



# General Assembly

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## Eleventh United Nations Congress on Crime Prevention and Criminal Justice

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### Discussion guide\*

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\* The footnote required in accordance with paragraph 8 of resolution 53/208 B, by which the General Assembly decided that, if a report was submitted late to the conference services, the reason for this should be included in a footnote to the document, was not included in the original submission.



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## I. Background

1. In its resolution 57/171 of 18 December 2002, the General Assembly decided that the main theme of the Eleventh Congress on Crime Prevention and Criminal Justice would be “Synergies and responses: strategic alliances in crime prevention and criminal justice”; requested the Secretary-General to prepare, in cooperation with the United Nations Crime Prevention and Criminal Justice Programme network of institutes, a discussion guide for the regional preparatory meetings for the Eleventh Congress for the consideration of the Commission, and invited Member States to be involved actively in that process.

2. In its resolution 58/138 of 22 December 2003, the General Assembly approved the following provisional agenda for the Eleventh Congress, finalized by the Commission on Crime Prevention and Criminal Justice at its twelfth session:

1. Opening of the Congress.
2. Organizational matters.
3. Effective measures to combat transnational organized crime.
4. International cooperation against terrorism and links between terrorism and other criminal activities in the context of the work of the United Nations Office on Drugs and Crime.
5. Corruption: threats and trends in the twenty-first century.
6. Economic and financial crimes: challenges to sustainable development.
7. Making standards work: fifty years of standard-setting in crime prevention and criminal justice.
8. Adoption of the report of the Congress.

The Assembly also decided that the high-level segment of the Eleventh Congress would be held during the last three days of the Congress in order to allow heads of State or Government or government ministers to focus on the main substantive agenda items of the Congress.

3. In accordance with paragraphs 2 (h) and (i) of General Assembly resolution 56/119 of 19 December 2001, each of the United Nations congresses on crime prevention and criminal justice shall adopt a single declaration containing recommendations derived from the deliberations of the high-level segment, the round tables and the workshops, to be submitted to the Commission on Crime Prevention and Criminal Justice, acting as the preparatory body of the congresses, for its consideration.

4. In its resolution 55/60 of 4 December 2000, the General Assembly, taking note with appreciation of the results of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,<sup>1</sup> including the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (General Assembly resolution 55/59, annex), adopted by the

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<sup>1</sup> See *Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000: report prepared by the Secretariat* (United Nations publication, Sales No. E.00.IV.8).

Tenth Congress during its high-level segment; requested the Secretary-General to prepare, in consultation with Member States, draft plans of action to include specific measures for the implementation of and follow-up to the commitments undertaken in the Declaration. In its resolution 56/261 of 31 January 2002, the Assembly took note with appreciation of the plans of action for the implementation of the Vienna Declaration, contained in the annex to the resolution; requested the Secretary-General to ensure the widest possible circulation of the plans of action; and invited Governments to consider carefully and use, as appropriate, the plans of action as a guide in their efforts to formulate legislation, policies and programmes in the field of crime prevention and criminal justice, for the purpose of implementing and following up on the commitments undertaken in the Vienna Declaration.

5. In its resolution 57/170 of 18 December 2002, the General Assembly, having taken note of the fact that the plans of action reflected a wide range of United Nations standards and norms in crime prevention and criminal justice, invited the Commission on Crime Prevention and Criminal Justice, while formulating recommendations regarding the Eleventh Congress, to take into account the progress made in the follow-up to the Vienna Declaration and the plans of action.

6. In its resolution 58/138, the General Assembly approved the provisional agenda for the Eleventh Congress; decided on the issues to be considered by the workshops within its framework; requested the Secretary-General to include in the discussion guide for the workshops consideration of technical cooperation ideas related to enhancing bilateral and multilateral efforts in technical assistance activities; invited Governments and relevant intergovernmental and non-governmental organizations to inform the Eleventh Congress about their activities with a view to the implementation of the plans of action for the implementation of the Vienna Declaration as guidance for the formulation of legislation, policies and programmes at the national and international levels; and encouraged Governments to undertake preparations for the Congress at an early stage by all appropriate means, including, where appropriate, the establishment of national preparatory committees, with a view to contributing to a focused and productive discussion on the topics and to participating actively in the organization of and follow-up to the workshops.

7. The present discussion guide, which outlines the substantive items included in the provisional agenda, has been prepared with a view to stimulating discussion of issues of major concern with a view to identifying the main policy options for consideration and action by the Eleventh Congress. It will also facilitate substantive discussion of the topics to be covered by the workshops to be conducted within the framework of the Congress.

8. In that context, it should be recalled that, pursuant to General Assembly resolution 46/152 of 18 December 1991, the United Nations congresses, as a consultative body of the United Nations Crime Prevention and Criminal Justice Programme, are to provide a forum for:

(a) The exchange of views between States, intergovernmental organizations, non-governmental organizations and individual experts representing various professions and disciplines;

(b) The exchange of experiences in research, law and policy development;

(c) The identification of emerging trends and issues in crime prevention and criminal justice;

(d) The provision of advice and comments to the Commission on Crime Prevention and Criminal Justice on selected matters submitted to it by the Commission;

(e) The submission of suggestions, for the consideration of the Commission, regarding possible subjects for the programme of work.

## **II. Substantive items of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice**

### **Substantive item 1. Effective measures to combat transnational organized crime**

#### **A. Introduction**

9. Transnational organized crime poses a major challenge for legislators, prosecutors and law enforcement officials. Criminal groups across the world can communicate and coordinate their activities, shrinking distances, rendering state frontiers permeable and often using new methods that enable them to elude the efforts of law enforcement agencies to intercept and control them. At the same time, the enhanced flows of information and commodities have created new opportunities for organized criminal groups, which have been quick to exploit them and expand their activities.

10. The serious threat posed by transnational organized crime to society and national economies was recognized as early as 1975 in the context of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The intensive work that has been carried out by the competent United Nations organs, in particular the United Nations Office on Drugs and Crime under its previous and current structure, culminated from the mid-1990s and led to the adoption of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I, the Organized Crime Convention) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (resolution 55/25, annex II, the Trafficking in Persons Protocol), the Protocol against the Smuggling of Migrants by Land, Sea and Air (resolution 55/25, annex III, the Migrants Protocol) and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (resolution 55/255, annex, the Firearms Protocol).

11. The entry into force of the Organized Crime Convention and the Trafficking in Persons Protocol was a historic milestone in the efforts of international community to counter and curb transnational organized crime. In addition, the commencement of the functioning of the Conference of the States Parties to the Convention will mark the beginning of a new and dynamic phase giving practical effect to the achievements of the international community in the field of combating transnational organized crime. The application of the new instruments is expected to bring about significant changes in national legal systems and to create a new impetus in

international cooperation, which will in turn galvanize innovative and broader perceptions about more effective ways to approach and deal with the various manifestations of transnational organized crime.

12. It is through agreed and universally accepted compatibility, with better and more profound understanding of but also respect for the differences in methods and ways of implementing certain policies, that the international community can establish efficient and effective working relationships and more functional cooperation. Guided by those principles, the United Nations Office on Drugs and Crime has initiated a wide range of activities to support and promote the implementation of the Convention, enhance the capacity of criminal justice practitioners in effectively combating organized crime and strengthen strategies and policies to combat organized crime. Similar activities have also been launched, as indicated below, to counter specific criminal activities closely related to organized crime, such as drug trafficking, trafficking in persons, money-laundering and corruption.

13. The Eleventh Congress will focus on the consideration of specific aspects of the prevention and control of transnational organized crime, as well as on practical methods with the potential for rendering related efforts more effective. The Congress could thus provide useful input concerning the implementation mechanism of the Convention and its Protocols to the Conference of the Parties.

## **B. Implementation of the United Nations Convention against Transnational Organized Crime and its three Protocols**

14. The Eleventh Congress could play a useful role as a platform for taking stock of progress in the ratification and implementation of the Organized Crime Convention and its Protocols, as well as for exploring requirements for the promotion of universal adherence to those instruments. In that context, the Congress could function in a consultative capacity to the Conference of the Parties, especially in the areas of technical cooperation, the exchange of information on patterns and trends in transnational organized crime and on successful practices for combating it, as well as the promotion of cooperation with relevant international and non-governmental organizations.

15. Moreover, the Congress could also constitute an additional source of useful information and knowledge on the legislative and administrative measures taken and programmes, plans and practices launched by States parties in implementation of the Convention, as well as on the difficulties and deficiencies encountered in the context of implementation, in accordance with article 32, paragraphs 4 and 5, of the Convention. Consequently, the Congress could become a forum for useful exchanges between States that are parties to the Convention and those which are not yet parties on practical issues related to key adherence and implementation steps at the national level, including the following:

(a) Developing legislation geared towards creating or strengthening sanctions, investigative powers and criminal procedures for best dealing with transnational organized crime. In that context, the Congress may wish to rely on the *Legislative Guide for the Implementation of the United Nations Convention against*

*Transnational Organized Crime* as a tool for drafting and practically applying relevant legislative provisions;

(b) Enhancing the skills and building the capacity of domestic criminal justice systems, including through the establishment or expansion of agencies responsible for the prevention, detection and control of transnational organized crime;

(c) Sponsoring research to develop and measure objective indicators of progress and harm against which the impact of new legislation, law enforcement capacity, training and technical assistance can be addressed;

(d) Conducting training programmes for judges, prosecutors and law enforcement personnel.

## **1. Trafficking in persons**

16. The Trafficking in Persons Protocol constitutes a specific United Nations response to the global scourge of human trafficking and has served as the framework and orientation for a number of activities undertaken by the United Nations Office on Drugs and Crime, including the Global Programme against Trafficking in Human Beings, which focuses on bringing to the fore the involvement of organized criminal groups in human trafficking and promoting the development of effective criminal justice-related counter-policies. In that area, the Office has been actively involved in providing advice and assistance on drafting or revising relevant legislation and establishing or strengthening anti-trafficking offices and units, as well as in training law enforcement officers, prosecutors and judges and strengthening victim and witness support.

17. It should also be recalled, in this context, that the thematic discussion and the workshop held during the twelfth session of the Commission on Crime Prevention and Criminal Justice, during which a number of wide-ranging issues were raised, covered not only the major trends in the phenomenon of trafficking in persons, but also best practices for investigating and prosecuting cases involving such trafficking, law enforcement cooperation and awareness-raising, including victim support and the role of civil society.<sup>2</sup> At the end of its deliberations, the Commission recommended specific measures to be adopted, as contained in General Assembly resolution 58/137 of 22 December 2003 on strengthening international cooperation in preventing and combating trafficking of persons and for treating victims of such trafficking.

18. The Eleventh Congress will provide a springboard for further action in the provision of technical assistance to requesting States, including in the implementation of the Protocol. In that context, it could also provide a forum for the exchange of opinion on the effectiveness of technical cooperation activities in this field, including those undertaken in the framework of the Global Programme, as well as for the definition of new areas of action and for the submission of proposals for launching new initiatives, such as:

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<sup>2</sup> *Official Records of the Economic and Social Council, 2003, Supplement No. 10 (E/2003/30), chap. II.*

- (a) Developing and sharing information and analytical expertise on the nature and extent of domestic and regional trafficking activities, the identification of trafficked persons and traffickers, as well as on the identities, means and methods of known traffickers or trafficking organizations (in accordance with art. 10 of the Protocol);
- (b) Adopting or strengthening effective laws and procedures for the punishment of trafficking in persons and effective measures for the support and protection of victims of such trafficking (in accordance with arts. 5-8 of the Protocol). Participants may wish to rely on the forthcoming legislative guide for the implementation of the protocol as a tool for drafting and practically applying relevant legislative provisions;
- (c) Implementing measures to provide trafficked persons with adequate legal assistance and ensure access to legal remedies for them (in accordance with art. 6, para. 2, of the Protocol);
- (d) Implementing measures to provide for the protection and physical, psychological and social recovery of victims of trafficking in persons (art. 6, para. 3);
- (e) Adopting and implementing measures to facilitate the repatriation of victims of human trafficking (art. 8);
- (f) Developing and disseminating public information about trafficking in persons to raise public awareness and educate potential victims of such trafficking (art. 9, para. 2);
- (g) Promoting cooperation with international, non-governmental and other organizations and elements of civil society with a view to preventing and combating trafficking in human beings and protecting victims of such trafficking from revictimization (art. 9, para. 3);
- (h) Reviewing and assessing the effectiveness of domestic measures against trafficking in persons and making relevant information available for comparison and research into the development of more effective measures against such trafficking;
- (i) Strengthening the capacity of law enforcement agencies or immigration authorities to develop and implement measures against trafficking in persons (in accordance with art.10, para. 2, of the Protocol);
- (j) Adopting appropriate measures to strengthen border measures with a view to preventing and detecting trafficking in persons (art. 11);
- (k) Developing technical cooperation projects to prevent and combat trafficking in human beings and protect the victims and witnesses of such trafficking;
- (l) Support research to evaluate progress made in efforts to address trafficking in human beings, to include trends in trafficking activity, the impact of new legislation, law enforcement training and technical assistance and the effectiveness of victim treatment and prevention programmes.

## 2. Smuggling of migrants

19. Constructive discussions could also be held during the Congress on the development of a set of activities along the lines of those undertaken to assist countries in their efforts against trafficking in persons. In particular, attention could be paid to a review of best practices and strategies against smuggling of migrants. In that context, relevant measures already applied could be reviewed and examined, focusing, in particular, on certain needs that should be met for best dealing with the problem of smuggling of migrants, such as:

(a) Enacting or strengthening effective laws for the prevention and punishment of smuggling of migrants and measures for the support and protection of the rights of smuggled migrants and of witnesses in smuggling cases (in accordance with arts. 5 and 6 of the Migrants Protocol). Participants may wish to rely on the forthcoming legislative guide for the implementation of the protocol as a tool for drafting and practically applying relevant legislative provisions;

(b) Developing and sharing information and analytical expertise on the nature and extent of domestic and regional activities relating to the smuggling of migrants and on the identities, means and methods of known smugglers or smuggling organizations (art. 10);

(c) Adopting and implementing appropriate measures with a view to strengthening border controls to prevent and detect the smuggling of migrants (art. 11);

(d) Promoting cooperation with international, non-governmental and other organizations and elements of civil society with a view to combating smuggling of migrants and protecting the rights of smuggled migrants (art. 14, para. 2);

(e) Developing technical cooperation projects to prevent and combat the smuggling of migrants and to make possible the effective protection of their human rights (art.14, para. 3);

(f) Developing and disseminating public information about smuggling of migrants to educate officials, the general public and potential migrants about the true nature of such smuggling, including the involvement of organized criminal groups and the risks posed to smuggled migrants (art. 15);

(g) Implementing measures to preserve and protect the basic rights of smuggled migrants and witnesses in smuggling cases, in particular to protect them from violence, as well as taking appropriate measures in cases where, in the course of being smuggled, the lives, safety or human dignity of migrants are placed in jeopardy (art. 16), including measures to ensure the safety and humane treatment of migrants smuggled by sea (art. 9, para. 1 (a));

(h) Strengthening inter-State cooperation to develop and implement measures against the smuggling of migrants (art. 17), including by sea (arts. 7 and 8);

(i) Adopting and implementing measures to facilitate the return of smuggled migrants to the countries of which they are nationals or in which they have the right of permanent residence (art. 18);

(j) Reviewing and assessing the effectiveness of domestic measures against the smuggling of migrants and making that information available for comparison and research into the development of more drastic and effective countermeasures.

### **3. Firearms**

20. The Eleventh Congress will serve to encourage an exchange of views and experience with a view to promoting adherence to and implementation of the Firearms Protocol. In order to achieve this objective, the Congress could also explore a number of related practical initiatives, such as:

(a) Determining the requirements for the adoption and strengthening of national legislation and procedures concerning, in particular, the establishment of criminal offences and the seizure, confiscation and disposal of firearms (in accordance with arts. 5 and 6 of the Protocol). The participants may wish to rely on the forthcoming legislative guide for the implementation of the protocol as a tool for drafting and practically applying relevant legislative provisions;

(b) Implementing requirements to keep records regarding firearms, as well as their marking and deactivation (arts. 7-9);

(c) Establishing or maintaining effective systems for the licensing or authorization of the import, export and transit of firearms (art. 10);

(d) Adopting appropriate legal and administrative measures for the prevention of the loss, theft or diversion of firearms, as well as the exchange of relevant information and the enhancement of international cooperation (arts. 11-13);

(e) Establishing and implementing an effective regulatory framework for the activities of those engaged in the brokering of transactions involving the import, export or transit of firearms (art. 15);

(f) Developing technical cooperation projects and activities to combat trafficking in firearms with a view to assisting States, in particular developing countries and countries with economies in transition, to build and maintain adequate criminal justice capabilities in this field (art. 14).

