carried out by or through corporations seeking enhanced profits or market advantages. Operating in the same manner as a corporation in such circumstances may contribute to obscuring the illegal activities and protecting the individuals acting within the corporation and, at the same time, may create special difficulties in deterring future unlawful acts. Thus, the basis of liability and the punishment of corporations and individuals within them are central to the successful enforcement of the law in this area.

88. A significant proportion of economic crime is carried out transnationally by organizations and, therefore, falls under transnational crime, which is discussed in the previous chapter. The action taken by the interna-

tional community in relation to transnational crime has focused on issues relevant to economic crime, including extradition and mutual legal assistance arrangements, provisions for the forfeiture of illegally acquired assets, and the adoption of appropriate taxation and bank secrecy laws. These measures are also discussed. Economic crime that does not fall into the category of transnational crime because it is carried out by individuals or corporations that are otherwise legitimate also deserves attention.

89. When discussing economic crime, there are a number of issues that require attention. The approach to this type of crime and mechanisms to prevent and control it should be designed keeping in mind its complexity and sophistication. It is important, for example, to consider that financial transactions, while being perfectly legitimate, are extremely complex and involve the financial systems of many countries. The complexity of the transactions and the speed with which they are carried out create a number of difficulties for regulators and government officials, particularly in developing countries and countries in transition, where relevant knowledge and expertise have not yet been accumulated. Financial markets, spurred by the possibilities offered by modern communications and electronic data processing, often operate in such a way that they create an impression of impropriety. Caution should always be exercised in regulating financial and economic activities and in elaborating legislative and other measures for the purpose of preventing and controlling economic crime. An appropriate balance needs to be struck; a regulatory and legislative system should be able to foster free competition and to encourage legitimate economic activity rather than stifle it through over-regulation. Such a system should, in sum, be designed to secure an environment in which illicit activity is difficult and involves a high risk, while legitimate economic activity is protected and allowed to flourish.

90. That should be the goal of effective mechanisms against economic crime. Economic crime does not have only short-term, fully quantifiable costs, such as the loss of public revenue or the value of the illicit activity *per se*; its long-term effects can be much more devastating. Economic crime undermines faith in major institutions of business and finance. It causes unemployment, artificially inflated prices, deteriorating standards; and, when coupled with the failure to inspect, to report and to account, it creates public anxiety and cynicism that are the bane of good governance. Economic crime puts a tremendous burden on the economy of a country, most of which is eventually borne by consumers and taxpayers, for example, according to one estimate, the collapse of the savings and loan institutions in the United States a few years ago cost as much as US\$ 500 billion.²⁵ Effective prevention and control of economic crime are essential to the full realization of the capacity of an economy, as well as its growth and further development.

91. The forms of economic crime are too numerous to be described in detail in the present working paper. Some of the forms of greatest concern at present include large-scale fraud, counterfeiting, credit card fraud, computer crime, bribery and tax evasion. Often the direct victims of these activities are individuals and corporations, but their overall impact is broader. They can cause harm to the economic well-being of a State, a region or an industrial sector. They may deprive a State of an important source of tax revenue or diminish its attractiveness as a place of investment and, therefore, harm its economic position.

1. Large-scale fraud

92. Fraud committed through or involving banking and other financial institutions is a form of economic crime with grave consequences for the public at large, national economies and the international financial markets, which are more interdependent than ever before. Examples of large-scale fraud abound in the international press and the difficulty in analysing various cases for the purpose of providing the public with a more comprehensive picture of the events only partly reflects the obstacles encountered by regulators and law enforcement officials in collecting, processing, preserving and presenting the evidence required for the adjudication of such cases. The collapse of a large bank of credit and commerce in 1991 was considered to be one of the biggest scandals ever. In accordance with accounts in the international press, the executives of the bank were allegedly involved in a host of illicit activities, ranging from providing terrorists with

financial assistance to money-laundering and corruption. At the time of the collapse of the bank, it was estimated that a quarter of its US\$ 20 billion in assets had been siphoned off; as a result, thousands of disillusioned investors and depositors in the 72 countries in which the bank had been operating scrambled to recover their investments.²⁶

93. More recently, world financial markets were visibly shocked by the disclosure of the collapse of one of the leading British banking institutions. Through the actions of one of its employees, involved in unauthorized derivatives trading estimated at US\$ 27 billion, the bank incurred losses amounting to US\$ 900 million, more than its worth, and was closed down.²⁷

94. Another manifestation of large-scale fraud involves funds of regional or international organizations and of development aid. For example, in a 1994 case still being investigated, the European Community was defrauded of roughly US\$ 300 million through the diversion of 20,000 tonnes of beef that had been purchased under the terms of its common agricultural policy and had been replaced with inferior meat during processing.²⁸

2. Counterfeiting

95. Counterfeiting is an extremely pervasive and costly form of economic crime. The production of paper currency has been facilitated by the increased availability of colour laser photocopiers and computer graphics software. States have been forced to take increasingly elaborate measures to protect the integrity of their currencies, such as the use of complex designs, special paper and holography. The problem goes far beyond the production of bogus currencies, however. Virtually every kind of manufactured product has been the target of counterfeiting activity: clothing, audio and video equipment, compact disks, watches, liquor, perfume, even parts for aeroplanes and motor vehicles. Losses are suffered by the manufacturers of the products, their employees, the economies of the States in which they are produced and the Governments that would otherwise have received tax revenues on the profits or sales generated by them.

