1994/12. Organized transnational crime

The Economic and Social Council,

Alarmed by the expansion and dimensions of organized transnational crime in all its forms and the increasing sophistication and diversification of the activities of organized criminal groups,

Alarmed also by the ability of organized criminal groups to transcend national frontiers, taking advantage of regional arrangements designed to foster free trade and economic and political cooperation and of the gaps in national legislation and international cooperation,

Deeply concerned about the capacity of organized criminal groups to expand their activities, including the use of violence, and to target the security and the economies of countries, in particular developing countries and countries in transition, thereby posing a grave threat to the stability of countries and the viability and further development of their economies,

Convinced of the urgent need for more effective action against organized transnational crime, to be coordinated at the global and regional levels,

Convinced also that such action represents an investment in the future for all societies,

Convinced further that technical assistance in the prevention of organized crime is indispensable and should be given high priority,


Recalling also its resolutions 1992/22 of 30 July 1992 and 1993/29 of 27 July 1993,
1. Takes note of the report of the Secretary-General\textsuperscript{28} on the status of preparations for the World Ministerial Conference on Organized Transnational Crime, to be held at Naples, Italy, later in 1994;

2. Takes note also of the discussion held on this topic by the Commission on Crime Prevention and Criminal Justice at its third session\textsuperscript{29} and of the document submitted to the Commission at that session by the Government of Italy, which is annexed to the present resolution and contains elements useful for the identification of specific matters to be dealt with by the World Ministerial Conference, and which is to be used as a basis for the substantive discussion of the objectives of the Conference;

3. Reiterates its request to all Member States that they be represented at the World Ministerial Conference at the highest possible level;

4. Commends the work done thus far by the coordination committee established by the Government of Italy in preparation for the World Ministerial Conference, and recommends that its efforts be continued and intensified to ensure, in close cooperation with the Crime Prevention and Criminal Justice Branch of the Secretariat, the finalization of all the necessary preparations;

5. Requests the Secretary-General to submit to the World Ministerial Conference background documents on each of its objectives, listed in paragraph I of Economic and Social Council resolution 1993/29, seeking input from Member States, in order to assist the Conference in its deliberations;


7. Requests the Secretary-General, within the overall existing resources of the United Nations, to continue collecting, analysing and disseminating information on the incidence, expansion and effects of organized transnational crime;

\textsuperscript{28} E/CN.15/1994/4.

8. Also requests the Secretary-General, within the overall existing resources of the United Nations, to continue collecting, as appropriate, the provisions of national legislation on the prevention and control of organized transnational crime, as well as on seizure, forfeiture and control of the proceeds of crime, money-laundering, monitoring of large-scale cash transactions and other measures, taking into account the work done by other intergovernmental organizations, and to make them available to Member States desiring to enact or further develop legislation in those areas, at their request;

9. Calls upon Member States to extend their full cooperation to the Secretary-General in the task described in paragraph 8 above and to respond promptly to his requests for information;

10. Requests the Secretary-General to provide, within the overall existing resources of the United Nations, upon request, advisory services and practical assistance to Member States wishing to adopt legislation or amendments or other measures and to upgrade the skills of their criminal justice personnel, in order to prevent and control organized transnational crime;

11. Also requests the Secretary-General, within the overall existing resources of the United Nations, to organize and conduct regional workshops and training programmes to deal with specific aspects of organized transnational crime, in accordance with the specific needs of Member States;

12. Requests the Commission on Crime Prevention and Criminal Justice to act as a focal point in order to facilitate the coordination of efforts and relevant activities of other entities of the United Nations system and to closely cooperate with other intergovernmental organizations to maximize the impact of efforts in the field;

13. Also requests the Commission to continue to accord high priority to the question of organized transnational crime;

14. Further requests the Commission to follow up appropriately the results of the World Ministerial Conference.

43rd plenary meeting
25 July 1994
ANNEX

Discussion document on the World Ministerial Conference on Organized Transnational Crime

1. The objectives of the World Ministerial Conference on Organized Transnational Crime were defined by the Economic and Social Council in its resolution 1993/29 of 27 July 1993. They represent five areas on which the ministers attending the Conference will base their debate and make decisions.

2. Taking into consideration the five areas and the political nature of the Conference, it should not only embody the political will of nations to fight organized transnational crime with firmness, but also highlight the fundamental principles of national initiatives and those upon which international cooperation should be based.

3. It is common knowledge that experience in relation to organized crime is characterized both by the extreme seriousness of the phenomenon and by the strong reaction shown by the authorities.

4. In recent years, the fight against organized crime has, in a number of countries, paved the way for the introduction of strict and effective legislative measures and for the organization of new operational instruments that have allowed the authorities to react, often successfully, against the phenomenon, limiting its potential damage to society and individuals.