### **C. Effective strategies to combat money-laundering**

21. As national and international efforts to deprive criminals of their illicit gains have intensified, organized criminal groups have increasingly sought to diversify money-laundering methods, engaging in more complicated transactions to obfuscate the origin and trail of the proceeds of crime and to integrate the money into the legitimate economy through more sophisticated procedures.

22. Binding obligations covering measures to combat money-laundering have consistently been in the forefront of United Nations initiatives, most notably from the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988<sup>3</sup> to the Organized Crime Convention and the United Nations Convention against Corruption (General Assembly resolution 58/4, annex, the Convention against Corruption). All these instruments criminalize

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<sup>3</sup> United Nations, *Treaty Series*, vol. 1582, No. 27627.

money-laundering, but the Organized Crime Convention expands the scope of predicate offences covered (art. 6).

23. The Eleventh Congress could play a productive role by offering an opportunity for discussion, information-sharing and critical analysis on practical measures already taken and further initiatives that have to be pursued. A useful framework for such discussion could be articles 6 and 7 of the Organized Crime Convention, on criminalization of and measures to combat money-laundering, as well as articles 14 and 23 of the Convention against Corruption. Within that framework, participants may wish to identify areas of priority action, make proposals or suggestions for streamlining strategies and related efforts and critically evaluate technical cooperation activities undertaken by the United Nations Office on Drugs and Crime, including in the context of its Global Programme against Money-Laundering. More specifically, discussion could cover the following issues:

(a) Adopting or improving domestic legislation ensuring adequate criminalization of activities and methods used to conceal, convert or transfer the proceeds of crime in order to disguise the nature or origin of those proceeds;

(b) Establishing a comprehensive regulatory and supervisory regime in order to deter and detect money-laundering activities;

(c) Developing appropriate monitoring mechanisms and establishment of financial intelligence units to serve as national centres for the collection, analysis and dissemination of information related to money-laundering activities;

(d) Promoting cooperation at the regional and international levels to combat money-laundering effectively;

(e) Supporting and assisting in enhancing skills and building capacity, including through training for legal, judicial, law enforcement and financial regulatory authorities, with a view to assume their respective roles in an anti-money-laundering infrastructure.

24. In the context of the above-mentioned critical evaluation, policy makers and experts attending the Congress could also benefit from an exchange of opinions and relevant information in further exploring the effectiveness of currently existing legislative and capacity-building tools aimed at promoting the enactment and implementation of adequate domestic legislation and regulations against money-laundering in accordance with the two related conventions, including the *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, as well as the feasibility of developing further legal or operational working tools covering a wide range of action against money-laundering, or the potential need for new initiatives and concerted efforts.

25. The Workshop on Enhancing International Law Enforcement Cooperation, including Extradition Measures, and the Workshop on Measures to Combat Economic Crime, including Money-Laundering, which are included in the programme of work of the Congress, will present an opportunity to conduct a thorough examination in this field and to provide the discussions under this agenda item with valuable input.

#### **D. The use of explosives by organized criminal groups**

26. In its resolution 54/127 of 17 December 1999, the General Assembly requested the Secretary-General to convene an expert group to prepare a study on the illicit manufacturing of and trafficking in explosives by criminals and their use for criminal purposes. That study, together with the recommendation of the expert group, was submitted to the Commission on Crime Prevention and Criminal Justice at its eleventh session (E/CN.15/2002/9 and Add.1). However, owing to its overcrowded agenda and other priority issues under consideration, the Commission was unable to review the recommendations and to take appropriate action.

27. The Eleventh Congress and its regional preparatory meetings could review the study and the related recommendations and serve as a platform for the discussion of practical measures and effective strategies to curb illicit manufacturing of and trafficking in explosives by criminals and their use for criminal purposes. Within that framework, the Congress could identify some of the key points and initiatives for dealing with this issue, such as:

(a) Drafting of national legislation defining and classifying explosives in a manner that could support the creation and enforcement of criminal offences and legal restrictions;

(b) Strengthening international cooperation between law enforcement agencies and in particular their specialized entities or units on explosives, including facilitation of the sharing of information on the manufacturing and technical nature of specific explosives, cross-border trafficking in explosives and the devices or techniques used by criminal individuals or groups to make such trafficking possible;

(c) Developing or improving statistical tools to collect and analyse information about explosive-related incidents from national repositories, taking into consideration the legitimate security and law enforcement needs of Member States.

#### **E. Combating computer-related crime**

28. As recognized in the Vienna Declaration and the plans of action for its implementation, the proliferation of information technologies and rapid developments in new systems of telecommunication and computer networks have been accompanied by the abuse of those technologies for criminal purposes as opportunities for criminals to exploit and target such systems have increased significantly. The distribution of child pornography—closely related to trafficking in children—the illegal intrusion into computer networks for fun or profit, extortion using threats to destroy computer and information systems and the penetration of computer systems for purposes of theft or fraud are forms of computer crime that require streamlined national action and new forms of international cooperation for the investigation and prosecution of their perpetrators. The need to adopt measures to combat computer-related abuses more effectively has been recognized by the General Assembly, in particular in its resolutions 55/63 of 4 December 2000 and 56/121 of 19 December 2001, on combating the criminal misuses of information technology, 57/239 of 20 December 2002, on the creation of a global culture of cybersecurity, and most recently 58/199 of 23 December 2003, on the creation of a

global culture of cybersecurity and the protection of critical information infrastructures.

29. Current experience suggests that traditional legal approaches may not be effective in dealing with such contemporary manifestations of transnational organized crime. The Eleventh Congress will provide an opportune forum to highlight the need for developing more concerted strategies to curb the problem at the national level and to consider the following measures:

(a) Criminalizing of the misuse of information technologies and amendment of definitions of traditional crimes, such as fraud, to ensure that they apply in cases where computer and telecommunication media and networks are used to commit those offences;

(b) Developing and implementing of legal powers, jurisdictional rules and other procedural provisions to ensure that computer- and telecommunication-related crimes can be investigated effectively at the national level and that adequate cooperation can be obtained in multinational cases;

(c) Adopting and implementing measures enabling the adjustment of rules of evidence to ensure that computer evidence can be preserved, authenticated and used in criminal proceedings, as well as enacting or amending provisions dealing with the national and international tracing and interception of communications transmitted via computer networks or similar media and governing the conduct of domestic and cross-border electronic searches;

(d) Strengthening of specialized capacities of law enforcement personnel through training to respond effectively and expeditiously to requests for assistance in the tracing of communications or in taking other measures necessary for the investigation of transnational computer-related crime;

(e) Extending and improving cooperation with other States to prevent and control computer-related crime;

(f) Promoting discussions with industries involved in the development and deployment of computers, telecommunication equipment, network software and hardware and other relevant products and services, in particular with a view to incorporating into new technologies elements intended to prevent crime or facilitate the detection, investigation or prosecution of crime;

(g) Making voluntary contributions, in cooperation with the private sector, in the form of resources and technical expertise needed to assist other States in developing and implementing effective crime control and prevention measures.

30. In addition, the Congress could play a useful role in considering the utility and suggesting the initiation of appropriate international action, undertaken by the United Nations Office on Drugs and Crime in collaboration with other relevant international and regional organizations, to prevent and combat computer-related crime, including the following:

(a) Expanding national and international research activities to identify new forms and patterns of offences, their impact on sustainable development, protection of privacy and electronic commerce, as well as legislative, regulatory or other measures taken in response by state authorities and the private sector;

(b) Preparing and disseminating guidelines, legal and technical tools, compilations of best practices and model legislation to assist legislative and law enforcement authorities in developing and implementing effective measures against computer-related crime;

(c) Promoting of technical cooperation and assistance projects with a view to building and strengthening domestic criminal justice capabilities for effectively dealing with the prevention, detection and suppression of computer-related crime;

(d) Considering the feasibility of negotiation of an international instrument on preventing and combating crimes involving information technologies.

31. The Workshop on Measures to Combat Computer-related Crime, which is included in the programme of work of the Congress, will present an opportunity to conduct a thorough examination in this field and to provide the discussions under this agenda item with valuable input.

## **F. Kidnapping and organized crime**

32. The involvement of organized criminal groups in kidnapping for profit, which has been spreading rapidly in recent years, could be one of the aspects for consideration during the Eleventh Congress, in particular in view of the discussions on this matter during the eleventh and twelfth sessions of the Commission on Crime Prevention and Criminal Justice and of its relevant recommendations, as reflected in Economic and Social Council resolutions 2002/16 of 24 July 2002 and 2003/28 of 22 July 2003. Drawing on the conclusions of the progress report submitted by the Secretary-General to the Commission at its twelfth session (E/CN.15/2003/7 and Add.1), practical measures for dealing with the issue could be explored with a view to developing best practices and preventive strategies to counter the phenomenon. The presence of policy makers and international experts at the Congress could provide an opportunity to exchange national experience and views on the creation of practical counter-kidnapping mechanisms. In that framework, a critical evaluation in the context of the Congress of the relevant initiatives taken under the Global Programme against Organized Crime, as well as a discussion on the possibility of building and enhancing functional and effective partnerships between business and government authorities would further assist in determining best tools, strategies and responses to curtail the spread of kidnapping as a specific manifestation of organized crime.

## **G. Illicit trafficking in protected species of wild flora and fauna**

33. As noted in the report of the Secretary-General to the Commission on Crime Prevention and Criminal Justice at its eleventh session (E/CN.15/2002/7), in the absence of an exhaustive and reliable register of trafficking in wildlife, together with indicators of the number of undetected cases, an assessment of the scope and nature of the problem of illicit trafficking in protected species becomes difficult. The Secretary-General noted in his report to the Commission at its twelfth session (E/CN.15/2003/8 and Add.1 and Corr.1) that there existed organized criminal groups operating transnationally that specialized in subsections of the illicit wildlife market, and although most illegal markets shared numerous broad characteristics,

each market also had certain peculiarities depending on the nature of the products being trafficked.

34. Combating the trade in endangered species requires a comprehensive approach that builds on areas of success, remedies deficiencies and weaknesses in laws and enforcement efforts and goes beyond law enforcement to include educational campaigns and awareness-raising. Since violations of wildlife trade regulations are often deemed insignificant, appropriate sanctions are rarely applied and penalties mostly remain relatively low. In its resolution 2003/27 of 22 July 2003, the Economic and Social Council urged Member States to adopt preventive measures, as well as to review their criminal legislation with a view to ensuring that offences relating to trafficking in protected species of wild flora and fauna were punishable by appropriate penalties that took into account the serious nature of those offences; encouraged Member States to undertake awareness-raising activities; and called upon Member States to promote international cooperation as well as the conclusion of mutual legal assistance agreements with a view to preventing, combating and eradicating trafficking in protected species of wild flora and fauna. The Eleventh Congress could offer a forum for policy makers and experts for discussion, information-sharing and critical analysis of measures already taken and further initiatives to be pursued at the national and international levels and of the role of competent entities of the United Nations system, in particular the United Nations Office on Drugs and Crime, the secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora<sup>4</sup> and the secretariat of the Convention on Biological Diversity.<sup>5</sup>

## H. Theft of and trafficking in cultural property

35. Although looting of art treasures has long been a feature of warfare and conquest, in recent years it has also become one of the most prevalent and flourishing activities of illicit transnational business. Indeed, there has been a vast increase in theft of and trafficking in cultural artefacts and antiquities in all their forms, with the potential for denuding entire cultures and nations of their cultural heritage.

36. Transnational organized crime is deeply involved in the exacerbation of the problem. Transnational networks have grown, involving links between the local population in areas where antiquities have been discovered and dealers who violate national legislation prohibiting their illegal export and smuggle them to countries where they are purchased by other dealers and private collectors. The well-organized nature of the illicit market for cultural artefacts and antiquities is perhaps most strikingly demonstrated by the fact that only around 5 per cent of all stolen objects are ever recovered.

37. The United Nations has recognized the importance of preserving cultural property and preventing criminal offences that infringe on the cultural heritage of nations in due time. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property<sup>6</sup> was adopted

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<sup>4</sup> United Nations, *Treaty Series*, vol. 993, No. 14537.

<sup>5</sup> *Ibid.*, vol. 1760, No. 30619.

<sup>6</sup> *Ibid.*, vol. 1037, No. 15511.

by the United Nations Educational, Scientific and Cultural Organization in 1970. A model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property<sup>7</sup> was adopted in 1990 by the Eighth Congress on the Prevention of Crime and the Treatment of Offenders and welcomed by the General Assembly in its resolution 45/121 of 14 December 1990.

38. The Eleventh Congress could facilitate the discussion of problems relating to trafficking in cultural property and may wish to examine measures and initiatives geared towards preventing and controlling the problem, in line with Economic and Social Council resolution 2003/29 of 22 July 2003, adopted on the recommendation of the Commission on Crime Prevention and Criminal Justice at its twelfth session. In that connection, the feasibility of creating a comprehensive database that would collect and disseminate information about stolen cultural objects, as well as the promotion of mechanisms for recovery and return of stolen movable cultural property, could be explored.

## **I. Organized crime in post-conflict situations**

39. The upsurge in and evolving nature of organized crime in post-conflict situations has become an increasing concern in recent years calling for an immediate and effective response. The issue may be viewed in conjunction with political and social circumstances that pave the way for criminal networks to engage in a multiplicity of organized criminal activities, namely, the disintegration of state institutions in countries involved in conflicts, whether international conflicts or civil wars, as well as the disruption of social and economic systems, causing a loss of faith in democratic processes, and the weakness of the domestic criminal justice system to respond to the challenges of maintaining the rule of law.

40. Indeed, the experience acquired in the most recent United Nations peacekeeping operations suggests that the criminal justice system is among the institutions that suffer the most in conflict situations, invariably being a prime target for dismantlement or destruction. Success in rebuilding a country after inter- or intra-State conflicts depends largely on the re-establishment of the rule of law, with an adequate level of security for all citizens.

41. The rehabilitation of criminal justice systems in post-conflict situations, especially in order to combat organized crime, has therefore become one of the most urgent priority issues and particular attention should be devoted to its examination during the Eleventh Congress. What could be envisaged is the development of comprehensive measures on the issue to complement the work of the Task Force on the Rule of Law of the United Nations Executive Committee on Peace and Security and the relevant initiatives of the Security Council, as well as to explore the feasibility of establishing mechanisms for coordinated action against the growth of organized crime in conflict zones or in post-conflict situations.

42. Moreover, the importance of technical assistance in dealing with the problem could be emphasized since the Congress will provide a propitious opportunity to

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

initiate or announce technical assistance projects intended to help States facing this problem to rebuild or strengthen their legal regimes, especially against transnational organized crime. This could be achieved by assistance to States in enacting domestic legislation that would enable the ratification and effective implementation of the Organized Crime Convention and its Protocols, taking into account for that purpose the legislative guides for those instruments being prepared by the United Nations Office on Drugs and Crime for use in technical assistance activities. The Congress could also explore and advise on the most appropriate role that the Office can play in providing specialized expertise to United Nations peacekeeping missions, as stressed in the most recent resolutions adopted by the General Assembly on strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity (resolutions 57/173 and 58/140).

## **J. Questions for discussion**

43. The regional preparatory meetings and the Eleventh Congress may wish to consider the following questions for further discussion:

(a) What progress has been achieved in the ratification of the Organized Crime Convention and its Protocols? What kind of difficulties are encountered in practice for such ratification and in giving practical effect to the provisions of those instruments? How can international adherence to these instruments be achieved? What input can be provided to the Conference of the Parties in order to assist it in accomplishing its tasks?

(b) How can regional and international cooperation in criminal matters best contribute to combating transnational crime? How can the existing network of bilateral and multilateral agreements and arrangements be assessed as to its effectiveness in dealing with transnational aspects of organized crime? Are there deficiencies at the national level in terms of enacting or streamlining domestic legislation to implement bilateral and multilateral agreements, as well as in terms of overcoming delays and bureaucratic procedures that hamper international cooperation? What progress has been achieved in designating central national authorities to deal with requests for cooperation?