3. Credit card fraud

96. Another major form of economic crime is credit card fraud. Losses caused by the use of fraudulent bank cards have been estimated at US\$ 1.25 billion a year.²⁹ Again, technology has facilitated the manufacture of false cards. With every innovation introduced by financial institutions to provide security against counterfeiting and fraud, increasingly sophisticated means of profiting from those instruments have been devised. For example, when card issuers began including holograms on credit cards, counterfeiters had difficulties reproducing them. Now, however, good copies of holograms can be found on fake cards. The same is true for the encoded magnetic stripes on the cards. This device has also been compromised by technology allowing forgers to encode false information in the stripe. Legitimate manufacturers of cards are now turning to other security measures. Given the millions of cards in circulation at any one time, however, the new measures can only be introduced gradually; furthermore, once authorities in one part of the world take measures against fraudulent card users, the latter move their activities to other jurisdictions whose means of detecting counterfeit cards may be less sophisticated. Thus, problems associated with this form of economic crime take some years to eradicate and the losses caused by them are felt around the world. While there may be more economic activity in developed parts of the world and, therefore, opportunities to make profits from this form of economic crime may be greater than in other parts of the world, it is also true that security measures and means of detecting unlawful activity may be more advanced in developed areas. As such, the impact of this type of crime over the long term may actually be greater in emerging markets and developing countries than in developed countries.

4. Computer crime

97. Another important type of economic crime is crime committed by way of or in relation to computers. Not all computer crime, however, has an economic motive or impact. In some cases, it involves gaining access to or manipulating data for some other purpose, such as sabotage or terrorism. Many of the other forms of economic crime discussed in the present working paper rely in whole or in part on the use of computers. Thus, measures to deal with computer crime are particularly significant in that they involve combating many different kinds of economic crime at the same time.

98. In many cases, computer crime may be classified as economic crime. Computers are used to embezzle funds, to commit fraud by interfering with data or to obtain trade secrets or other confidential and economically valuable information. Other types of computer-related crime involve the reproduction and sale of protected computer programs, which is really another form of counterfeiting.*

99. To begin to deal with computer crime, States must modernize their substantive criminal laws to ensure that such misconduct as fraud by data manipulation, forgery of electronically stored information and theft or modification of, or obtaining unauthorized access or causing damage to, such information is prohibited. Some progress has been made towards harmonizing domestic laws in this area. In addition to domestic measures, international cooperation has been fostered in some regions of the world but much more needs to be done about the perpetrators of computer crime.

100. The Eighth Congress adopted a resolution entitled "Computer-related crimes", in which it called on Member States to intensify their efforts to combat more effectively such crimes, *inter alia*, by modernizing their national criminal laws and procedures, by taking measures, such as the improvement of computer security and privacy measures, sensitizing the public to the problem, and by elaborating rules of ethics in the use of computers.³⁰ In that resolution, the Eighth Congress recommended that the Committee on Crime Prevention and Control** should promote international efforts in the development of guidelines and standards to assist Member States in dealing with computer-related crimes. It also requested the Secretary-General to consider the publication of a technical publication on the prevention and prosecution of such crimes.

101. The preparation of a technical publication or manual pursuant to the Eighth Congress resolution on computer-related crimes was initiated by the Government of Canada. The manual was first reviewed at an expert meeting convened in connection with the Colloquium on Computer Crime and Other Crimes against Information Technology. The Colloquium, held at Würzburg, Germany, from 5 to 8 October 1992, was organized by the International Association of Penal Law, a non-governmental organization in consultative status with the Economic and Social Council, with the joint participation of the United Nations, the Council of Europe and the European Union. The resulting "United Nations manual on the prevention and control of computer-related crime" was published in the *International Review of Criminal Policy* in 1994.³¹

102. The purpose of the manual is to assist in developing a common framework for understanding the implications of computer-related crime for the entire world. Accordingly, it provides advice to States on the nature of the problem, the possible inadequacies of current laws and the various solutions and action proposals that have been put forward throughout the world. The manual is a working document, a blueprint

*For a detailed discussion of computer crime and international efforts to deal with it, see the *United Nations Manual on the Prevention and Control of Computer-Related Crime in International Review of Criminal Policy*, Nos. 43 and 44 (United Nations publication, Sales No. E.94.IV.5).

**Subsequently, the Economic and Social Council, in its resolution 1992/1, decided to dissolve the Committee on Crime Prevention and Control and to establish the Commission on Crime Prevention and Criminal Justice as a functional commission of the Council.

for action, which States faced with computer-related crime may use to increase their knowledge of the problem and the various solutions that have been recommended, in order to develop their own response and to foster international cooperation. The manual also identifies other sources of information to which States may turn for expertise on more specific issues.

103. The Organization for Economic Cooperation and Development (OECD)³² and the Council of Europe³³ have each produced guidelines for policy makers and legislators on the subject of computer crime.

5. *Bribery and corruption*

104. Corporations, criminal associations or individuals may engage in bribery of officials for a number of reasons, not all of them economic. Still, in many cases, bribery is used to achieve an economic advantage. The goal is usually to persuade officials to extend to the payer some form of preferential treatment, such as awarding a contract, expediting a license, making exceptions to regulatory standards or turning a blind eye to violations of those standards.