(c) Is there appropriate infrastructure at the national level for carrying out collection and analysis of data on transnational organized crime? What progress has been achieved in maintaining databases on patterns and trends of activities carried out by organized criminal groups, as well as in compiling best practices to fight organized crime? Have domestic criminal justice systems developed adequate mechanisms and capacities to provide the United Nations Office on Drugs and Crime with official information and input and thus to make possible the collection of up-to-date information that would permit a more comprehensive geographical mapping of transnational organized crime?

(d) What further measures can be taken to improve public awareness of the dangers posed by transnational organized crime? What could be the role and involvement of the public in the context of an effective fight against transnational organized crime? What kind of action could be initiated in order to mobilize the

public and to increase its involvement in maintaining security and safety, as well as to support justice reforms aimed at combating organized crime?

(e) What types of technical assistance are needed in crime prevention and criminal justice to tackle transnational organized crime and promote the rule of law, including in post-conflict reconstruction? How can they best be provided by the international community, including the United Nations Office on Drugs and Crime? Are there specific measures that would be most effective in responding to the most urgent needs of countries for technical assistance? How have the results of technical assistance projects already launched been evaluated and how can their implementation be improved?

## **Substantive item 2. International cooperation against terrorism and links between terrorism and other criminal activities in the context of the work of the United Nations Office on Drugs and Crime**

### **A. Introduction**

44. Terrorism is a global threat to national and international security, introducing a random violence that challenges the ability of States to protect their citizens. As terrorism transcends national boundaries, with its changing patterns and methods of operation, no region or country remains immune. The General Assembly has made substantial progress in formulating guidelines to promote international cooperation in combating terrorism in all its forms and dimensions by adopting a number of resolutions on measures to eliminate international terrorism and strengthening international cooperation and technical assistance in promoting the implementation of the universal conventions and protocols related to terrorism within the framework of the activities of the Centre for International Crime Prevention (in particular, resolutions 57/219 and 58/136). On the basis of such progress and other initiatives undertaken at various levels, the Eleventh Congress should examine practical ways of strengthening national action and promoting international cooperation, in particular by developing more practical arrangements for the effective implementation of the existing anti-terrorism international instruments.

45. It should be recalled that the United Nations Millennium Declaration (General Assembly resolution 55/2) contains two references to terror and terrorism: (a) “To take concerted action against international terrorism, and to accede as soon as possible to all the relevant international conventions” (para. 9); and (b) “We will spare no effort to make the United Nations a more effective instrument for pursuing all of these priorities: the fight for development for all the peoples of the world, the fight against poverty, ignorance and disease; the fight against injustice; the fight against violence, terror and crime; and the fight against the degradation and destruction of our common home” (para. 29). The road map towards the implementation of the Millennium Declaration outlined three strategies for moving forward (A/56/326, para. 22):

(a) Encouraging States to sign, ratify and implement the conventions and protocols relating to terrorism;

(b) Supporting the international community in its efforts to finalize the draft international convention for the suppression of acts of nuclear terrorism, and efforts to draw up a comprehensive convention on international terrorism;

(c) Continuing efforts to develop and adopt corresponding laws and administrative procedures at the national level.

46. In this context it should also be recalled that, in paragraph 19 of the Vienna Declaration, Member States stressed that acts of violence and terrorism continued to be of grave concern and committed themselves, in conformity with the Charter of the United Nations and taking into account all the relevant General Assembly resolutions, to combat terrorism and criminal activities carried out for the purpose of furthering terrorism in all its forms and manifestations, as well as to foster universal adherence to the international instruments concerned with the fight against terrorism.

47. In the plans of action for the implementation of the Vienna Declaration, a series of specific measures were recommended at the national and international levels. At the national level, it was recommended that, individually and collectively, States endeavour, as appropriate, to support the following actions:

(a) Signing and ratifying the international instruments dealing with terrorism;

(b) Conducting research and gathering information about criminal activities carried out for the purpose of furthering terrorism in all its forms and manifestations, including the identities, whereabouts and activities of specific individuals or groups involved in such activities, and supporting similar work at the international level, to the extent consistent with national laws and international agreements and arrangements;

(c) Reviewing their relevant domestic laws and procedures with a view to achieving effective domestic measures against terrorism and related crime, an enhanced ability to cooperate in appropriate cases with other States and the effective implementation of relevant international instruments;

(d) Fostering cooperation between anti-terrorism agencies and agencies fighting crime: this could include the establishment of liaison offices and other channels of communication between anti-terrorism agencies and agencies fighting crime in order to enhance information exchange.

48. At the international level, a number of tasks were identified for the Secretariat to undertake in cooperation with other relevant international and regional organizations and in coordination with the Office of Legal Affairs of the Secretariat. These included:

(a) Taking steps to raise awareness of the relevant international instruments, encouraging States to sign and ratify such instruments and, where feasible, providing assistance in implementing such instruments to States, upon request;

(b) In cooperation with Member States, taking measures to raise public awareness of the nature and scope of international terrorism and its relationship to crime, including organized crime, where appropriate;

(c) Offering analytical support to Member States by collecting and disseminating information on the relationship between terrorism and related criminal activities.

## **B. Recent developments**

49. The terrorist attacks of 11 September 2001 on the United States of America, events that killed almost 3,000 citizens of more than 80 Member States, led to a broad spectrum of United Nations activities, including the creation of a Counter-Terrorism Committee in response to Security Council resolution 1373 (2001) of 28 September 2001, which was passed unanimously under the mandatory provision of Chapter VII of the Charter of the United Nations. A high-level Policy Working Group on the United Nations and Terrorism recommended that United Nations activities be part of a tripartite strategy supporting global efforts: (a) to dissuade disaffected groups from embracing terrorism; (b) to deny groups or individuals the means to carry out acts of terrorism; and (c) to sustain broad-based international cooperation in the struggle against terrorism (A/57/273-S/2002/875, annex).

50. The Global Programme against Terrorism was launched in October 2002 as an outcome of the Vienna Symposium on Combating International Terrorism: the Contribution of the United Nations.<sup>8</sup> It provides a framework for technical assistance activities supporting Member States in their fight against terrorism. It serves to deliver prompt responses to requests for assistance through: (a) reviewing domestic legislation and providing advice on drafting enabling laws; (b) facilitating and providing training on the implementation of the new legislation against terrorism with a mentorship programme; (c) by maintaining a roster of experts to supplement specific expertise where required; and (d) developing a database of existing national legislation and multilateral agreements.

51. The United Nations Office on Drugs and Crime provides technical assistance to individual countries, at their request or the request of the Counter-Terrorism Committee of the Security Council, including the organization of national, regional and subregional workshops and seminars as well as needs assessments missions. Usually, such activities are conducted jointly with other international organizations, such as the International Monetary Fund, the Council of Europe and the Organization for Security and Cooperation in Europe, which allows for a more comprehensive and efficient delivery of specialized services. From the experience gained so far, it emerges that advice and assistance should extend increasingly beyond purely legislative matters pertaining to the 12 conventions and protocols against terrorism in order to address in much more depth issues of capacity-building in national criminal justice systems to the extent that these relate to the implementation of the universal instruments and Security Council resolution 1373 (2001). Such national institution-building support should include, in particular, the specialized training of prosecutors and judges on the efficient use of instruments of international cooperation.

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<sup>8</sup> United Nations Office on Drugs and Crime, *Combating International Terrorism: the Contribution of the United Nations: Proceedings of a Symposium held at the Vienna International Centre, Austria, 3-4 June 2002* (New York, United Nations, 2003).

### **C. Links between terrorism and other criminal activities**

52. In response to Security Council resolution 1373 (2001), in which the Council noted with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking and illegal movement of nuclear, chemical, biological and other potentially deadly materials, the Commission on Crime Prevention and Criminal Justice, at its twelfth session, recommended to the General Assembly the adoption of a draft resolution entitled “Strengthening international cooperation and technical assistance in promoting the implementation of the universal conventions and protocols related to terrorism within the framework of the activities of the Centre for International Crime Prevention”. The draft resolution was subsequently adopted as Assembly resolution 58/136. In that resolution, the Assembly invited Member States to provide the Secretary-General with information on the nature of links between terrorism and other forms of crime in order to increase synergies in the delivery of technical assistance. The replies received from Member States in that connection will be analysed and brought to the attention of the Eleventh Congress.

53. The interface between international terrorism and transnational organized crime also requires the international community to look into ways in which the universal legal instruments against terrorism and the Organized Crime Convention can be utilized where there is overlap in criminal offences. To the extent that some terrorist organizations are also demonstrating features and *modi operandi* of organized criminal groups, the Convention can be used also to fight terrorist organizations, in particular in connection with the implementation of the innovative provisions concerning the establishment of joint cross-border investigative teams. Conversely, some of the provisions of the International Convention for the Suppression of the Financing of Terrorism (General Assembly resolution 54/109, annex) might also be applicable in targeting the financial dealings and money-laundering activities of organized criminal groups.

54. The growing links between international terrorism and other forms of transnational organized crime require the strengthening of international cooperation. Among the major problems the international community still faces is the lack of harmony and even incompatibility among national legal systems and also between systems and international agreements that are intended to provide international criminal justice cooperation mechanisms. This has slowed down and in some cases prevented international cooperation, while providing transnational criminals and international terrorists with opportunities to exploit those differences to their advantage.

55. The same divergences that at times exist between international law and national laws can also be found at the regional level. One issue that needs to be considered is the relationship between the universal United Nations conventions and protocols against terrorism and regional anti-terrorist instruments.

### **D. Strengthening international cooperation**

56. One prerequisite for international cooperation is knowledge of the existing national legislation and international agreements. The United Nations Office on

Drugs and Crime has therefore developed a legislative database on terrorism, containing, in electronic form, the full text of terrorism-related legislation of some 90 Member States in English, French and Spanish. The database covers substantive laws, procedural laws, and agreements on cooperation with foreign authorities. It allows for comparative analysis, which can lead to the identification of legal loopholes. At the same time, it also permits the identification of best practices. In addition, it contains the text of international conventions and protocols related to the prevention and suppression of terrorism as well as other legal instruments that facilitate inter-State mutual legal assistance and extradition. The database will also be brought to the attention of the Congress.

57. Multilateral conventions form bridges between legal systems and represent a kind of *acquis communautaire* of the international community. They allow States that are parties to those treaties to deal with the challenges posed by transnational organized crime and international terrorism. Modalities of inter-State cooperation in criminal matters that have traditionally been the subject of bilateral agreements are increasingly becoming enshrined in international legal instruments such as the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex) and the International Convention for the Suppression of the Financing of Terrorism. Matters of extradition, legal assistance, investigative assistance, collection of evidence (hearing of witnesses and the carrying out of searches, for example), transfer of sentenced persons, transfer of documents and penal proceedings, seizure and forfeiture of illicit proceeds of crime, as well as the recognition of foreign penal judgements, are issues that can be addressed in such multilateral instruments. In that context, the United Nations Office on Drugs and Crime has, in cooperation with the International Institute of Higher Studies in Criminal Sciences, been working on model laws to reflect the provisions of international instruments, as well as the revision and updating of manuals on extradition and mutual legal assistance. Furthermore, guidelines on technical assistance are being prepared in order to facilitate international cooperation by strengthening the capacity of national law enforcement agencies to respond promptly to requests for assistance from other States.

## **E. Questions for discussion**

58. The regional preparatory meetings and the Eleventh Congress may wish to discuss in what ways international cooperation can be further strengthened to provide countries in need with adequate institutional facilities for upgrading their respective criminal justice systems so as to be more responsive to the international fight against terrorism. In addition, the discussion could focus on the following questions:

(a) How do criminal justice aspects of preventing and countering terrorism relate to other aspects of the fight against terrorism?

(b) To what extent have the goals set out in the plans of action for the implementation of the Vienna Declaration been achieved?

(c) What are the links between terrorism and other forms of crime and what are the implications of those links for technical assistance and international cooperation? What synergies can be envisaged between the implementation of the

provisions of the Organized Crime Convention, which entered into force on 29 September 2003, and those of the international instruments related to the prevention and suppression of international terrorism?

(d) To what extent has the Global Programme against Terrorism of the United Nations Office on Drugs and Crime been able to answer the technical assistance requests of Member States in each region regarding the ratification and implementation of the 12 universal instruments and thus support the work of the Technical Assistance Team of the Security Council's Counter-Terrorism Committee?

(e) To what extent is it possible to coordinate and synthesize terrorism research efforts in different regions to develop models and indicators to help form the basis for training and technical assistance?

### **Substantive item 3. Corruption: threats and trends in the twenty-first century**

#### **A. Introduction**

59. In the world of relative turmoil produced by the radical changes of the post-cold-war era, there are new opportunities and incentives to engage in corrupt practices. The assumption that free markets and non-interventionism are the remedy for corruption is challenged by recent experience. It now appears that each socio-political and economic system produces its own version of corruption and that no system is completely corruption-free.

60. The problem of corruption occurs in monopolistic or oligopolistic situations, in which one or a small number of companies control a given market, including private companies engaged by the State to perform specific tasks or to provide services or public works. To the extent that only a very small number of companies are practically able to carry out such work, the ground is fertile for corrupt practices such as overcharging, low-quality work and delays.

61. In addition, very wide discretionary powers in the hands of individuals or organizations may generate temptations and incentives for corruption. Whenever there are few or no mechanisms of checks and balances, people have many opportunities to take undue advantage of their power. Another contributing factor is the lack of transparency, which reduces the ability to control those in positions of authority. Such lack of transparency may be caused by factors ranging from secrecy in banking to dictatorial regimes that do not permit the questioning of authority.

62. Corruption usually entails confusion of the private sphere with the public sphere or an illicit exchange between the two. In essence, corruption-related activities involve public officials acting in the best interest of private concerns regardless of or contrary to the public interest. Abuse of public office in order to secure unjust advantage may include any planned, attempted, requested or successful transfer of a benefit as a result of inappropriate exploitation of an official position.

63. In planning and developing anti-corruption strategies and policies, it is essential to begin by determining the extent of the harmful effects of corrupt

practices. In many countries, in particular developing countries and countries with economies in transition, corruption hampers social, economic and political progress. Public resources are allocated inefficiently and the people's distrust of political institutions increases. Consequently, productivity becomes lower, administrative efficiency is reduced and the legitimacy of political order is undermined. In addition, projects are left incomplete and economic development is impaired, which, in turn, leads to political instability, as well as poor infrastructure, education, health systems and other social services.

64. On the other hand, the phenomenon of corruption also has detrimental effects in developed countries by undermining ethical principles, rewarding those willing and able to pay bribes for their own benefit and perpetuating inequality. The result is that individuals who wish to conduct their affairs honestly are demoralized and lose faith in the rule of law. Moreover, competition is distorted and the quality of products and services tends to deteriorate. National budgets are severely depleted and rules and regulations designed to enhance the social responsibility of corporations and other businesses are undercut and undermined.

65. In response to the challenges posed by corruption, the United Nations has carried out a considerable amount of work in recent years and has achieved important results. By its resolution 51/59 of 12 December 1996, the General Assembly adopted the International Code of Conduct for Public Officials and recommended it to Member States as a tool to guide their efforts against corruption. By its resolution 51/191 of 16 December 1996, the Assembly adopted the United Nations Declaration against Corruption and Bribery in International Commercial Transactions and requested the Economic and Social Council and its subsidiary bodies, in particular the Commission on Crime Prevention and Criminal Justice, to examine ways, including through legally binding international instruments, to further the implementation of the Declaration, to keep the issue under regular review and to promote the effective implementation of the resolution.

66. In the field of normative development at the international level, the Organized Crime Convention, which entered into force on 29 September 2003, includes provisions related to corruption. The Convention envisages criminalization of active and passive bribery involving a public official (art. 8, para. 1) or a foreign public official or international civil servant (art. 8, para. 2), as well as of participation as an accomplice in corruption-related offences (art. 8, para. 3). In addition, States parties are required to adopt measures designed to promote integrity and to prevent, detect and punish the corruption of public officials (art. 9).

67. The need for a new comprehensive convention against corruption emerged during the negotiation of the Organized Crime Convention. Because of the focused nature and scope of the latter, States agreed that the multifaceted phenomenon of corruption could be dealt with more appropriately in an independent instrument. In its resolution 55/61 of 4 December 2000, the General Assembly established an ad hoc committee to negotiate a broad and effective convention against corruption. The Ad Hoc Committee completed its work on 1 October 2003 and the United Nations Convention against Corruption was adopted by the General Assembly in its resolution 58/4 of 31 October 2003 and opened for signature from 9 to 11 December 2003 in Merida, Mexico.

68. The Convention against Corruption requires the establishment of a range of offences and includes extensive preventive measures. It also contains substantial provisions on strengthening international cooperation in criminal matters, as well as on specific aspects of international law enforcement cooperation, including joint investigations and the use of special investigative techniques, such as controlled delivery, electronic surveillance and undercover operations. Finally, it includes separate chapters on asset recovery and technical assistance and information exchange.

69. In parallel with the development of the Convention against Corruption, the United Nations Office on Drugs and Crime launched a Global Programme against Corruption as a vehicle for technical cooperation activities aimed at advancing knowledge and expertise on anti-corruption measures and tools. The Global Programme is focused on providing technical assistance to build and strengthen the capacity of domestic criminal justice systems to combat corruption, as well as enhancing coordination and cooperation in anti-corruption policy and enforcement.

70. The Eleventh Congress will offer an opportunity for the consideration of strategies and policies geared towards further consolidating the advances made against corruption. It will also provide a useful forum for the exchange of information and experience with a view to further developing concerted action and enhancing practical counter-corruption mechanisms. The issues outlined below have been identified as being of particular relevance to the Congress.

## **B. Ratification of the United Nations Convention against Corruption**

71. The Eleventh Congress could provide a springboard for further action with a view to promoting adherence to the provisions of the Convention against Corruption by means of identifying ways and means of, as well as requirements for, encouraging its signature and speedy ratification by Member States. For this objective to be achieved, the Congress could explore and assess specific actions and practical initiatives at the national level, such as:

(a) Developing or adapting of domestic legislative, administrative and other related measures to facilitate the ratification of the Convention against Corruption and its subsequent implementation;

(b) Developing national strategies and plans of action against corruption, based on the broad participation of stakeholders from government and civil society;

(c) Strengthening national governance systems and institutions, in particular criminal justice institutions, to create and ensure greater independence from and resistance to corrupt influences;

(d) Maintaining or establishing institutions and structures to achieve transparency and public accountability in government, business and other key social and economic sectors;

(e) Developing expertise in anti-corruption measures and enhancing knowledge through training of officials about the nature and consequences of corruption and how to combat it effectively;

(f) Developing and enhancing domestic capacity to provide international cooperation in anti-corruption matters;

(g) Raising awareness of the seriousness of the problems posed by corruption and the need to support effective measures against it in government and in society with a view to lowering tolerance to corruption and developing cooperation;

(h) Providing technical assistance to States in anti-corruption programmes, both directly and through support to the related activities of the United Nations Office on Drugs and Crime;

(i) Reducing opportunities for the transfer and concealment of proceeds of corruption and addressing the question of returning such proceeds to their countries of origin;

(j) Organizing existing corruption research and promoting new research to better understand its patterns, high-risk public/private sector interactions, economic factors and the legal environment in order to develop practical models and tools to serve as the basis for ongoing training and technical assistance.

72. In addition, the Congress could play a useful role in reviewing and strengthening appropriate action undertaken by the United Nations Office on Drugs and Crime with a view to preventing and combating corruption, including the following:

(a) Organizing high-level seminars to increase awareness of the Convention against Corruption on the part of Member States, as well as intergovernmental and non-governmental organizations;

(b) Assisting States, upon request, in the development of legislation and regulations to facilitate the ratification of the Convention. Participants may wish to rely on the *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime* and also to explore the development of appropriate implementation tools for the Convention against Corruption;

(c) Providing expertise or technical cooperation to States, upon request, with a view to strengthening the capacity of domestic criminal justice systems to deal with corruption;

(d) Assisting in the establishment or intensification of bilateral and multilateral cooperation in the areas covered by the Convention;

(e) Facilitating the sharing of information, experience and expertise between States;

(f) Maintaining a database of existing national assessments of corruption in a standardized form, as well as updating the toolkit of best practices against corruption.

## C. Institution-building

73. Institutional changes constitute an integral component of anti-corruption policies. As many factors related to institutional cultures and structures influence the levels and types of corruption, institutional reform may be used to combat or reduce the phenomenon.

74. For this reason, the Eleventh Congress could provide an opportune forum for exchanging views and promoting discussion on new approaches according to which reforms should deal not only with institutions but also with the individuals involved in them. In that context, the focus of attention could be placed on the role and utility of codes of conduct for public officials. Such codes have to be implemented effectively to establish and maintain standards of behaviour consistent with organizational and ethical principles of justice, impartiality, independence, integrity, loyalty towards the organization, diligence and propriety of personal conduct. That need is also emphasized in the Convention against Corruption, which requires States parties to establish measures and promote mechanisms for ensuring the implementation of such codes of conduct, including by facilitating the reporting of acts of corruption, by scrutinizing activities, assets or benefits that may entail conflict of interest with respect to public functions and by establishing disciplinary or other measures.

75. In that context, the Eleventh Congress could consider and explore specific measures to promote a culture of professionalism within the public service and elements that could be included in codes of conduct for public officials, such as:

(a) Rules setting standards for the treatment of members of the public that promote respect and courtesy;

(b) Rules setting standards of competence for public servants, such as knowledge of relevant laws, procedures and related areas to which the public may have to be referred;

(c) Rules establishing performance criteria and assessment procedures that take into consideration productivity and the quality of service;

(d) Rules requiring managers to promote and implement service-oriented values and practices.

76. Special reference could also be made to the need to enhance the competence, professionalism and integrity of members of the judiciary and prosecution services in view of the crucial role of the judiciary in the fight against corruption. The high status and independence of judges in most countries, as well as their task of adjudicating corruption cases or sometimes of reviewing the function of anti-corruption agencies or rendering decisions on matters of governance, make them a powerful example for the conduct of others, but, at the same time, the target of corruption, in particular where efforts to corrupt lower-level criminal justice officials have failed.

77. The Convention against Corruption takes into consideration the need to strengthen judicial institutions. Article 11 requires States parties to take measures for strengthening integrity and preventing opportunities for corruption among members of the judiciary and the prosecution services, including, for example, consideration of the following measures:

- (a) Promoting practical mechanisms for strengthening the independence and increasing the transparency and accountability of the judiciary and the prosecution services;
- (b) Methods of ensuring accountability of members of the judiciary and the prosecution services, as well as introducing transparent systems to monitor declared assets of members of the judiciary and the prosecution services;
- (c) Increasing internal oversight and supervision through organizational and functional auditing;
- (d) Strengthening internal disciplinary bodies;
- (e) Establishment and application of codes of conduct for members of the judiciary and the prosecution services.

#### **D. Preventive measures against corruption**

78. One of the key elements in the fight against corruption is the development of effective preventive strategies through which good governance, as well as accountability and transparency, are preserved. The Convention against Corruption attaches crucial importance to the prevention of corruption, devoting a separate chapter to the issue (chap. II, "Preventive measures"). Moreover, the Organized Crime Convention introduces and promotes the concept of integrity of public officials (art. 9, para. 1) and foresees that each State party shall take measures to ensure effective action by its authorities in the prevention of corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions (art. 9, para. 2).

79. Preventive measures against corruption may be either situational or social. The first deal with specific situations in which corruption-related offences may take place, while social measures focus on more general social or economic factors, aiming at creating conditions that discourage such offences.

80. In the context of the discussion on situational preventive measures, the Eleventh Congress will benefit from a constructive exchange of views and experience on the promotion of measures, such as the disclosure of assets, aimed at enhancing the accountability and integrity of public officials. The obligation to disclose information concerning the income and assets of public officials may be established either by legislative measures or as a contractual condition of employment. In both cases, the objective is to cover public officials whose functions create potential for corrupt behaviour or may offer increased opportunities for corruption.

81. With this in mind, the Congress could explore various forms of specific action that could be taken in conjunction with the disclosure of assets for ensuring transparency, such as:

- (a) Developing regulations and/or legislation outlining the requirement for the declaration of assets and the consequences in case of non-compliance with the rules;

(b) Enacting regulations allowing for public access to information concerning declared assets;

(c) Establishing bodies to monitor asset declaration and ensuring their functioning.

82. An equally important issue that could be discussed during the Congress is the promotion of mechanisms to curb corruption in the procurement process, which seems to be the most frequent area of corruption. Article 9 of the Convention against Corruption requires States parties to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, and lists certain requirements that have to be met for the promotion of accountability in the management of public finances, such as the development of unified procurement codes or systems setting out basic principles or supplementing them with more detailed rules and regulations.

83. Educating and involving the public in building integrity is the most important social preventive measure in curbing corruption in the medium and long term and has also been included among the preventive measures against corruption provided for in the Convention (art. 13). The purpose of encouraging public participation in the fight against corruption is to increase checks and balances by empowering civil society to exercise oversight of public institutions. In that context, the Congress could provide a forum for consideration of the following activities geared towards strengthening awareness-raising strategies:

(a) Sponsoring public education and awareness-raising campaigns, including by focusing on prevention projects that educate society about the evils of corruption and instil in the people a moral commitment to integrity in dealing with business and government officials;

(b) Conducting regular integrity workshops at the national or local government level with the participation of all stakeholders to discuss problems and make proposals;

(c) Improving information available to citizens about their rights, including by ensuring access to information and establishing credible complaints mechanisms, and empowering citizens to monitor state performance;

(d) Promoting and maintaining independent, professional and free media that will assume an educational and oversight role, including through capacity-building, promoting integrity, encouraging owners and editors to allow balanced reporting and encouraging the media to regulate themselves;

(e) Mobilizing civil society organizations (non-governmental organizations, professional associations and research or university institutes) to study and monitor good governance through social control mechanisms;

(f) Creating and strengthening non-governmental organization networks to share information on local, regional and national initiatives to fight corruption and improve public sector governance.

## **E. Effective enforcement against corruption**

84. Experience has shown that raising awareness without adequate and visible enforcement can lead to cynicism among the general public and possibly increase incidents of corruption. Citizens who are well informed about types, levels and the location of corruption but who have also seen cases where perpetrators have gone unpunished may be tempted to engage in corrupt acts where high profit and no risks appear to be the norm.

85. It is therefore essential to balance awareness-raising policies and preventive measures with effective enforcement, focusing on the deterrent effects of the latter in order to consolidate an efficient anti-corruption strategy. In that connection, discussions during the Eleventh Congress could also revolve around the need to strike a balance between preventive measures, including the creation of specialized independent anti-corruption bodies, and law enforcement measures and methods.

86. The autonomy, security and confidentiality of investigations are of crucial importance in ensuring that their results are valid and reliable, as well as for encouraging and protecting those who report corruption or assist in other ways. Such encouragement is one of the greatest challenges encountered in the context of the investigation procedure because of the vulnerability of witnesses to intimidation or retaliation from the offenders and their consequent reluctance to report corruption. The Convention against Corruption includes specific provisions for the protection of witnesses and reporting persons (arts. 32 and 33). The Congress could thus consider practical ways and means to create effective witness protection programmes that would ensure the physical integrity and safety of persons who testify or report any facts concerning corruption-related offences.

## **F. International cooperation for combating corruption**

87. Corruption may often encompass transnational elements. For example, persons involved in bribery may act within different jurisdictions. In other cases, the corrupt official may receive the bribe directly into his or her foreign bank account. Law enforcement authorities are often called to deal with complicated situations, in which offenders, victims and evidence may be located in jurisdictions different from the one where the case is being investigated and prosecuted. As a consequence, modalities for international cooperation in criminal matters must be strengthened in order to build the case and successfully present and defend it before a court.

88. The Convention against Corruption includes provisions on such modalities, namely on extradition (art. 44), transfer of sentenced persons (art. 45), mutual legal assistance (art. 46) and transfer of criminal proceedings (art. 47), as well as on strengthening international law enforcement cooperation (arts. 48 and 49). Those provisions are similar to the corresponding provisions of the Organized Crime Convention.

89. In that context, the Eleventh Congress will be a useful platform for discussion of issues related to international cooperation to tackle corruption, especially problems and deficiencies encountered in day-to-day practice. Particular attention could be devoted to obstacles that may arise out of the application of bank secrecy laws and could hamper investigation, prosecution or judicial proceedings with

regard to potential corruption-related offences. The Convention against Corruption (art. 40), as well as the Organized Crime Convention (art. 18, para. 8) provide the framework for a constructive exchange of views on this issue.

90. Feedback provided by the Workshop on Enhancing International Law Enforcement Cooperation, including Extradition Measures, would further the discussion of this substantive item.

## G. Asset recovery

91. Recovery and return of assets diverted and stolen through corrupt practices is one of the key factors in dealing effectively with corruption and has become a pressing issue for many States. The problems that hamper recovery of the proceeds of corruption may vary depending on the countries involved and may generally be attributed to the following: (a) the absence or weakness of the political will in the victim country as well as in the countries to which the assets have been diverted; (b) the lack of an appropriate and solid legal framework to allow for related actions of an efficient and effective sort; (c) the lack of specialized technical expertise in the victim country to deal with pertinent cases, including by means of filing charges against the perpetrators and preparing mutual legal assistance requests; and (d) difficulties encountered by victim States in improving their national institutional infrastructure and anti-corruption legislation.

92. In addition, legal issues arising in practice differ significantly depending on the jurisdiction in which the recovery effort is pursued (common or civil law countries) and the procedure followed (civil or criminal recovery). Many continental jurisdictions allow for the participation of the victim in the criminal proceedings as a *partie civile*, thus enabling victims to have access to all information available to the prosecution, and rely on the criminal court to render a decision on the civil compensation that is claimed.

93. In common law countries, the wide discretionary powers of the prosecution to engage in plea-bargaining has proved to be a quite effective method of enabling asset recovery, since offenders, who can be offered immunity from prosecution on condition of their collaboration in the location of the diverted assets, often prefer to cooperate with prosecutorial and law enforcement authorities in tracking down the assets.

94. As for the nature of the relevant proceedings, civil recovery, allowing for confiscation and recovery based on the balance of probabilities, has the substantial advantage of requiring a lower evidentiary threshold than that needed for criminal recovery. In addition, it makes possible civil action even against third parties, such as facilitators of a corruption-related offence, as well as the free choice of the jurisdiction in which the recovery of the proceeds of crime can be pursued. As opposed to criminal recovery, which follows pre-set jurisdictional conditions, civil recovery can be pursued without jurisdictional limitations and even in several jurisdictions simultaneously.

95. On the other hand, the criminal procedure for asset recovery provides the investigating authorities with privileged access to information, at both the national and the international level. The investigative powers of the prosecutor contribute to

overcoming more easily the impediment of bank secrecy and obtaining freezing orders. Moreover, criminal recovery requires fewer financial resources on the part of the requesting State, since the substantial part of the investigation that has to be conducted is carried out by the law enforcement agencies of the requested State. However, a request for criminal recovery often needs to meet strict requirements provided for by the national legislation of the requested State in order to ensure the collaboration of its competent authorities. Repatriation in most cases can only be granted after a final decision is made on criminal prosecution or forfeiture, while proceedings should also satisfy due process standards and human rights principles.

96. The Convention against Corruption recognizes the return of assets as a fundamental principle and incorporates provisions enabling the direct recovery of property (art. 53) or such recovery through international cooperation (art. 54). In addition, the Convention outlines a detailed and comprehensive approach concerning the return and disposition of assets. Thus, the Convention imposes the obligation for States parties to adopt such legislative and other measures as would enable their competent authorities, when acting on a request made by another State party, to return confiscated property, taking into account the rights of bona fide third parties and in accordance with the fundamental principles of their domestic law (art. 57, para. 2). In particular, the Convention requires States parties that receive a relevant request in the case of embezzled public funds or of laundering of embezzled public funds to return the confiscated property to the requesting State party on the basis of a final judgement in the latter State (although this condition can be waived) (art. 57, para. 3 (a)). In the case of any other offences covered by the Convention, two additional conditions for the return are recognized alternatively, namely, that the requesting State reasonably establishes its prior ownership of such confiscated property or that the requested State recognizes damage to the requesting State as a basis for returning the confiscated property (art. 57, para. 3 (b)). In all other cases the requested State party shall give priority consideration to returning confiscated property to the requesting State party, returning such property to its prior legitimate owners or compensating the victims of the crime (art. 57, para. 3 (c)).