105. In many jurisdictions, both the making and the receiving of a bribe is an offence. In relation to transnational transactions, however, this is often not sufficient to deter corrupt practices. First, the payer of the bribe is often in another jurisdiction, effectively beyond the reach of the law of the State in which the official is employed. Secondly, it may be extremely difficult to detect whether a payment was in fact made. Payment may have been made in the form of an electronic transfer or an in-kind arrangement, for example. Thirdly, even though the law may prohibit such conduct, the commercial culture prevailing in the State in which the official is employed may explicitly or implicitly encourage such practices.

106. Bribery can have serious economic and social costs in the affected jurisdiction. The cost of government contracts may increase since they may be awarded to payers of bribes rather than to the lowest bidder. Such practices amount to compromising market forces within the State, resulting in economic gain going to less productive companies, increased law enforcement costs and a loss of investor confidence or interest in a given country.

107. These effects may be differentially felt in States with emerging markets and developing economies. The temptation of officials to accede to offers of payment made by foreign business representatives may be greater in those States because of the comparative value of the payments and a heightened eagerness to encourage investment. Yet the long-term economic and social costs of corruption in States attempting to establish economies based in part on foreign capital investment are great. It may result in the diversion of development funds supplied by foreign States or international bodies, it may result in some corporations and Governments deciding not to make investments in the State in question, it may foster a climate in which individuals seek private gain over the well-being of the economy and it may result in failure to enforce regulatory standards necessary for the maintenance of health, safety and the environment and, ultimately, the viability of the economy as a whole.

108. To deal with the bribery of officials in relation to international transactions, States must respond with adequate domestic legislation, particularly in relation to payments made to foreign officials. One State that has taken action in this regard is the United States. The foreign corrupt practices act,³⁴ enacted in 1977 and amended in 1988, prohibits the bribing of foreign officials, whether directly or indirectly, in order to obtain a commercial advantage and requires public corporations in the United States to adopt proper accounting measures to track relevant payments.³⁵

109. It should be noted that the Eighth Congress adopted a resolution entitled, "Corruption in government", in which it, *inter alia*, requested the Secretary-General to publish a manual on practical measures against corruption. The manual, developed with the invaluable assistance of the United States Department of Justice,

was published in 1993 in the *International Review of Criminal Policy*³⁶ under the title "Crime prevention and criminal justice in the context of development: realities and perspectives of international cooperation; practical measures against corruption". The issue of corruption is more extensively covered in the background paper on international action against corruption (A/CONF.169/14), prepared for the one-day plenary discussion on experiences in and practical measures aimed at combating corruption involving public officials, which has been included in the programme of work of the Ninth Congress pursuant to Economic and Social Council resolution 1993/32.

110. On 27 May 1994, the Council of OECD adopted a recommendation on bribery in international business transactions. It was recommended that OECD member States should take steps to combat bribery of foreign public officials in connection with international transactions by a variety of means, including criminal laws, tax legislation, company and business accounting requirements, and laws and regulations that make it possible for government procurement contracts to be denied as a sanction against such bribery. It also recommended that OECD member States should cooperate in investigations of such bribery by, for example, extraditing suspects. The International Symposium on Corruption and Good Governance, held in Paris from 13 to 14 March 1995, was organized by OECD. At the Symposium, the follow-up to the recommendation, the close cooperation of all international organizations with competence and mandates on the matter, and the possibility of assisting developing countries in strengthening their institutions and in preventing and controlling corruption and bribery were extensively discussed.

6. Tax evasion

111. Tax evasion can be an extremely serious form of economic crime, affecting the ability of States to generate sufficient revenue for adequate governance and, in some cases, thwarting the social purposes for which a tax has been imposed or for which its revenue has been targeted. It is becoming increasingly common, for example, for taxes to be employed in the achievement of an express social policy, such as to discourage consumption of harmful products, for example alcohol or tobacco, or the use of environmentally harmful products. Alternatively, tax measures may be used as a means for the State to generate revenue for particular expenditure, such as highways or other infrastructural requirements. As such, when taxes are evaded, not only does the State lose revenue that it requires, but it may also fail to achieve a desirable social aim.

112. In some cases, the measures taken by organizations to evade taxes, particularly commodity taxes, are extraordinarily elaborate and amount to transnational crime. For example, criminal organizations have executed schemes to evade United States fuel oil taxes involving corporations whose purpose was to assist in creating multiple wholesale transactions for fuel oil and creating a corresponding trail that would be impossible for United States tax enforcement officials to follow. It is estimated that the United States federal treasury lost at least US\$ 1 billion in tax revenue and that several states in the United States lost roughly the same amount each by way of these schemes.³⁷

7. Money-laundering

113. The illicit nature of the proceeds of the various activities carried out by criminal organizations needs to be concealed and thus "laundered", in order to provide these organizations with the necessary resources for financing other activities. This means that the funds of illicit origin are first employed in a series of sophisticated and transboundary financial transactions and then enter the legal circuit in various forms of investment. Money-laundering thus requires the exploitation of legitimate markets, banks and other financial intermediaries, and in certain cases there are dangerous interconnections between the management of financial intermediaries and criminal interests.