97. The Eleventh Congress could serve the function of encouraging an exchange of opinions and experience with a view to promoting discussion on methods of tracing proceeds of corruption and securing their recovery and return through the application of the above-mentioned provisions, as well as on ways and means to overcome pertinent problems. In particular, the Congress could consider and highlight practical methods and strategies aiming at enhancing and streamlining international cooperation in this field, such as:

(a) Strengthening capacity to deal with financial investigations, forensic accounting and requests for mutual legal assistance, as well as to acquire a thorough knowledge and understanding of the legal requirements of the States where the assets are located;

(b) Applying civil forfeiture and conviction-based confiscation systems, with a view to assessing a broad range of possibilities allowing for asset forfeiture in different situations, as also indicated in the discussion guide on the workshop on enhancing international law enforcement cooperation, including extradition mechanisms, which could provide the participants with valuable input to the discussions in this field.

## H. Technical assistance activities

98. The Eleventh Congress could play a useful role in considering and exploring ways of strengthening technical assistance with a view to bolstering the efforts of States, upon request, to enhance the capacity of their criminal justice systems to combat corruption. In that context, the Congress could offer an opportunity for the initiation or announcement of technical assistance projects, as well as for the suggestion of a variety of measures and initiatives that could complement what has already been accomplished by the relevant activities of the United Nations Office on Drugs and Crime, such as:

(a) Organizing of training programmes to build capacity in the development of anti-corruption policies, as well as to deal effectively with issues related to pertinent investigations, recovery of assets and preparation of requests for mutual legal assistance;

(b) Developing statistics and analytical expertise concerning corruption with a view to defining common standards and methodologies for counteraction;

(c) Sharing information on best practices to prevent and combat corruption.

99. As indicated above, participants may also consider the format and contents of an implementation guide to the Convention against Corruption to be developed by the United Nations Office on Drugs and Crime.

100. At this early stage in promoting adherence to the provisions of the Convention, discussions on technical assistance activities and projects during the Congress could accelerate developments and progress in this field well before the competent Conference of the Parties undertakes this task in the context of the future implementation of the instrument.

## I. Questions for discussion

101. The regional preparatory meetings and the Eleventh Congress may wish to consider the following questions for further discussion:

(a) What progress has been achieved in the promotion of adherence to the provisions of the United Nations Convention against Corruption? What kind of problems or, potentially, national priorities may hamper and delay the process of signature and ratification of the Convention? What kind of initiatives aimed at awareness-raising could be conducive to its speedy signature and ratification?

(b) What kind of legislative, administrative or other measures can be taken with a view to implementing at the national level the provisions on promoting integrity of public officials? What kind of initiatives could be suggested to provide the competent national authorities with the independence needed to deter the exertion of inappropriate influence on their actions, while acting to prevent, detect and punish the corruption of public officials?

(c) On the basis of past experience, what approaches would be successful in the establishment and maintenance of effective regulatory and administrative oversight mechanisms, including independent bodies, to promote transparency in the management of public funds and in the decision-making process? How can

codes of ethics or standards of conduct for public officials best contribute to proper performance of public functions?

(d) How can regional and international cooperation in criminal matters best contribute to combating corruption? How can the existing network of bilateral and multilateral agreements and arrangements be assessed as to its effectiveness in dealing with transnational aspects of corruption? What kind of deficiencies and/or problems are encountered in the field of international cooperation for asset recovery?

(e) What types of technical assistance are needed to tackle corruption and promote integrity, transparency and accountability while performing public functions? How can such assistance best be provided by the international community, including the United Nations Office on Drugs and Crime? Are there specific measures that would be most effective in responding to the most urgent needs of countries for technical assistance? How have the results of technical assistance projects already launched been evaluated and how can their implementation be improved?

## **Substantive item 4. Economic and financial crimes: challenges to sustainable development**

### **A. Introduction**

102. The potential damage wrought by economic and financial crime has become increasingly clear over the past decade with a series of high-profile cases in Europe and North America that severely damaged the credibility of a number of companies and financial institutions, leading to bankruptcy and the loss of jobs.<sup>9</sup> In the developed world, however, despite the seriousness of such cases, their impact can be contained, given both the size of the economies in which they have occurred, as well the ability of the countries concerned to install the appropriate regulatory mechanisms to prevent the occurrence of further incidents. In the developing world, in contrast, the long-term impact on and costs of economic and financial crime for sustainable development are considerably higher.

103. The term “economic and financial crime” refers broadly to any non-violent crime that generally results in a financial loss. Such crimes thus include a range of illegal activities, including fraud, corruption, tax evasion or money-laundering. Determining the overall extent of economic and financial crimes, and as a result any associated trends over time, is difficult. This is both because systems for recording such crime vary greatly from country to country as well as the fact that many cases are not reported, given that companies and financial institutions prefer to deal with incidents internally to avoid public scrutiny. There is, however, a growing perception that financial and economic crimes are some of the most rapidly growing predicate offences.<sup>10</sup>

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<sup>9</sup> Organizations whose main task is considered to be financial intermediation are considered to be financial institutions. This includes institutions such as banks, insurance companies, securities firms, brokers and pension funds.

<sup>10</sup> Predicate crimes are crimes whose proceeds are laundered (see International Monetary Fund, “Financial system abuse, financial crime and money laundering: background paper”,

104. The growth in both the quantity and seriousness of economic and financial crime is the result of the ongoing process of globalization and the resulting integration of the world's financial markets. That integration has not only facilitated the conduct of legitimate business transactions, but also that of illegitimate ones. In turn, the closer integration of global financial and other markets has meant that the knock-on effects of economic and financial crime can seldom be confined to only a single country. In prominent cases of substantial fraud in the banking system in the last decade, such as that of the Bank of Credit and Commerce International, the implications were truly global, involving investors across the world and damaging the banking systems of a number of developing countries.<sup>11</sup>

105. The profits to be made from economic and financial crime in the current global context have ensured the involvement of relatively sophisticated criminal organizations. Organized criminal groups are engaged in significant economic and financial crimes through, for example, offences related to credit card fraud, identity theft and counterfeiting. The spread of electronic banking and the rapid growth of the Internet have also resulted in new opportunities for economic and financial crime. Fraud using credit or debit cards is now acknowledged to be a serious international problem, generating much higher levels of illegal global profits than the counterfeiting of currency. The Internet has also provided a powerful tool for the perpetration of fraud, both by making easily available information on individuals and companies that can be exploited by fraudsters, but also by providing a mechanism through which to perpetrate multiple fraudulent activities at the same time. In the case of advanced fee fraud, for instance, the Internet is used both as a resource to identify likely targets, with electronic mail providing the ability to make contact with thousands of possible victims simultaneously.

106. These factors suggest that economic and financial crime is set to grow rapidly in the coming years, perhaps even rivalling trafficking in illicit drugs as a source of criminal profits. Given that organized criminal and terrorist organizations make use of illegal financial transactions to both transfer and fraudulently acquire resources, countering such crime is increasingly becoming inseparable from effectively curtailing current global security threats. The growth of economic and financial crime therefore poses significant challenges to the international community, including finding mechanisms in which appropriate regulations and safeguards can be put in place to prevent its occurrence without unnecessarily disrupting legal commercial activities. Given that such crimes are likely to span national borders, effective control and prevention measures must rely on much higher levels of cooperation between States than is currently the case.

## **B. Impact on sustainable development**

107. The perpetration of economic and financial crimes has a number of direct costs in developing countries. Most particularly, such crimes often have an impact on the poor, given that they result in the diversion of resources away from government- and donor-funded programmes aimed at social support. In developing countries too,

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12 February 2001).

<sup>11</sup> See John Kerry and Hank Brown, "The BCCI Affair: a report to the Committee on Foreign Relations, United States Senate", December 1992.

ordinary citizens, with few savings or resources to absorb the consequences, are also victimized by small-scale fraud at a considerably higher level than their counterparts in developed countries. Data from the International Crime Victim Survey shows that the percentage of respondents who reported victimization by consumer fraud during the year 2000 was 28.1 per cent for Africa, 27.6 per cent for Asia, 36.7 per cent for Eastern and Central Europe and 19.6 per cent for Latin America. The Survey showed significantly lower levels of consumer fraud for North America and Western Europe.

108. Apart from these short-term and direct costs, economic and financial crimes pose a serious long-term threat to peaceful and democratic socio-economic development in many countries. While in the short-term such crimes typically have costs that are quantifiable, if they occur repeatedly over time their impact, while less direct, becomes much more serious, holding the potential to undermine the effective functioning or consolidation of democracy, accountability and the rule of law. Critically, economic and financial crimes introduce critical distortions into free market economies. Legal economic practices are undermined by introducing artificially high elements of risk in investment and business decision-making as well as providing incentives for individuals to get rich quickly outside the formal strictures of the regulated economy.

109. In economies where such crimes are regarded as commonplace, the confidence of legitimate investors is severely undercut. Trust underpins the existence and development of both financial markets and sound business relationships. The effective functioning of financial markets relies heavily on the expectation that high professional, legal and ethical standards are observed and enforced. Consistent violations undermine that trust and, as a result, undercut the chances of sustainable economic growth. A reputation for integrity—soundness, honesty, adherence to standards and codes—is one of the assets most valued by investors and financial institutions. Long-term and sustainable economic growth is seldom possible in the absence of these factors.

110. Various forms of financial system abuse may compromise the reputation of financial institutions and countries, undermine investors' trust in them and therefore weaken the financial system. Economic damage arises not only from direct acts of economic or financial crime but also from the perception that it occurs, undermining the reputation of financial systems and deterring outside investment. In many countries too, widespread public suspicion that economic and financial crimes are committed by elites in both the public and private sectors undercuts government legitimacy. Effectively countering economic and financial crime is therefore critical to sustainable development and institution-building.

### **C. Preventing and controlling economic and financial crimes**

111. Since the late 1980s, growing concerns about the vast profits being made from drug trafficking, the impact of globalization on international organized crime, as well as advances in communication technology (which among other benefits have eased the transfer of funds, both licit and illicit), have led to a series of interventions by international institutions and the international community to combat financial crime, most notably money-laundering. The international regime against

money-laundering embodies a framework of standards adopted in the context of regional or international organizations. The 40 Recommendations of the Financial Action Task Force on Money Laundering, revised in October 2003 to reflect new best practices in countering and preventing money-laundering, provide a clear set of guidelines in this regard.

112. No international instrument, however, deals exclusively with the problem of economic and financial crime, and none focuses specifically on the particular problems of developing countries. Nevertheless, both the Organized Crime Convention and the Convention against Corruption contain provisions that are important in building an international framework to counter such criminal activities. The Organized Crime Convention applies specifically to cases where economic or financial crimes have been perpetrated by organized criminal groups. The Convention against Corruption covers those economic or financial crimes which are the result of corrupt practices in the public sector. Apart from these international instruments, and at a regional level, the European Union has adopted a framework decision whereby fraud and counterfeiting of non-cash payments must be recognized as a criminal offence by member States. It should be noted too that article 8 of the Convention on Cybercrime of the Council of Europe<sup>12</sup> deals specifically with the issue of computer-related fraud.

113. Despite these important steps, much work still must be done to build both a global legal framework as well as the capacity to fight economic and financial crime. Two critical problems remain. The first is that legal definitions of the variety of offences that occur under the definition of economic or financial crimes vary from country to country.<sup>13</sup> This is increasingly the case given the variety of potentially new offences, in particular in relation to crimes committed using the Internet. Secondly, investigating economic and financial crime requires high levels of expertise, including financial analytical techniques that are not well developed in many police agencies. This is especially the case in developing countries.

#### **D. Questions for discussion**

114. The regional preparatory meetings and the Eleventh Congress may wish to consider the following questions for further discussion:

(a) What new and emerging trends can be identified in the area of economic and financial crime? Do such trends have specific implications for developing countries, in particular in respect of undercutting their ability to achieve sustainable levels of development?

(b) Do current international and regional legal instruments provide sufficient scope for building an effective global legal framework to counter economic and financial crime? Is it possible to provide an international framework to regulate the wide variety of possible offences encompassed by the term “economic and financial

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<sup>12</sup> Council of Europe, *European Treaty Series*, No. 185.

<sup>13</sup> In European Union Framework Decision (2001/413/JHA) of 28 May 2001 on combating fraud and counterfeiting of non-cash means of payment, for example, references to specific offences under existing criminal law were avoided because they do not cover the same elements everywhere.

crime”, or should work rather focus on specific subcategories, for example, cybercrime?

(c) What types of technical assistance would be most effective in building national capacity to fight economic and financial crime? If technical assistance activities in this area have already been implemented in some countries, have specific lessons been learned that can now be drawn upon? To what degree is it possible in developing countries to attract high-level financial skills into the law enforcement environment to investigate and/or prevent such crimes?

(d) What research is needed to develop reliable indicators of economic and financial crime and a system for comparing their incidence and harm compared with other types of criminal behaviour, in order to establish objectively its seriousness and the resource levels needed to address the problem?

## **Substantive item 5. Making standards work: fifty years of standard-setting in crime prevention and criminal justice**

### **A. Introduction**

115. Since its foundation, the United Nations, drawing on the principles enshrined in the Charter and the International Bill of Human Rights, has developed a body of standards and norms covering the whole spectrum of crime prevention and criminal justice policy issues, from juvenile delinquency prevention to treatment of offenders and capital punishment. The United Nations congresses on crime prevention and criminal justice have contributed to this process of standard-setting, beginning with the First Congress (held in Geneva in 1955), which adopted the Standard Minimum Rules for the Treatment of Prisoners.<sup>14</sup> Other important instruments have been adopted since then, drawing in particular on the recommendations of the Fifth Congress (held in Geneva in 1975) and the Sixth Congress (held in Caracas in 1980), such as the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX), annex); the Code of Conduct for Law Enforcement Officials (resolution 34/169, annex); the Caracas Declaration (resolution 35/171, annex); the safeguards guaranteeing the protection of the rights of those facing the death penalty (Economic and Social Council resolution 1984/50, annex); and the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners (resolution 1984/47).

116. The work of the United Nations in this field was expanded by the standards recommended by the Seventh Congress (held in Milan in 1985) and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985, such as the Milan Plan of Action;<sup>15</sup> the United Nations Standard Minimum Rules for the

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<sup>14</sup> *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A.

<sup>15</sup> See *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*

Administration of Juvenile Justice (the Beijing Rules, General Assembly resolution 40/33, annex); the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex); the Basic Principles on the Independence of the Judiciary and the Model Agreement on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners.<sup>16</sup> Further, in 1989, the Economic and Social Council, on the recommendation of the (now defunct) Committee on Crime Prevention and Control, adopted the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Council resolution 1989/65, annex), the procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary (resolution 1989/60, annex) and the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials (resolution 1989/61, annex), which were endorsed by the General Assembly in its resolution 44/162 of 16 December 1989.

117. In 1990, additional standards were adopted on the recommendation of the Eighth Congress and/or welcomed by the General Assembly in its resolutions 45/121 of 14 December 1990 and 45/166 of 18 December 1990, including the United Nations Guidelines for the Prevention of Juvenile Delinquency (General Assembly resolution 45/112, annex); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (resolution 45/113, annex); the United Nations Standard Minimum Rules for Non-Custodial Measures (resolution 45/110, annex); the Basic Principles for the Treatment of Prisoners (resolution 45/111, annex); the Model Treaty on Extradition (resolutions 45/116, annex, and 52/88, annex); the Model Treaty on Mutual Assistance in Criminal Matters (resolutions 45/117, annex, and 53/112, annex I); the Model Treaty on the Transfer of Proceedings in Criminal Matters (resolution 45/118, annex); the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (resolution 45/119, annex); and the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property.<sup>17</sup>

118. As directed by the General Assembly in its resolution 46/152 and the annex thereto on the creation of an effective United Nations crime prevention and criminal justice programme, in which a more efficient and effective justice administration was defined, based on respect for the human rights of all those affected and on the highest standards of fairness, humanity, justice and professional conduct, as one of its main goals, the Commission on Crime Prevention and Criminal Justice continued to contribute to the process of standard setting, drawing also on the recommendations of the Ninth Congress (held in Cairo in 1995) and the Tenth Congress (held in Vienna in 2000), with the adoption of the following: the Guidelines for Cooperation and Technical Assistance in the Field of Urban Crime Prevention (Economic and Social Council resolution 1995/9, annex); the Model Strategies and Practical Measures for the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (General Assembly resolution 52/86, annex); the firearm regulation for purposes of crime prevention and public health and safety (Economic and Social Council resolution 1997/28); the Model Bilateral Treaty for the Return of Stolen or Embezzled Vehicles (resolution 1997/29, annex II); the

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(United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

<sup>16</sup> Ibid., sect. D.