114. The laundering of the proceeds of crime, like other criminal activities, has acquired a global character. Organized criminal groups take advantage of weaknesses in national regulatory schemes, resort to flexible and rapid movement of assets across national boundaries, exploit the diversity of business regulations within and between national systems and benefit from the assistance of professional categories that are unregulated. Persons involved in money-laundering move their activities from one country to another or from one financial sector to another to avoid regulatory and control efforts. Therefore, it is essential that an effective and comprehensive global anti-money-laundering net be established.*

B. Dealing with economic crime

115. Economic crimes pose a great challenge to individual States and the international community. The forms of crime that are most harmful are often multi-jurisdictional, either in the sense that they involve transactions taking place in several jurisdictions and/or because the evasive behaviour of the perpetrators crosses international boundaries. The challenges, then, lie in creating the necessary legal, regulatory and investigatory authority to deal with such economic crime in individual States, staying abreast of the technologies that criminals may employ in the accomplishment of their object, exchanging information with other jurisdictions in relation to the crimes and cooperating with other States in investigating and bringing to justice the perpetrators.

116. As regards money-laundering, participants at the International Conference on Preventing and Controlling Money-Laundering and the Use of Proceeds of Crime: a Global Approach, held at Courmayeur, Italy, from 18 to 20 June 1994, stressed the need for filling the gaps in the anti-money-laundering net and building a social defence system with administrative and regulatory tools, to be buttressed by criminal law. In particular, it was necessary to make the laundering of drug and non-drug criminal proceeds a criminal offence, to limit bank secrecy, to apply the "know your customer" rule, to identify and report suspicious transactions, to establish improved regulations of business or professional conducting of financial operations, to increase asset forfeiture and to implement effective coordination at the regional and international levels for strategies and efforts to promote relevant action at the national level and cooperation between countries (E/CONF.88/7, paras. 13-23).

117. In the Naples Political Declaration (A/49/748, annex) the States participating in the World Ministerial Conference expressed their desire to strengthen and enhance the capability of States to achieve more effective international cooperation against transnational crime by measures to prevent and combat money-laundering and to control the use of the proceeds of crime. In addition, States were urged to develop instruments to deal with the broad range of organized transnational crimes extending beyond drug trafficking. In the Global Action Plan against Organized Transnational Crime, States participating in the World Ministerial Conference recommended that States should consider the need to make it a criminal offence to launder the proceeds of criminal activities, in order to address the accumulation by organized criminal groups of large amounts of capital.

118. These developments indicate the movement of the international community towards more broadly based measures for dealing with the proceeds of crime, including those in relational to transnational crime and economic crime in general.

*For an overview of money-laundering and of ways to prevent it, see the International Scientific and Professional Advisory Council, General Reports of the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: a Global Approach, held at Courmayeur, Italy, from 18 to 20 June 1994; and the note by the Secretary-General on the report and recommendations of the International Conference (E/CONF.88/7).

119. One legal difficulty in this area that affects many States is corporate liability, given that many economic crimes are committed through use of the body corporate. This is particularly a problem in States that have not needed to develop theories of collective liability in the past because of the absence of market economies on the Western model. China, for example, had no corporate law until 1993. As such, organizations have rarely been prosecuted for unlawful conduct. It has been more common for individuals within corporations to be prosecuted and punished.³⁸

120. While some States will have more developed laws and jurisprudence on corporate liability than others, it is a challenge for all States to devise an approach that will result in the ability to impose criminal liability on corporations in appropriate circumstances, as well as meaningful corporate sanctions. Some States, such as Australia and Canada, have recently given consideration to broadening the legal basis for corporate liability by recognizing a theory of liability based on "corporate culture" in an effort to impose liability on a basis appropriate to the nature of decision-making in and operations of modern corporations. The Eighth International Conference of the Society for the Reform of Criminal Law: The Corporation and the Criminal Law - Victim and Violator, held at Hong Kong from 4 to 8 December 1994, canvassed the various difficulties encountered by States in imposing liability on corporations and on individuals within them.

121. The Ninth Congress will provide an opportunity to discuss these legal issues, as well as ways of enhancing the international cooperation and information-sharing that is critical to dealing with the problem of serious economic crime. In the latter connection, the following matters merit discussion: the need for international cooperation in dealing with new forms of fraud; the need for international assistance in the training of investigators to detect these kinds of crime; the need to encourage police and industry partnerships to keep abreast of technological developments that may be employed in the commission of economic crime; and ways in which industry may take prevention measures, such as through voluntary codes and practices.

IV. THE ROLE OF CRIMINAL LAW IN THE PROTECTION OF THE ENVIRONMENT

A. International trends

122. The research and consultations conducted within the framework of the United Nations crime prevention and criminal justice programme* and the regional preparatory meetings for the Ninth Congress have highlighted a number of pressing concerns in regard to the role of the criminal law in the protection of the environment, including those discussed below.

1. Hazardous material and products

123. The report of the World Commission on Environment and Development, entitled "Our Common Future" (A/42/427, annex, part II, chap. 8, paras. 75-80) contains a detailed account of the environmental problems presented by the lucrative trade in hazardous waste. After that report was issued, in 1987, States took action to regulate hazardous waste landfills and to clean up contaminated sites. A by-product of that action, however, has been growth in the illicit disposal of hazardous wastes and the creation of international networks for trade in such wastes. In some countries, organized criminal groups have been associated with the illegal disposal of, and trade in, hazardous waste and materials.

*See, for example, A. Alvazzi del Frate and Jennifer Norberry, eds., *Environmental Crime, Sanctioning Strategies and Sustainable Development* (United Nations publication, Sales No. E.93.III.N.4) and the background paper on environmental protection at the national and international levels: potentials and limits of criminal justice (A/CONF.169/12).

124. The illicit trade in hazardous waste continues to be a significant international and national problem. Of particular concern is growing evidence of the supply and shipment of dangerous substances such as radioactive by-products of the nuclear industry. Corrupt arrangements with officials may be used by criminal groups to facilitate the transportation of such materials and the avoidance of border and safety controls.

125. The ever-burgeoning international demand for and use of arms continues to wreak havoc upon citizens and the environment. The "collateral damage" produced by conflicts around the world has left vast areas of rich and fertile land unfit for use or habitation because of the spraying of toxic defoliants or the continuing deadly presence of land mines and other lethal munitions.

2. Flora and fauna

126. Another lucrative illicit trade activity that presents a severe environmental threat is trafficking in endangered plants and animal species. While the exact dimensions of this trade are unknown, recent estimates indicate it may amount to US\$ 5 billion per year,³⁹ making it one of the largest contraband businesses in the world, after arms and illicit drugs. Many of the plants and animals are originally taken from their habitat by impoverished citizens of developing countries and are then transported by well-organized dealers to black markets in the developed world. The illicit trade in wildlife includes traffic in animal body parts. For example, the slaughter of elephants for their tusks and black rhinoceros for their horns has resulted in their ceasing to exist in many parts of Africa.

3. Illicit narcotic drugs

127. Cultivation of plants used to produce illicit narcotics drugs not only accounts for an increasing share of tropical deforestation, but also causes some of the most severe environmental damage. Growers often plant their crops in fragile forest environments in remote areas. Moreover, in some countries, the illicit cultivators are former city-dwellers who have moved into the cultivation regions to take advantage of the opportunity to make quick profits. Their rapid and systematic clearing and cultivation methods tend to be more devastating on the environment than those of traditional farmers, who often have a culturally instilled sense of respect for the land. Slash-and-burn techniques for land clearance are used for illicit cultivation, landing strips and buildings. The employment of petrol and diesel-fuelled machinery can accelerate rates of soil erosion in fragile mountain environments.⁴⁰

128. Chemicals utilized at all stages of illicit drug cultivation and production have a negative impact on ecosystems. Growers often use high levels of fertilizers, herbicides and pesticides. Each year cocaine and heroin processors dump millions of tonnes of toxic chemical substances and waste by-products of the extraction process onto the land and into streams, and other bodies of water. Such substances include ethyl ether, acetone, ammonia, sulphuric acid and hydrochloric acid. Ecological experts have noted that many of the affected tributaries are almost devoid of many species of animal and plant life. Contaminated water used to irrigate food crops also poses a substantial public health hazard.⁴⁰

129. The United Nations International Drug Control Programme takes this issue into account when preparing plans for alternative development of the traditional illicit cultivation areas. Furthermore, parties to the 1988 Convention are required to protect the environment when taking measures to prevent or eradicate illicit cultivation. While these measures set the stage for necessary action, other action is needed to stop environmental degradation caused by illicit drug cultivation and production.

4. Industrial accidents and activities

130. Environmental disasters such as those at Seveso, Bhopal, Chernobyl and Basel are reminders to the international community that the consequences of failed industrial processes reach beyond national borders.

Industrial accidents occur in plants all over the world. Over 1,000 accidents of varying degrees of severity occur each year.

131. While small businesses are important to most economies, they also produce pollution and other environmental damage, often as a result of negligent or reckless practices. For example, farmers use fertilizers and pesticides that can contaminate soil and water resources. Dry cleaners use solvents and chemicals that may be released into drainage and sewerage systems. Metalwork shops, body shops and paint shops may release toxic fumes or hazardous wastes. Cumulatively, the impact of these activities may be quite significant and may even extend beyond national borders.

B. Enforcement of criminal laws protecting the environment*

132. The public associates criminal law with public censure and punishment to such an extent that labelling an act as criminal can be an important way of influencing the activities of people and organizations, whether by way of deterrence, by emphasizing the blameworthiness and illegality of certain activities, or by recognizing the protection of the environment as a fundamental social value. Inclusion of environmental crimes in the penal code also plays an educative role, raising the awareness of the public that protection of the environment should not be taken lightly.

133. While it is generally recognized that criminal law should not be used indiscriminately to deal with a range of social harms of varying seriousness, its use may be justified to deal with truly culpable conduct that causes or threatens serious harm for which other treatment is inappropriate. Some activities so gravely harm the environment and affect the ecological balance that many States now regard them as crimes when they are deliberately perpetrated. And when entire communities are exposed to serious danger as a result of those crimes, they may be regarded as crimes against humanity.

134. By focusing on acts and omissions causing or likely to cause the most serious harm, the criminal justice system can at least reduce the danger of environmental damage resulting from illegal activities of powerful perpetrators. Furthermore, extremely harmful activities can be engaged in not only by large private and public enterprises, but also by myriads of individuals carrying out their daily activities. Those activities, collectively, can and often do lead to destruction or degradation of the environment, depletion or even extinction of living species, thus impairing the ability of both present and future generations to meet their essential needs.

135. Most illegal acts against the environment are committed unintentionally or unknowingly and, for that reason, do not deserve the same condemnation or stigma of moral delinquency as criminal acts committed deliberately, recklessly or through gross negligence. Minor infractions can usefully be dealt with through administrative penalties and sanctions, especially where no substantial damage has resulted from them. It is important, however, to deter such conduct since, in the aggregate, it can produce significant harm to the environment. In this respect, criminal law can serve as a useful backstop to administrative and civil law sanctions.