<sup>17</sup> *Eighth United Nations Congress ...*, chap. I, sect. B.1, annex.

Guidelines for Action on Children in the Criminal Justice System (resolution 1997/30, annex); the International Code of Conduct for Public Officials (General Assembly resolution 51/59, annex); the United Nations Declaration on Crime and Public Security (resolution 51/60, annex); the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (resolution 51/191, annex); the plan of action for the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Economic and Social Council resolution 1998/21, annex); the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (General Assembly resolution 55/59, annex); the plans of action for the implementation of the Vienna Declaration (resolution 56/261, annex); the basic principles on the use of restorative justice programmes in criminal matters (Economic and Social Council resolution 2002/12, annex); and the Guidelines for the Prevention of Crime (resolution 2002/13, annex), as well as the Organized Crime Convention and its three Protocols and the new United Nations Convention against Corruption.

119. It should be noted that the legal status of such standards and norms varies as declarations, principles, guidelines, rules, plans of action, model treaties and recommendations have no binding legal effect. Nevertheless, such instruments have an undeniable moral force and provide practical guidance to States in their conduct. Their value lies in their recognition and acceptance by a large number of States and, even without binding effect, they may be seen as enshrining goals, practices and strategies broadly accepted by the international community. On the contrary, international treaties, referred to as covenants, conventions, statutes and protocols, are legally binding for those States which ratify or accede to them.

120. It should also be recalled that, as requested by the Economic and Social Council in its resolution 1989/69 of 24 May 1989, a compilation of existing United Nations standards and norms in crime prevention and criminal justice<sup>18</sup> was issued in 1992 and widely distributed. In accordance with the existing mandates, a revised version will soon be published to include the new instruments adopted in recent years.

121. While the Vienna Declaration and its plans of action contain a number of provisions related to the use and application of United Nations standards and norms in national law and practice (see, in particular, sections X, XII and XIV of the plans of action), the General Assembly, in its resolutions 56/161 and 58/183 on human rights in the administration of justice, has consistently reaffirmed the importance of their full and effective implementation, reiterating also its call to all Member States to spare no effort in providing for effective legislative and other measures and procedures, as well as adequate resources, to ensure their full implementation.

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<sup>18</sup> *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice* (United Nations publication, Sales No. E.92.IV.1 and Corr.1); and *Human Rights, a Compilation of International Instruments*, vol. 1 (first part), the chapter on human rights in the administration of justice: protection of persons subjected to detention or imprisonment (United Nations publication, Sales No. E.02.XIV.4); see also Roger S. Clark, *The United Nations Crime Prevention and Criminal Justice Programme: Formulation of Standards and Efforts at Their Implementation* (University of Pennsylvania Press, 1994). The United Nations standards and norms in crime prevention and criminal justice are available on the web site of the United Nations Crime and Justice Information Network ([www.uncjin.org/Standards/standards.html](http://www.uncjin.org/Standards/standards.html)).

## **B. Promoting the use and application of United Nations standards and norms**

122. The development and practical application of United Nations standards and norms in crime prevention and criminal justice have been of great concern to the Commission from the outset of its work, as reflected in Economic and Social Council resolutions 1992/22, section VII, of 30 July 1992 and 1993/34, section III, of 27 July 1993. Not only has the topic of United Nations standards and norms in crime prevention and criminal justice been a standing item of the agenda of the Commission, but the first reporting cycle on the use and application of existing standards and norms was completed by the Commission at its eleventh session. The reports, containing a summary of replies provided by Member States, United Nations entities, other intergovernmental organizations, non-governmental organizations and institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network, reflected a number of initiatives and accomplishments.

123. In particular, with the support of the United Nations Crime Prevention and Criminal Justice Programme network, the Secretariat has widely disseminated these instruments and facilitated their translation into the languages of many countries, with an array of manuals, handbooks and tool kits being published in order to facilitate their implementation by crime prevention and criminal justice practitioners.<sup>19</sup> In addition, the United Nations Office on Drugs and Crime has consistently promoted them as working tools for training seminars and workshops, as parameters for assessment of country needs in the provision of advisory services and as major yardsticks in the formulation and execution of its technical assistance projects, in close cooperation with various intergovernmental and non-governmental organizations, groups and concerned experts, while maintaining close coordination with other entities in the United Nations system in order to enhance joint action and avoid duplication of work.

124. During the eleventh session of the Commission, the thematic discussion focused on reform of the criminal justice system: achieving effectiveness and equity. Pursuant to section I of Economic and Social Council resolution 2002/15 of 24 July 2002, adopted on the recommendation of the Commission at its eleventh session, the Secretary-General convened the Meeting of Experts on the Application of United Nations Standards and Norms in Crime Prevention and Criminal Justice. The Meeting, held in Stadtschlaining, Austria, in February 2003, evaluated the results achieved and the progress made in the application of existing United Nations standards and norms, reviewed the present system of reporting, assessed the advantages to be expected in using a cross-sectoral approach and made concrete proposals to the Commission (see E/CN.15/2003/10/Add.1, para. 11). The Meeting noted that the extensive work of the United Nations, individual Member States and various intergovernmental and non-governmental organizations in the application of the United Nations standards and norms had left its mark. At the international level, certain principles and provisions contained in the standards and norms had been

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<sup>19</sup> The list of manuals published by the Secretariat, institutes of the United Nations Crime Prevention and Criminal Justice Programme network and other entities and organizations is available on the web site of the United Nations Office on Drugs and Crime ([www.unodc.org/unodc/en/crime\\_cicp\\_standards.html/manuals](http://www.unodc.org/unodc/en/crime_cicp_standards.html/manuals)).

integrated into legally binding instruments. For example, several principles in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power had been incorporated into the Rome Statute of the International Criminal Court,<sup>20</sup> while the Standard Minimum Rules for the Treatment of Prisoners had provided the basis for the development of the European Prison Rules of the Council of Europe,<sup>21</sup> which in turn had been used by the European Court of Human Rights in its jurisprudence.

125. The Meeting also noted that the impact of the standards and norms could be seen in the work of other United Nations bodies. For example, various special rapporteurs of the Commission on Human Rights and its Subcommission on the Promotion and Protection of Minorities were using the standards and norms in their studies and reports, for example on the independence of the judiciary, torture, extralegal summary execution and victims of human rights abuses. The Human Rights Committee, established under the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex), was drawing on existing standards and norms when reviewing country reports, as well as individual complaints, under its optional Protocol. Some of the standards and norms had been taken into account in drafting the Convention on the Rights of the Child (resolution 44/25, annex), while the Committee on the Rights of the Child, established under article 43 of that Convention, was relying on existing juvenile justice standards and norms in the accomplishment of its mandates. Finally, the Meeting noted that, if assessed through the perspective of the United Nations itself, a growing area of direct application of the standards and norms was within the context of ongoing peacekeeping missions and in post-conflict reconstruction, as in all efforts to restore a functioning economy, create a free and fair political system and strengthen the development of civil society, it was of paramount importance to first re-establish the rule of law and the justice system (E/CN.15/2003/10/Add.1, paras. 15 and 16).<sup>22</sup>

126. Drawing on the proposals of the Meeting of Experts,<sup>23</sup> the Commission, at its twelfth session, recommended to the Economic and Social Council the adoption of resolution 2003/30 of 22 July 2003, in which the Council recognized the need to reform and streamline the process of information-gathering, with the final objective of making the process more efficient and cost-effective. In order to better identify the specific needs of Member States and provide an analytical framework with a view to improving technical cooperation, the Council also decided to group the standards and norms in the following categories: (a) standards and norms related

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<sup>20</sup> *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1988*, vol. I: *Final documents* (United Nations publication, Sales No. E.02.I.5), sect. A, art. 68.

<sup>21</sup> Recommendation No. R (87) 3, adopted by the Committee of Ministers on 12 February 1987 at the 404th meeting of the Ministers' Deputies.

<sup>22</sup> See, for instance, *United Nations Criminal Justice Standards for Peace Keeping Police ("Blue Book")* (Vienna, United Nations, 1994) (available at [www.unodc.org](http://www.unodc.org)); and *International Human Rights Standards for Law Enforcement: a Pocket Book on Human Rights for the Police* (United Nations publication, Sales No. E.96.XIV.6).

<sup>23</sup> For a more comprehensive review, see the various reports referred to in the report of the Meeting of Experts (E/CN.15/2003/10/Add.1); see also the deliberations of the Commission at its twelfth session (*Official Records of the Economic and Social Council, 2003, Supplement No. 10* (E/2003/30), chap. VI).

primarily to persons in custody, non-custodial sanctions and juvenile restorative justice; (b) standards and norms related primarily to legal, institutional and practical arrangements for international cooperation; (c) standards and norms related primarily to crime prevention and victim issues; and (d) standards and norms related primarily to good governance, the independence of the judiciary and the integrity of criminal justice personnel.

### **C. The way forward**

127. This systematized and streamlined clustering, designed to meet national needs and improve technical cooperation, may require relating the crime prevention and criminal justice standards to certain kindred principles and norms that may have been developed under other United Nations programmes or as part of the United Nations mission as a whole. Among the former are most notably the covenants, conventions and other norms developed under the human rights programme, including those against torture, arbitrary and summary executions, disappearances, arbitrary arrest and detention, modern forms of slavery, the rights of the child and redress for massive violations of human rights. Others include those shared with the advancement of women programme (e.g. on violence against women); the United Nations Children's Fund (e.g. rights of the child and juvenile justice); the Office of Legal Affairs (e.g. on terrorism); or the United Nations Human Settlements Programme (e.g. on urban crime prevention). Among those with the broadest scope are the Millennium Development Goals (56/326, annex), derived from the United Nations Millennium Declaration (General Assembly resolution 55/2).

128. The new grouping is also intended to improve the implementation of the standards and norms, and, without rendering the process too onerous, the new reporting procedures, together with systems used elsewhere that have shown promise, including the phased reporting on progress designed to monitor gains in advancing the Millennium Development Goals, could be examined by the Eleventh Congress. Model national legislation, regional annotations, rosters of best practices and sources of technical assistance could all be helpful in exploring new areas that could provide incentives for more cost-effective and innovative approaches.

129. Conducting such an exercise in a meaningful context, such as the Eleventh Congress, should produce useful results and help States to introduce or consolidate reforms, based on United Nations principles that reflect widespread consensus, while drawing on actual experience and lessons learned. Thus, by evaluating the results presented and formulating empirically based measures, where necessary with other stakeholders, more viable and fair crime prevention and criminal justice policies could be advanced. This would also require further dissemination efforts, with tangible examples, and adaptation to the range of problems faced by different countries and regions. By pointing out ways of overcoming such problems, providing samples of helpful practices geared to new circumstances and the needs of global cooperation, the necessary inroads would be made for the standards to receive their due attention as an invaluable tool for making further progress in a complex and changing world.

130. In this perspective, the Eleventh Congress would provide an opportunity to place increased focus on incisive collaborative action to enhance technical

cooperation and capacity-building. In fact, the prevention of violence against persons and of systematic crimes against humanity requires proper enforcement. Crimes of a transnational and organized character are most likely to spread in the context of armed conflict and during the transition to peace. Without the necessary law enforcement mechanisms and infrastructure, societies subjected to conflicts may become safe havens for criminal organizations, both national and transnational. Unfortunately, lawlessness, banditry, smuggling and victimization of innocents usually accompany war, while their effects delay the transition to peace. In addition to the creation of international mechanisms for crime control and criminal justice (war tribunals), it is crucial that national and local criminal justice institutions be made to work, so that justice can be done—and be seen to be done—under the rule of law, while serving also as a means of promoting public confidence and social cohesion. Accordingly, ambitious multidisciplinary, cross-cutting joint ventures may be required with partners of various kinds, international, regional and national, and the private sector, utilizing many types of potential input to meet stated objectives, within a larger vision geared to the challenging times. In addition, interfaces with other concerned United Nations entities should be fostered in order to achieve the proper coverage and to create the necessary linkages for increased synergies.

131. The fiftieth anniversary of United Nations standard-setting in the field of crime prevention and criminal justice, to be celebrated on the occasion of the Eleventh Congress, will provide an additional opportunity to take stock of far-reaching criminal justice reforms, to assess how they can be more widely applied and, finally, to consider if new standards need to be adopted by the United Nations either to confront persistent problems or to face new challenges.

#### **D. Questions for discussion**

132. The regional preparatory meetings and the Eleventh Congress may wish to consider the following questions for further discussion:

(a) What innovative approaches could be suggested to improve the practical application of United Nations standards and norms, for example, by the contribution of regional entities or their inclusion in the curricula of law enforcement training schools and police academies and peacekeeping training, as well as in those of legal workshops and courses for judges and prosecutors?

(b) What steps could be explored with a view to operationalizing the application of United Nations standards and norms for the benefit of technical cooperation projects?

(c) What mechanisms could be suggested to the Commission on Crime Prevention and Criminal Justice in order to assess the impact of standards and norms on criminal justice reform?

(d) How can Member States best share information and experience on the most viable and successful efforts to apply United Nations standards and norms in national legislation?

(e) What best practices can be identified as to how Member States are addressing persisting and emerging new challenges in the administration of criminal justice?

(f) Are there new areas that would require urgent attention by the international community for additional standards and norms?

### **III. Workshops to be organized at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice**

#### **A. Practical features**

133. In advance of the Eleventh Congress, Member States are invited to communicate their interest in participating in workshop activities and to specify their substantive concerns for discussion at the workshops. Their views could be incorporated into national position papers, on the basis of which partnerships for future technical cooperation and other operational activities could be built. Before and during the Congress, States may submit papers or reports, highlighting programmes or resources currently available in their countries that might be of assistance in enhancing the capabilities of other States in criminal justice matters.

#### **B. Participation**

134. Participants will include government officials from ministries of justice, of foreign affairs and of the interior, including judges, prosecutors and lawyers and other legal specialists acquainted with principles and practices involved in the subject matter of the workshops. In addition, panels of experts will stimulate discussion, maintaining an open dialogue with participants and avoiding the reading of statements.

135. The Eleventh Congress will have a duration of eight working days, the last three of which will be devoted to the high-level segment. It should be noted, therefore, that covering the full scope of each of the six workshops, as suggested in the discussion guide, will be dependent on the time that can be allocated to each workshop.

### **Workshop 1. Enhancing International Law Enforcement Cooperation, including Extradition Measures**

#### **A. Scope**

136. The various United Nations conventions targeting the most serious forms of crime—the 1988 Convention, the Convention against Terrorism (among other anti-terrorism conventions), the Organized Crime Convention and its Trafficking in Persons Protocol and Migrants Protocol and the Convention against Corruption—all define as one of their main objectives the enhancement of international cooperation in law enforcement and contain a wide range of provisions relevant to that aim.

137. A number of provisions in the above instruments focus on strengthening cooperation and assistance of an operational nature between law enforcement agencies, for example, cooperation in conducting inquiries, providing items for analytical and investigative purposes, exchanging information on offenders' modus

operandi, maintaining channels of communication, exchanging personnel, establishing joint investigation bodies (Convention against Corruption, arts. 48 and 49; Organized Crime Convention, art. 27, including a reference to cooperation against crime committed through the use of modern technology; 1988 Convention, art. 9; and Convention against Terrorism, art. 18); and cooperation in using special investigative techniques (1988 Convention, art. 11, on controlled delivery; Convention against Corruption, art. 50; and Organized Crime Convention, art. 20, also referring to electronic surveillance and undercover operations).

138. Other provisions address judicial cooperation in investigations, prosecutions and criminal proceedings, for example, extradition (1988 Convention, art. 6; Convention against Terrorism, art. 11; Organized Crime Convention, art. 16; and Convention against Corruption, art. 44); transfer of sentenced persons (1988 Convention, art. 6, para. 12; Organized Crime Convention, art. 17; and Convention against Corruption, art. 45); mutual legal assistance (1988 Convention, art. 7; Organized Crime Convention, art. 18; Convention against Terrorism, art. 12; and Convention against Corruption, art. 46); transfer of criminal proceedings (1988 Convention, art. 8; Organized Crime Convention, art. 21; and Convention against Corruption, art. 47); and international cooperation for purposes of confiscation (1988 Convention, art. 5; Organized Crime Convention, art. 13; and Convention against Corruption, art. 55).