136. Since both penal code and environmental statutes aim at controlling or prohibiting illegal conduct, it is necessary to induce compliance by some means. Laws generally provide various tools and sanctions but, despite their availability, they are not often utilized. Weak laws and weak law enforcement are unlikely to command obedience. It is therefore essential to give teeth to those laws and to their enforcement by

*Based on Crime Prevention and Criminal Justice Branch of the Secretariat and the United Nations Interregional Crime and Justice Research Institute, *Monograph on Capacity Building in Criminal Enforcement of Environmental Law*, forthcoming.

providing officials with a full range of sanctions and by employing an effective law enforcement strategy that fully responds to non-compliance.*

137. Difficulties grounded in the jurisprudence of some legal systems, especially the civil law system, pose particularly serious problems in dealing with organizational offenders through criminal law. Most large-scale industrial and commercial operations in a country are conducted through corporations or other legal entities. Their operations are capable of causing enormous environmental damage and human suffering. The directors and high managerial officials of such entities can often escape detection by hiding behind the independent legal status of the firms; even when these human agents are identified and prosecuted, their punishment often does not create sufficient incentive for the legal entities to comply unless they too are subject to prosecution and punishment. Therefore, legal systems should devise appropriate criminal law strategies that will force legal entities to comply.

138. The design and implementation of environmental laws pose significant problems for many countries, especially developing countries and countries in transition.⁴¹ The most basic problems occur in the design of the legal regime, and severe constraints on implementation compound the design deficiencies. Multiplicity of laws and overlapping jurisdictions, lack of clearly assigned implementation authority, lack of political support for the stated objectives, inadequate resources and corruption in the public sector are some of the other problems that may be experienced by those countries. There may also be legal and economic problems in securing compliance with environmental laws by large industrial firms and public entities. Environmental issues may not be a high priority when countries are faced with grave social, economic and political problems. While industrial development may be needed for economic growth, if it is to be achieved by the reckless operation of factories, mines and other production facilities, there may ultimately be no real economic growth or real prosperity because of the loss of life, property or basic amenities, or the ecological imbalance that results.

139. Inadequate attention to customary law and practices also presents an impediment to law enforcement in many developing countries and countries in transition. People will not obey laws that fail to reflect their economic conditions, customs or values. For example, a law prohibiting the felling of trees (or the hunting of birds or the catching of fish etc.) is not likely to be obeyed where that is an age-old practice tied to local subsistence needs and alternative sources are not provided. Where possible, therefore, practical alternative means of local subsistence should be developed.

140. Even when laws are well drafted and jurisdictional mandates are clear, however, implementation problems may arise. For example, environmental agencies in some developing countries and countries in transition seldom have the technical capability or the political will to monitor compliance and to correct violations. Compounding those problems is the possibility that the public, enterprises and agencies subject to regulations and laws may not know of the applicable requirements or may consider them unjustified. The situation is exacerbated when environmental regulations target economically important activities, particularly activities conducted by the Government or powerful industrial establishments. Governments may fear that vigorous enforcement will curtail the flow of revenue. While weak enforcement is not limited to environmental laws, there is a great need to enforce environmental laws since disregarding such laws may cause permanent damage to the environment and human resources.

*For examples of successful law enforcement responses to environmental crime see J. Epstein and T. Hammett, *Law Enforcement Response to Environmental Crime* (Washington, D.C., National Institute of Justice, United States Department of Justice, January 1995). For a description of strategies used by district attorneys in combating environmental crime, see J. Epstein and T. Hammett, *Local Prosecution of Environmental Crime* (Washington, D.C., National Institute of Justice, United States Department of Justice, June 1993).

141. Solutions to these problems cannot be found in law alone; at the same time, however, they cannot be handled in any effective, sustained fashion without law in the broader sense of the word: intelligent policy, rules, institutions, procedures and responsibilities. Above all, there must be the political will to move from policies and laws to the decision to implement them fully and to keep on implementing them. The international community can assist in strengthening national institutional capacities for designing, implementing and enforcing environmental policies, laws and regulations.

C. Directions for national and international action

1. National measures for the protection of the environment

142. The international community and individual States have not remained quiescent in the face of environmental threats. More than 900 international treaties and conventions have been concluded relating to environmental issues, most of which are subject specific, dealing only with certain aspects of polluting behaviour. There is still no comprehensive convention dealing with the environment as a whole. The acceptance by the vast majority of States of the principles and duties set out in existing treaties and conventions is an encouraging indication of the desire of the international community to protect the environment. Still, such measures are dependent on States ratifying them or enacting comparable domestic legislation. Experience has shown that the translation of international instruments into domestic law is a slow process and, even when it is carried out, there remain the issues of *locus standi*, law enforcement and the jurisdiction of the courts. The issue of *locus standi* (in this case, the right of appearance in a court of justice on a given question) involves deciding who should be permitted to initiate prosecutions for offences against the environment. While in many legal systems only the State may commence prosecutions, some jurisdictions also permit individuals and non-governmental organizations to exercise this power. A further problem arises when the State itself is responsible for polluting behaviour and is not, under international law, amenable to any criminal jurisdiction.

143. As noted above, compliance and enforcement problems can also be profound. For example, under the Convention on International Trade in Endangered Species of Wild Fauna and Flora,⁴² trade in animals that are in imminent danger of extinction, such as sea turtles, giant pandas and cheetahs, is banned. Even with such international guarantees of protection, effective enforcement of such protection may still be difficult to achieve in practice, and this should be made a priority at the national level, as well as at the international level.