139. Other forms of international cooperation are relevant to specific types of crime, for example, cooperation against illicit traffic at sea (1988 Convention, art. 17; and Migrants Protocol, arts. 7 and 8); international cooperation for the repatriation of victims of trafficking in persons and the return of smuggled migrants (Trafficking in Persons Protocol, art. 8; and Migrants Protocol, art. 18).

140. Workshop 1 will review the various forms of international law enforcement cooperation provided for in the international instruments and will discuss the status of their implementation at the regional level, including possible measures to enhance their effectiveness.

## **B. Objectives**

141. The objectives of Workshop 1 will be:

(a) To review key forms of law enforcement cooperation required or recommended under the United Nations anti-crime conventions and protocols, in particular innovations in the most recent instruments;

(b) To take stock of experience, best practices and obstacles met at the national and regional levels in the implementation of law enforcement cooperation measures;

(c) To enhance law enforcement communication, regionally and internationally, on organized transnational crime and criminal groups, corruption and trafficking in drugs and persons (women, children and migrants);

(d) To further the exchange of information on special investigative techniques (including use of informants, undercover operations, electronic

surveillance and controlled delivery) and on methods to counter the commission of crime through the use of modern technology;

(e) To further the exchange of information on best practices in witness protection programmes and in assistance to and protection of victims;

(f) To enable a critical examination by States of their extradition legislation, policies, practices and arrangements and to enhance dialogue on issues affecting viable extradition practice;

(g) To serve as a basis for future technical cooperation activities that will provide States with practical guidance on procedures involved in formulating and responding to extradition requests, securing extradition, for example, through practical training for officials involved in extradition matters;

(h) To facilitate a critical examination by States of their mutual assistance legislation, policies, practices and arrangements (including assistance for purposes of confiscation), and to enhance dialogue on obstacles to efficient provision of mutual legal assistance; and to serve as a basis for the formulation of future technical cooperation activities to improve mutual legal assistance through practical guidance and training;

(i) To enhance the provision of assistance to counter drug trafficking and smuggling of persons by sea.

142. Workshop 1 should focus discussion on identifying the practical and procedural difficulties faced in giving effect to the provisions on law enforcement cooperation of the conventions and explore means to overcome those difficulties.

### **C. Questions for discussion**

143. For each form of law enforcement cooperation reviewed by Workshop 1, participants are invited to bring data on the cooperation measures implemented at the national and regional levels during the last five years.

144. On the basis of such data, participants could focus the discussion on the following questions for each form of cooperation reviewed:

- (a) What have been the main factors for success (best practices)?
- (b) What have been the main obstacles to success?
- (c) How have such obstacles been overcome?

## **Workshop 2. Enhancing Criminal Justice Reform, including Restorative Justice**

### **A. Scope**

145. There has been growing interest in testing and promoting new methods for improving the administration of justice worldwide, as was apparent from the thematic discussion by the Commission on Crime Prevention and Criminal Justice

at its eleventh session of reform of the criminal justice system: achieving effectiveness and equity.

146. Workshop 2 will address current challenges facing criminal justice administration. Victims and offenders, especially from poorer social strata, have limited access to justice. Victims feel re-victimized after a trial in which they do not actively participate. Offenders “pay the price” for the crime they have committed with little or no consideration given to rehabilitation. Judges are under pressure to make retributive decisions on sentencing. The cost on the judicial system is rising, as trials become longer and more complicated. The retributive process that has traditionally focused on the offender and the State is seen as archaic and still too rarely resorts to non-custodial sanctions or other alternatives, including restorative justice.

147. In recent years a variety of reforms have been initiated to confront such problems. Community policing initiatives have been instituted where police work proactively and in partnership with citizens to identify and solve problems at an early stage. In many instances greater prosecutorial discretion has been given with respect to non-violent and minor offences. Innovative sentencing approaches such as house arrest, part-time detention and weekend detention have also been instituted. Other measures aimed at deterrence such as the “three strikes and you’re out” penalty of life imprisonment and mandatory minimum sentences are being tried but have also been subject to heavy criticism.

148. Community corrective measures, which include mechanisms such as probation and parole, have also emerged as viable and effective alternatives to imprisonment. This increased use of community measures has been made possible by technical advance in offender assessment, classification and programmes aimed at rehabilitation.

149. Among the array of alternative measures, restorative justice has emerged as an attempt to reinstate the beneficial aspects of more traditional systems of justice. Workshop 2 will familiarize participants with the directions that restorative justice has taken internationally, including the emergence of international principles to guide policy and the practice emerging in this field.

## **B. Objectives**

150. Three major outcomes are expected:

(a) An information exchange on recent successful criminal justice reform initiatives, based upon the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and other international instruments, including the basic principles on the use of restorative justice programmes in criminal matters;

(b) Encouragement of the establishment of intergovernmental projects of research into evidence-based approaches for the further development of restorative justice practices;

(c) Identification of opportunities for information-sharing and the provision of technical assistance (project ideas and proposals) for least developed countries

and countries with economies in transition, with a view to supporting their criminal justice reforms, including the development of restorative justice programmes.

151. Workshop 2 will provide an opportunity to identify and create collaborative opportunities and practical applications for research, training and other technical cooperation activities to promote and support criminal justice reform, including the use of restorative justice.

152. It is expected that Workshop 2 will ensure that criminal justice reforms are grounded in international standards and that restorative justice programmes in particular are guided by basic principles. The Workshop should also lead to regional strategies, initiatives and policies to guide the development of restorative justice and other reform programmes.

### **C. Questions for discussion**

153. For workshop 2, participants are invited to bring with them data on evaluative research conducted in their countries on major criminal justice reforms that have been implemented in the last five years. On the basis of such data, discussions could be focused on the following questions:

- (a) What have been the main factors for success (best practices)?
- (b) What have been the main obstacles to success?
- (c) How have such obstacles been overcome?

## **Workshop 3. Strategies and Best Practices for Crime Prevention, in particular in relation to Urban Crime and Youth at Risk**

### **A. Scope**

154. In its resolution 2002/13 of 24 July 2002, the Economic and Social Council adopted the Guidelines for the Prevention of Crime, in which it set out the necessary elements for effective crime prevention. In its resolution 2003/26 of 22 July 2003, the Council encouraged Member States to draw upon those Guidelines when developing, implementing and evaluating urban crime prevention programmes and projects and to share experience gained in that regard; and also encouraged them, where appropriate, to establish policies to protect children at risk in urban areas. In its resolution 1995/9 of 24 July 1995, the Council had adopted the Guidelines for Cooperation and Technical Assistance in the Field of Urban Crime Prevention. In the field of youth at risk, the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) were adopted by the General Assembly in its resolution 45/12 of 14 December 1990.

155. Urban crime is an expanding phenomenon in many countries, in large part as a consequence of the rapid increase in urbanization. Over 47 per cent of the world's population now lives in urban areas and, because of rapid population increases and migration, it is expected that this percentage will increase to 50 per cent by 2007. Three quarters of the urban population growth is occurring in developing countries,

but existing urban areas are not equipped to accommodate such rapid population increases. Many developed countries are now largely urban and a number of “mega cities” with more than 10 million inhabitants are emerging in developing countries. Much of this urban population includes children and young people. In many cities more than 50 per cent of the urban population are under the age of 19. It is expected that this trend will continue over the next 10-20 years, accompanying the process of urbanization. Among youth in particular, a demographic explosion is anticipated, with the percentages of young people (15-24) in developing countries expected to rise by 10 per cent to 29 per cent between 2003 and 2005.

156. As a consequence of the rapid population growth in many urban areas, environmental and housing infrastructures, employment and job creation are falling behind and levels of social exclusion and poverty are increasing in many countries. This places children and youth at particular risk of victimization, exploitation and criminalization. The link between urban criminality and transnational or national organized crime, drug trafficking and trafficking in persons has also increasingly been revealed in recent years. The past decade has also seen the increase in certain types of urban crime, such as kidnapping in Latin America or car-jacking and gun-related crime in Africa. The level of urban violence against women and of crimes against ethnic, cultural and visible minorities has also become more evident.

157. Over the past 10 years, there has been considerable accumulation of knowledge about good effective practices that can be used to promote community safety and reduce crime in urban settings. This includes knowledge about risk and protective factors affecting young people’s chances of victimization or offending. It includes knowledge about a range of practices from early childhood interventions, educational programmes, youth leadership, mediation and job and skills training to rehabilitation and reintegration programmes. Many of these programmes are targeted to young people most at risk, or those living in areas of high risk. The more successful ones often involve young people and communities, helping to build the capacity of young people to become useful members of society. Specific programmes have also been developed to take account of gender differences in experience, needs and vulnerabilities. Furthermore, a range of situational and environmental practices have been collected and can be used in urban settings and legislative and regulatory mechanisms that help to improve surveillance and strengthen social controls in urban areas. As in some cities there is increasing resort to private security and policing, the limits and role of private security and the problems of the exclusion of people from public spaces, or of urban segregation and discrimination have become the subject of considerable debate.

158. Other initiatives involve the careful development of housing and urban renewal strategies that take account of crime and safety, with wider community participation. Implementation of programmes as part of a careful partnership strategy, planned at the local level and based on a careful assessment of the problems and concerns experienced, has also started to show positive results during the past decade. This includes the experience of the Safer Cities Programme of the United Nations Human Settlements Programme, as well as that of Member States and of civil society organizations. Partnerships including elected officials and administrators and other local institutions, including law enforcement and the judiciary, and civil society are now much more common. A number of tools to facilitate the planning and implantation of local strategies for urban safety have also

been tested in both developed and developing countries, with training in capacity-building beginning to expand.

## **B. Objectives**

159. The objectives of Workshop 3 will be:

(a) To foster the implementation and evaluation of integrated urban safety initiatives and the sharing of best practices in crime prevention programmes internationally;

(b) To identify best practices for cooperation between different levels of government nationally and internationally in relation to the prevention of urban crime;

(c) To identify best practices in preventing crime among specific groups of young persons particularly at risk (e.g. minorities and both young men and young women);

(d) To facilitate a critical examination by Member States of their urban crime prevention strategies and programmes, in particular in relation to urban crime and youth at risk;

(e) To foster the provision of professional training for urban planners, city managers and others to serve as a basis for future technical cooperation activities that will provide States with best practices in implementing the relevant guidelines.

160. Substantive issues that may be of interest are:

(a) Integrated urban crime prevention strategies in urban areas;

(b) Partners that need to be involved, including law enforcement agencies, private security and the judiciary, as well as the community at large;

(c) Strategies to target urban segregation and discrimination;

(d) How different levels of decision-making—regional, national or local—can be linked efficiently;

(e) Effective responses to crime facilitators such as small firearms, alcohol and drug abuse;

(f) The role of housing and urban development policies in creating safe urban environments.

161. Workshop 3 will focus on identifying best practices for crime prevention in expanding cities, and on success factors for prevention programmes targeting youth considered particularly at risk and will give participants an opportunity to discuss needs for assistance or exchange of knowledge between cities and countries and how the different United Nations guidelines could be better applied.

## **C. Questions for discussion**

162. For Workshop 3, participants are invited to bring with them specific examples of projects that have proved successful, so as to answer the following questions:

- (a) What have been the main factors for success (best practices)?
- (b) What have been the main obstacles to success?
- (c) How have such obstacles been overcome?

## **Workshop 4. Measures to Combat Terrorism, with reference to the Relevant International Conventions and Protocols**

### **A. Scope**

163. International efforts to prevent and combat terrorism are increasingly multi-pronged, including measures in the field of law enforcement, military, finance, politics and communication. The backbone of the international regime against terrorism is formed by 12 sectoral legal instruments. As at 17 November 2003, the 12 universal instruments related to the prevention and suppression of international terrorism had been ratified as follows:

<i>Instrument</i>	<i>Number of States Parties</i>
1963 Convention on Offences and Certain other Acts Committed on Board Aircraft <sup>24</sup>	176
1970 Convention for the Suppression of Unlawful Seizure of Aircraft of 1970 <sup>25</sup>	177
1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation <sup>26</sup>	179
1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents <sup>27</sup>	143
1979 International Convention against the Taking of Hostages <sup>28</sup>	134
1979 Convention of the Physical Protection of Nuclear Material <sup>29</sup>	93
1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation <sup>30</sup>	137
1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation <sup>31</sup>	95
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf <sup>32</sup>	87

<sup>24</sup> United Nations, *Treaty Series*, vol. 704, No. 10106.

<sup>25</sup> *Ibid.*, vol. 860, No. 12325.

<sup>26</sup> *Ibid.*, vol. 974, No. 14118.

<sup>27</sup> *Ibid.*, vol. 1035, No. 15410.

<sup>28</sup> *Ibid.*, vol. 1316, No. 21931.

<sup>29</sup> *Ibid.*, vol. 1456, No. 24631.

<sup>30</sup> *Ibid.*, vol. 1589, No. 14118.

<sup>31</sup> *Ibid.*, vol. 1678, No. 29004.

<sup>32</sup> *Ibid.*, vol. 1678, No. 29004.

<i>Instrument</i>	<i>Number of States Parties</i>
1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection <sup>33</sup>	97
1997 International Convention for the Suppression of Terrorist Bombings <sup>34</sup>	113
1999 International Convention for the Suppression of the Financing of Terrorism <sup>35</sup>	102

164. As a practical way to create a watertight international legal regime against terrorism and to ensure that there are no safe haven for terrorists, Member States must recognize the need to become parties to the conventions and protocols listed above. In its resolution 1373 (2001), the Security Council called on all States to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism. Intensive efforts should continue to be made to achieve that goal. When the resolution was passed in 2001 only two States had ratified all the universal instruments; two years later, 40 Member States had fully complied in that regard. The Counter-Terrorism Committee was established pursuant to resolution 1373 (2001), which has de facto become the monitoring body for the implementation of the 12 international instruments and specific provisions of the resolution.<sup>36</sup> In the declaration annexed to its resolution 1377 (2001) of 12 November 2001, the Council invited the Counter-Terrorism Committee to explore ways in which States could be assisted and to explore the availability of existing technical, financial, regulatory, legislative or other assistance programmes that might facilitate the implementation of resolution 1373 (2001). That exploration is an ongoing process in which the preparatory meetings and the Eleventh Congress can play a useful role.

<sup>33</sup> S/22393, annex I; see *Official Records of the Security Council, Forty-sixth Year, Supplement for January, February and March 1991*.

<sup>34</sup> General Assembly resolution 54/109, annex.

<sup>35</sup> General Assembly resolution 54/109, annex.

<sup>36</sup> At the same time, efforts continue in the Ad Hoc Committee on Terrorism of the General Assembly to conclude the negotiations on two more conventions, one dealing with nuclear terrorism and the other aiming at a comprehensive convention. Efforts to conclude these two conventions successfully have so far been impeded by disagreements with regard to questions such as whether terrorism should be defined; whether so-called "state terrorism" should also be covered; and whether one should differentiate between terrorism and the right of peoples to self-determination and to combat foreign occupation; whether the nuclear convention should also cover certain activities of military forces of a State in the exercise of their duties; and whether the envisaged comprehensive convention should replace or complement the existing sectoral conventions (see Rohan Perera, "The contribution of the South Asian Association for Regional Cooperation", and Hans Corell, "International instruments against terrorism: the record so far and strengthening the existing regime", United Nations Office on Drugs and Crime, *Combating International Terrorism ...*).

## **B. Objectives**

165. One objective of Workshop 4 will be a review of the progress made in the ratification and implementation process of the 12 universal instruments related to the prevention and suppression of international terrorism. Such a review could be based in part on a secondary analysis of the reports of Member States to the Counter-Terrorism Committee, which are in the public domain. In particular, the focus should be on those aspects of national implementation that have a direct impact on the quality of international judicial cooperation.

166. A review of possible shortcomings of international cooperation should also be made, in which special focus should be on the quality of national capacities of Member States to make their criminal justice systems more responsive in order to react in a timely and efficient manner to requests for judicial assistance. From this should follow a needs assessment regarding national efforts and international assistance measures to upgrade criminal justice systems. The role the United Nations Office on Drugs and Crime could play in providing the necessary technical and advisory assistance to improve international cooperation could be one focus of the Workshop.

167. A further aspect to be considered is the “close connection” (Security Council resolution 1373 (2001)) between international terrorism and some forms of transnational organized crime and other related forms of crime. Here the discussion could concentrate, on the one hand, on the actual empirical evidence of this close connection in different regions of the world. On the other hand, the question of how the existing legal instruments (the Organized Crime Convention and the 12 universal anti-terrorist conventions) can be utilized optimally in both fields—terrorism and organized crime—ought to be explored.