144. At the national level, further obstacles to the use of criminal law exist. While most jurisdictions possess comprehensive laws for the protection of land, air and water resources, few have created generic offences against the environment or consolidated their environmental legislation in a systematic way. In many jurisdictions, issues relating to the fault requirement applicable to environmental offences and the respective roles of civil and administrative penalties remain unresolved. The benefits of criminal law may be outweighed by the difficulties presented in meeting the burden of proof in criminal cases and the delay and cost of prosecutions.

145. The development and implementation of capacity-building programmes for the criminal enforcement of environmental law involve many actors: government and government institutions and their policy makers, decision makers, legal officers and drafters, agency inspectors and law enforcement officers; prosecutors and the judiciary; the private and public sector, whose activities are the subject of environmental regulation and law enforcement, including corporations and other legal entities, small businesses and individuals; the media; and non-governmental organizations. Success in achieving an acceptable level of compliance with environmental laws for sustainable development will largely depend on whether the interests, perspectives and rights of all these actors can be recognized and harmonized in a broad set of mutually acceptable objectives concerning the action to be taken.

146. The requirements for achieving environmental protection for sustainable development should depend on a careful assessment of the needs of the country involved, including its social and economic conditions, legal traditions and constitutional requirements. One practical first step might be to compile all relevant existing laws, including national, provincial and municipal provisions, which are often excessive in number, juxtaposed and contradictory. Those provisions can then be reviewed and consolidated and, where appropriate, reshaped into clear and consistent provisions, without prejudice to the regulatory powers delegated to provinces or other political subdivisions of the country, municipalities and local authorities.

2. International perspectives on environmental protection

147. Within the United Nations, significant advances have been made in providing for a global approach to the protection of the environment. Of particular significance are Agenda 21 and the Programme of Action of the International Conference on Population and Development (A/CONF.171/13, chap. I, resolution 1), which offer a framework for achieving a balance between sustainable development and the ultimate survival of the world's population. Still, at the international level, a number of key issues require immediate attention at the Ninth Congress.

148. Significant compliance problems remain to be resolved in regard to transboundary and transnational offences against the environment, whether dealt with under existing or prospective treaties.* Potentially, the detection, investigation and prosecution of such offences could become the responsibility of an international body established under the auspices of the United Nations. Even without such a body, however, much could be done to enhance the level of international compliance with environmental protection measures. Investigation and prosecution of offences could be facilitated through international technical cooperation arrangements, including the establishment of rosters of available experts,** the development of standard-setting manuals for practitioners and the regular exchange of experiences between practitioners.

149. Significant progress has been made by the International Law Commission in elaborating a draft Code of Crimes against the Peace and Security of Mankind which includes core offences against the environment and gives recognition to the principles enunciated by the United Nations Conference on Environment and Development in the Rio Declaration. The Economic and Social Council in its resolution 1994/15 took note of the recommendations concerning the role of the criminal law in the protection of the environment, made by the Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime, held in Vienna from 7 to 10 December 1993.

150. Valuable reforms may be achieved at the regional level, as was recognized by the above-mentioned Ad Hoc Expert Group and by the International Meeting of Experts on the Use of Criminal Sanctions in the Protection of the Environment, Internationally, Domestically and Regionally, held at Portland, Oregon (United States), from 19 to 23 March 1994. Agreement may be more easily reached at the regional level than at the interregional level, because of shared problems related to geographical proximity, as well as possible shared legal and political cultures. For example, the Council of Europe has prepared a draft convention on the protection of the environment through criminal law, and Canada, Mexico and the United States have concluded an agreement parallel to the North American Free Trade Agreement.

151. All United Nations entities have a role to play in the implementation of Agenda 21.⁴³ The United Nations Environment Programme, the United Nations Development Programme and the Commission for

*For a discussion of transboundary pollution, see A/CONF.169/12, paras. 60-80.

**A roster of experts from all regions in the field of environmental crime is maintained by the Crime Prevention and Criminal Justice Branch pursuant to Economic and Social Council resolution 1993/28. At the time of writing, 188 experts from 49 countries were on the roster.

Sustainable Development have leading roles to play in this respect. Much can be done by the international community to facilitate change at the national level, including institutional capacity-building and coordination, training and providing advice and assistance in relation to law reform, public education and research.

152. There is little doubt that momentum is building for the introduction of new initiatives to protect the shrinking environmental resources upon which the world depends. The Ninth Congress provides an important opportunity to advance States' means to prevent, detect, investigate, prosecute and adjudicate offences against the environment. There should be a continuous review of the role of criminal law in protecting the environment, as national and international values continue to develop, and the needs and expectations of Member States change in this area. Ways should be found to improve the integration of criminal law into national and regional capacity-building packages in order to provide an important buttress to the enforcement of environmental laws and regulations, where necessary. To this end, further cooperation between the Crime Prevention and Criminal Justice Branch and other United Nations entities with responsibilities in this area is desirable. The United Nations crime prevention and criminal justice programme can do much to facilitate the implementation of initiatives advanced by the Ninth Congress and to assist at the international, regional and national levels with training, advisory services, research and evaluation programmes.

Notes

¹See *Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1-12 September 1975: report prepared by the Secretariat* (United Nations publication, Sales No. E.76.IV.2), para. 52.

²*Ibid.*, paras. 51-52.