168. Workshop 4 will address technical assistance and international cooperation issues related to the 12 conventions, including a discussion of the interface between regional conventions and the universal conventions. At the same time, Security Council resolution 1373 (2001) and the work of the Counter-Terrorism Committee in implementing that resolution should be taken into consideration.

169. The Workshop would focus on the close connection between international terrorism and other forms of crime in various regions of the world, especially those touched by protracted civil war or difficult post-war situations. At the same time the synergies that can be gained by applying multiple legal instruments (the Organized Crime Convention and the 12 conventions and protocols against international terrorism) should be addressed.

## **C. Questions for discussion**

170. Participants should discuss the following questions in relation to the objectives set:

(a) What are the main bottlenecks in international cooperation against terrorism and how can further progress be made to facilitate international judicial cooperation?

(b) What divergencies exist between the 7 regional conventions against terrorism and the 12 universal conventions and protocols related to the prevention and suppression of international terrorism and how can these best be resolved?

(c) What kind of technical assistance should be provided, upon request, to criminal justice systems of Member States in order to support them in strengthening their capacity to respond more effectively to threats? What role should the United Nations Office on Drugs and Crime, as a major provider of technical assistance, play in this?

## **Workshop 5. Measures to Combat Economic Crime, including Money-Laundering**

### **A. Scope**

171. Advances in information technology and the associated process of globalization have not only increased the possibilities for the perpetration of economic crimes, but have also made the impact of such crimes harder to contain. Economic crime has the potential to cause loss to a greater number of people and harm both national economies and the global financial system by, among other means, undercutting economic confidence. It has become easier for transnational criminal groups to use the legitimate economy to disguise their operations and to facilitate the rapid transfer of proceeds of crime in order to avoid investigation by law enforcement authorities. Thousand of individuals can be defrauded at the same time, targeting countries with complex financial systems but also those lacking effective regulatory, legal and judicial structures.

172. The term “economic crime” escapes easy description and an exact definition remains to be formulated. In 1981, the Committee of Ministers of the Council of Europe identified 16 offences as economic crimes,<sup>37</sup> namely, fraudulent practices and abuse of economic situations by multinational companies; fraudulent procurement or abuse of state or international organizations’ grants; computer crime (including data theft, violation of secrets and manipulation of computer data); bogus firms; faking of company balance sheets and book-keeping offences; fraud concerning the economic situation and corporate capital of companies; violation by a company of standards of security and health concerning employees; fraud to the detriment of creditors (bankruptcy and violation of intellectual and industrial property rights); consumer fraud (in particular falsification of and misleading statements on goods, offences against public health and abuse of consumers’ weakness or inexperience); unfair competition (including payment of bribes to an employee of a competing company) and misleading advertising; fiscal offences and evasion of social costs by enterprises; customs offences (evasion of duties and breach of quota restrictions); offences concerning money and currency regulations; stock exchange and bank offences (such as fraudulent stock manipulation); and offences against the environment.

<sup>37</sup> Recommendation No. R (81) 12, adopted by the Committee of Ministers on 25 June 1981 at the 335th meeting of the Ministers’ Deputies.

173. The expansion of the Internet has created new opportunities for economic crime, including a range of fraudulent activities using the Internet, as well as significant increases in credit and debit card fraud. The latter is now regarded as a problem of international concern. The continued rapid pace of technological developments makes reliable predictions of new forms of economic crime difficult. In many economic crimes that make use of high technology, the physical presence of the offender is not a defining factor. Crimes can therefore be committed from jurisdictions that have the weakest legal framework and law enforcement infrastructure to counter them. In addition, the profits to be made from economic crime in the current global context have attracted the involvement of organized criminal groups, which are becoming increasingly involved in credit card fraud, identity theft and counterfeiting.

174. Organized criminal groups have also taken advantage of the transnational nature of global finance to launder money. Money-laundering is the process by which the proceeds of crime are disguised to conceal their criminal origins and make their future use appear legitimate. Money-laundering provides organized crime with both cash flow and investment capital. There are two main reasons why countries commit themselves to the development and maintenance of a regime to combat money-laundering. Firstly, depriving the criminal of the profits of crime is a critical weapon, as profit is the main incentive for committing most crimes. Secondly, for both developed and developing countries, money-laundering hampers the stability, efficiency and integrity of financial systems, economic development and anti-corruption efforts.

175. To address money-laundering, States are affording each other the widest range of mutual assistance. The international regime against money-laundering embodies a framework of standards adopted in the context of regional or international organizations in order to assist States in establishing the necessary infrastructure. These include the 1988 Convention and the Organized Crime Convention. The latter gives legal force to the criminalization of money-laundering derived from all serious crime and the adoption of measures that address customer identification, record-keeping and the reporting of suspicious transactions. The Convention against Corruption, opened for signature in December 2003, also contains provisions against money-laundering derived from acts of corruption, as well as provisions to facilitate the return of stolen government assets to their countries of origin.

176. Following the events of 11 September 2001, the international community decided to adopt an integrated approach to the fight against money-laundering and financing of terrorism. The two criminal activities are closely linked, as the techniques involved are frequently similar, despite the fact that money destined for use by terrorists can be derived from legitimate sources.

177. The issue of economic crime constitutes a serious challenge for law enforcement agencies. This is an area where the international community should muster broader agreement and advance common interests, which should be exploited to exchange experience and devise new strategies.

178. The sharing of knowledge, most particularly in the area of technical assistance, would serve the interests of all participants. With a broad assessment of the most urgent needs and, where possible, with a focus on the identification of available solutions; individual experts and practitioners would improve their knowledge so as

to better organize their thinking on the issue; intergovernmental and non-governmental organizations would be able to fine-tune their services to be more responsive to existing and prospective requirements.

## **B. Objectives**

179. Workshop 5 will review the current legislative framework at the national, regional and international levels with respect to economic crime, providing pointers to the development of more sophisticated domestic and international regimes to counter the problem. Emphasis will be placed on issues related to international cooperation. Important, too, would be the consideration of the improvement of criminal procedures and investigative measures, such as special investigative techniques. In the specific area of money-laundering, an assessment could be made of systems currently in place to prevent the phenomenon, as well as of new measures that are required and of the effectiveness of current technical assistance activities.

180. The Workshop will also include the presentation and discussion of a hypothetical case of economic crime in order to review the best practices, legal frameworks, investigative techniques and so on available. The following issues will be covered:

- (a) Identifying appropriate legal instruments at the national, regional and international levels to combat economic crime;
- (b) Mechanisms to enhance techniques for the investigation of economic crime, most particularly in cases where sophisticated methods have been used;
- (c) Improving inter-agency cooperation, including cooperation between fiscal and law enforcement authorities;
- (d) Strengthening the capabilities of investigative personnel and the judiciary;
- (e) Improving the protection and remedial action in favour of victims of economic crime;
- (f) Identifying effective measures to prevent economic crime.

181. This problem-orientated approach will focus on innovative programmes and approaches that have the potential to be replicated in or adapted to other contexts. Technical cooperation activities will benefit from the exchange of experience and views between officials and practitioners. Building on these aims, the key objective of the Workshop would be, on the basis of a review of the available responses, to identify critical interventions that could be taken at the national, regional and global levels to improve the current position.

182. More specifically, the Workshop should contribute to the promotion of the ratification and implementation of all the relevant United Nations instruments, as well as the Forty Recommendations of the Financial Action Task Force against Money Laundering, as revised in October 2003, to reflect new best practices to combat money-laundering. Specific consideration will be given to raising the awareness of all stakeholders involved in the fight against money-laundering,

including the private and public sectors. In particular, the Workshop will focus on the pivotal role of financial intelligence units, which are entities responsible for receiving, analysing and disseminating suspicious transaction reports of money-laundering to law enforcement authorities.

183. The Workshop will also address the misuse of non-financial institutions and professions and will examine how to make effective action against money-laundering in developing countries that have mostly cash-based economies.

184. In addition, the Workshop will examine measures to improve procedures relating to the confiscation of criminal proceeds, paying special attention to asset-sharing mechanisms between several countries involved in the same case, as well as to new tools available in some countries, based on the principle of civil forfeiture.

185. Finally, the Workshop will allow the exchange of experience, knowledge and responses to economic crime, including money-laundering. As a result, it will provide informed solutions and proposals for countermeasures against it, including broader policy measures and strategies, as well as international cooperation arrangements. By reviewing specific problems of countering serious economic crime and identifying weakness in the available legal frameworks and tools, the Workshop will act as a catalyst in devising a more comprehensive global response, including various forms of technical assistance and appropriate training. The Workshop will also foster the political commitment of state representatives on the implementation of instruments to combat money-laundering.

### **C. Questions for discussion**

186. Specific areas for discussion could include:

(a) Success stories and obstacles encountered in the fight against economic crime and in the prosecution of money-laundering cases, including the confiscation of proceeds of crime completed pursuant to anti-money-laundering legislation;

(b) How financial intelligence units can work with their counterparts and other institutions to ensure best practice in national and international cooperation;

(c) How best to implement anti-money-laundering standards in informal and cash-based economies.

Participants are strongly encouraged to bring copies of their latest relevant legislation against economic crime, including money-laundering, as well as notice of the status of their country's participation in regional mechanisms (the Financial Action Task Force and the related regional bodies) and its adherence to the regional and international legal instruments. Participants may also wish to provide the Workshop with recent assessments of their efforts to fight money-laundering that have been made by either the regional mechanisms or the international financial institutions.

## Workshop 6. Measures to Combat Computer-related Crime

### A. Scope

187. Rapid globalization and the spread of new communication technologies, both of which continue to bring numerous economic, educational and cultural benefits to the modern world also present new challenges to criminal justice. National borders and domestic response are becoming less and less relevant. Offenders no longer need to be physically present in a particular jurisdiction to take full advantage of any gap in legislation or law enforcement there. Cyber attacks can be launched instantaneously without the identity or location of the attacker being disclosed and with a minute possibility of detection.

188. States without adequate controls can become the base from which offenders anywhere can target victims in other countries or shield their operations from investigators. The most challenging legislative problems regarding computer crime relate to its departure from the physical world into an intangible environment, thus necessitating untraditional responses. Inadequate regimes for international legal assistance and extradition can shield criminals from law enforcement. Because of the changing nature of computer crime, States must not only have the appropriate computer crime statutes, but also procedural laws to investigate such crime. Law enforcement agencies must keep pace with rapid developments and their exploitation by offenders while formulating countermeasures that effectively protect victims and control crime. They must also preserve the advantages of the new technologies and respect other fundamental interests such as basic human rights, as well as not impinging on the national sovereignty of other countries, with which they share access to the Internet.

189. Many countries have not only established units to counter computer or cybercrime and focal points for international cooperation, but have also adopted new laws and statutes against computer crime. Measures have also been taken to protect computer and other electronic systems from being exploited by terrorists and other criminals, with special efforts to protect various population groups or interests, for example, children from exploitation on the Internet, young people from the solicitation of drugs, minorities from hatred and consumers from fraud. Other countries have not been able to take any comprehensive steps of this sort, thus becoming vulnerable to various forms of computer abuse.

190. In the past decade, various initiatives have been taken globally and regionally with the purpose of advancing international understanding of and cooperation in combating computer-related crime, including actions taken by the Council of Europe, the Group of Eight, the Organisation for Economic Cooperation and Development, the European Union and the United Nations. Some organizations have enacted action plans, established expert and working groups on cybercrime and developed related guidelines; set up Internet-based information networks for extradition and mutual legal assistance; and consolidated best practices guides and manuals.<sup>38</sup> The Council of Europe Convention on Cybercrime

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<sup>38</sup> *Principles on Transborder Access to Stored Computer Data: Principles on Accessing Data Stored in a Foreign State*, Group of Eight, 20 October 1999

of 2001<sup>39</sup> is the first international treaty on computer-related and high-technology crime. However, the Convention has met with criticism from some interest groups and Internet companies regarding the effective protection of human rights, the protection of customer privacy and the high cost of cooperating with law enforcement investigators. The Optional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, which was opened for signature on 28 January 2003, aims at harmonizing criminal law in the fight against racism and xenophobia on the Internet and at improving international cooperation in that area. Part of the law enforcement community feels that a global legal instrument might be needed to set clear and consistent rules for multinational investigations and prosecutions, but this sentiment is not universally shared. Calls have been made to explore the idea of developing a United Nations convention against cybercrime, starting with the improved tools for law enforcement to control illicit drug trafficking,<sup>40</sup> but there may be many more fields for legal applications depending on the course of action taken by Member States.

191. The Organized Crime Convention addresses some implications for future action against computer-related crime, but this is not its primary focus. The *United Nations Manual on the Prevention and Control of Computer-related Crime*<sup>41</sup> was published as a resource for investigators and policy makers about 10 years ago. In its resolution 1999/23 of 28 July 1999, the Economic and Social Council requested the Secretary-General to conduct a study on effective measures to prevent and control computer-related crime, which would include an examination of the desirability of preparing manuals, guidelines and recommendations. The study (E/CN.15/2001/4) recommended the establishment in the Secretariat of a global programme against high-technology and computer-related crime. Furthermore, the Vienna Declaration and related plans of action recommended several national and international measures to prevent and combat computer-related crime, implementation of which could be discussed in depth at the Workshop, taking also into account the more recent resolutions on this matter adopted by the General Assembly. Finally, it should be recalled that, in August 2003, the World Federation of Scientists issued a report entitled “Towards a Universal Order of Cyberspace: Managing Threats from Cybercrime to Cyberwar”, which contains far-reaching recommendations and which will be brought to the attention of the Workshop.

## B. Objectives

192. Workshop 6 will provide a forum for sharing experience and information on recent trends in computer-related crime and on the successful investigation and prosecution of such crime, as well as for the formulation of a comprehensive, multifaceted international response by addressing the following issues:

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(<http://Canada.justice.gc.ca/en/news/nr/1999/data.html>); and Organisation for Economic Cooperation and Development, *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* (Paris, 1981).

<sup>39</sup> Council of Europe, *European Treaty Series*, No. 185.

<sup>40</sup> See the report of the International Narcotics Control Board for 2001 (United Nations publication, Sales No. E.02.XI.1, para. 77) and General Assembly resolution 53/70.

<sup>41</sup> United Nations publication, Sales No. E.95.IV.5.

- (a) Criminalizing the misuse of information technologies;
- (b) Formulating jurisdictional rules and other procedural provisions for investigation and international cooperation;
- (c) Assessing the need for training law enforcement personnel to respond more effectively and expeditiously to requests for assistance in the tracing of communications;
- (d) Expanding national and international research on computer crime in key areas such as sustainable development, protection of privacy and electronic commerce and legislative and other measures taken in response by developed and developing countries and the private sector;
- (e) Evaluating internationally developed materials such as guidelines, legal and technical manuals, best practices and model legislation to assist legislators and law enforcement and other authorities.

193. The Workshop could also explore how common principles relating to computer and high-technology crime could be established regarding the transnational tracing of communications; cross-border electronic searches; interception of communications; confidentiality or privacy interests; identification of individual users of computer network or telecommunications services versus individual privacy; forensic practices and legal rules of evidence; and confidentiality and integrity of data versus the effectiveness of crime control strategies.

### **C. Questions for discussion**

194. For Workshop 6, participants are invited to review successful experiences and current trends. Specific objectives are:

- (a) To increase understanding of the nature and scope of the problem and to study national and international countermeasures;
- (b) How to develop practical tools to effectively fight the threat of computer-related and other cybercrime, including mechanisms through which States may exchange information regarding the problems faced in combating the criminal misuse of information technologies;
- (c) How to promote a comprehensive strategy to combat computer-related crime, including technical assistance, model legislation and law enforcement cooperation.

195. In the discussion of technical cooperation projects, particular attention will have to be paid to the criminal justice needs of developing countries.

#### **IV. Concluding remarks**

196. The regional preparatory meetings are charged with the task of providing tightly focused recommendations, from their respective regional perspectives, which will be taken into consideration in the drafting of the single declaration of the Eleventh Congress. The declaration will also be based on the deliberations of the high-level segment, the round tables and the recommendations of the workshops. The declaration, as adopted by the Eleventh Congress, will be submitted to the Commission on Crime Prevention and Criminal Justice at its fourteenth session.

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