³See *Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, 25 August-5 September 1980: report prepared by the Secretariat* (United Nations publication, Sales No. E.81.IV.4), para. 158.

⁴*Ibid.*, para. 159.

⁵See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. IV, sect. A, para. 66.

⁶*Ibid.*, chap. I, sect. A.

⁷See *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. IV, sect. C, paras. 249 and 265.

⁸*Ibid.*, chap. I, sect. C.24, annex.

⁹*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).

¹⁰See United Nations Environment Programme, *Convention on Biological Diversity* (Environmental Law and Institutions Programme Activity Centre), June 1992.

¹¹*Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex I.*

¹²Ibid., annex II.

¹³*Eighth United Nations Congress ...*, chap. I, sect. C.2.

¹⁴Josh Friedman, "Smugglers move 1 million yearly to industrial world", *Houston Chronicle*, 12 June 1994, p. A 31.

¹⁵R. T. Naylor, "Covert commerce and underground financing in the modern arms black market", paper presented to the Committee on International Security Studies of the American Academy of Arts and Sciences, 24 February 1994, p. 6.

¹⁶Testimony by Hans-Ludwig Zachert before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate, 25 May 1994.

¹⁷Ferdinand Protzman, "Germany reaffirms origin of seized plutonium in Russia", *New York Times*, 21 July 1994, p. A 6.

¹⁸See *Time*, No. 35, 29 August 1994; and *Newsweek*, 29 August 1994.

¹⁹John Krenuske, quoted in Marilyn Goldstein, "Human rights, if you're the right sex", *Newsday*, 13 December 1993, p. 8.

²⁰Reuters, "Organ trafficking a reality, says Argentine diplomat", 22 November 1993.

²¹Quoted in "The organ theft scandal", *Times*, 18 November 1993; see also Reuters, "Film exposes black market in human body parts", 12 November 1993.

²²M. E. Beekman and M. R. Daly, "Motor vehicle theft investigations: emerging international trends", *FBI Law Enforcement Bulletin*, vol. 69, No. 9 (September 1990), pp. 14-19.

²³Gabriela Tarazona-Sevillano, *Sendero Luminoso and the Threat of Narcoterrorism* (New York, Praeger, 1990), p. 100.

²⁴See United States of America, Department of Justice, Terrorist Research and Analytical Center, Counterterrorism Section, Intelligence Division, *Terrorism in the United States, 1982-1992* (Washington, D.C., 1993), p. 13.

²⁵Richard L. Thornburgh, *American Criminal Law Review*, No. 28, 1991.

²⁶See "BCCI roadblocks", *Newsweek*, 2 December 1991.

²⁷See *International Herald Tribune*, 28 February 1995. At the time of writing this paper, three countries were involved in extradition proceedings. The outcome of the judicial proceedings to follow were not known.

²⁸See *EuroBusiness*, February 1995.

²⁹See M.E.P. Ballard, "A crisis in counterfeits", presented at the Eighth International Conference of the Society for the Reform of Criminal Law: The Corporation and the Criminal Law - Victim and Violator, Hong Kong, 4-8 December 1994.

³⁰See *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. C.9.

³¹*International Review of Criminal Policy*, Nos. 43 and 44 (United Nations publication, Sales No. E.94.IV.5).

³²Organization for Economic Cooperation and Development, *Computer-Related Crime: Analysis of Legal Policy* (Paris, 1986); Organization for Economic Cooperation and Development, *Recommendation of the Council concerning Guidelines for the Security of Information Systems* (Paris, 1992).

³³Council of Europe, *Computer-Related Crime: Recommendation No. R(89)9 on Computer-Related Crime and Final Report of the European Committee on Crime Problems* (Strasbourg, 1990).

³⁴15 United States Code, § 78, ff.

³⁵See J. C. Nobles Jr. and C. Maistrellis, "The foreign corrupt practices act: a systemic solution for the U.S. multinational", presented to the Eighth International Conference of the Society for the Reform of Criminal Law: The Corporation and the Criminal Law - Victim and Violator, Hong Kong, 4-8 December 1994.

³⁶*International Review of Criminal Policy*, Nos. 41 and 42 (United Nations publication, Sales No.E.93.IV.4).

³⁷See A. A. Block, "Petroleum rackets, racketeers, and the underground economy" presented to the Eighth International Conference of the Society for the Reform of Criminal Law: The Corporation and the Criminal Law - Victim and Violator, Hong Kong, 4-8 December 1994.

³⁸See V. C. Yang, "Corporate liability: the state and the enterprise", paper presented to the Eighth International Conference of the Society for the Reform of Criminal Law: The Corporation and the Criminal Law - Victim and Violator, held at Hong Kong, 4-8 December 1994.

³⁹Sarah Fitzgerald, *International Wildlife Trade: Whose Business Is It?* (Washington, D.C., World Wildlife Fund, 1989), p. 3.

⁴⁰L. Armstead, "Illicit narcotics cultivation and processing: the ignored environmental drama", *Bulletin on Narcotics*, vol. XLIV, No. 2 (1992), pp. 10-11.

⁴¹See A. Alvazzi del Frate and J. Norberry, eds., "Rounding up: themes and issues", *Environmental Crime, Sanctioning Strategies and Sustainable Development*

⁴²United Nations, *Treaty Series*, vol. 993, No. 14537.

⁴³*Report of the United Nations Conference on Environment and Development*, annex II, para. 38.5.

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