5. However, through direct experience, especially in the use of the instruments offered by the criminal justice system, Governments have become aware that for national action to be effective there needs to be cooperation from all nations. Governments have also come to understand that organized crime is, due to its nature, a pervasive phenomenon. Therefore, the international community should find ways to cooperate, not only in controlling current illicit behaviour, but also in preventing the expansion of the phenomenon to new areas where defence mechanisms against the spread of such criminal activities are weak.

6. The necessity for international cooperation is always accompanied by a common concern and by general expressions of political will. Global action does not always follow, however, and sometimes mutual assistance is not even possible in individual cases.

7. It is believed that these difficulties are the result of the great differences that still exist among countries in their understanding and evaluation of the phenomenon and, consequently, in their choice of policies to fight organized crime, as well as the result of the different degree of development of laws and regulations and legislative and organizational measures applied in each country.
8. Therefore, it is hoped that the Conference will contribute towards the creation of a common perception of organized crime within the international community and that it will lead to a generally agreed essential concept of the phenomenon, through which it will be possible to lay down proposals for more homogeneous national measures that will also make cooperation more effective.

9. In order to reach this goal, it should be stressed that, according to current experience, positive results can be achieved in the fight against organized crime not by focusing on one or another type of “definite” crimes committed by criminal groups, for example, drug trafficking, extortion, illegal gambling or trafficking in arms. It is important to use normative and organizational measures that can be applied to every aspect of criminal activity. In other words, there is a need to devise strategies related to the structural characteristics of organized crime which, besides the essential element of having more individuals organized in a group, include the goal of profit-making; the use of violence, intimidation and corruption; the hierarchical link or personal relationships that make it possible to closely control the activities of the group; the economic control of whole territories; the laundering of illicit profits in order not only to organize other criminal activities but also to set up legal businesses (with the consequent effect of corrupting them); the great potential of expansion beyond national boundaries; and the tendency to organize international operations together with other groups of different nationalities.

10. In this perspective, the Conference and the subsequent actions of the United Nations in promoting crime prevention and criminal justice should take into account the above-mentioned elements.

11. The analysis of the above-mentioned structural characteristics highlights the importance of adopting a series of measures against organized crime, both in the area of substantive and procedural penal law and in the area of international cooperation. It is hoped that the issues presented below will receive particular attention from the Governments and competent international organizations attending the Conference.

12. As far as substantive penal law is concerned, particular attention should be paid to the “criminalization” of participation in a criminal organization. The existence of specific crimes such as the “association of criminals” of French law or the “criminal association” or “Mafia association” of the Italian penal code or the various types of “conspiracy” of other criminal laws, should be used as an example. In Italy, for example, the “association” crimes have played a key role in criminal justice intervention against organized crime.
13. The use in all nations of similar, if not identical, types of incrimination for members of criminal organizations can help reduce the spread of organized crime and will facilitate legal cooperation, especially when it is based on the principle of “dual criminality”.

14. The accumulation of large amounts of capital originating from criminal activities, not only from drug trafficking, and the resulting need of criminal organizations to launder those profits and invest them in legal businesses leads, as far as substantive penal law is concerned, to the necessity of criminalizing such acts in relation to any kind of profit-making criminal activity. Particular attention should also be given to correct and well-defined incrimination of economic crimes.

15. For the same reason, it is important not to neglect preventive measures, ensuring a clear definition of the position of the owners of companies and accurate control of acquisitions and transfers; a high ethical standard in public administration and financial institutions; and cooperation between the authorities in charge of regulating financial and economic sectors, and those in charge of applying the penal code.

16. The fight against organized crime is based on strategies aimed at defeating the economic power of criminal organizations, which should also involve criminal law measures, in particular in the field of appropriate sanctioning and sentencing.

17. Measures such as the confiscation of illicit proceeds are of great importance to the achievement of those goals. Such measures can prevent the accumulation of illegal profits and make a great contribution towards the destabilization of criminal groups by targeting their resources.

18. It should be noted that in some countries - under specific conditions and always through judicial proceedings - it is possible to confiscate illegal profits even without a guilty verdict, or to confiscate sums that are definitely higher than those relating to the crime for which judgement has been passed. This possibility should be taken into consideration when discussing the enactment of new legislation relating to confiscation or the modification of existing legislation.

19. As far as police action and criminal proceedings are concerned, it should be pointed out that in criminal proceedings related to organized crime offences, the investigative aspect and the identifying and securing of evidence present particular difficulties. Three main issues should be stressed: the increase of “intelligence”; the introduction and development of investigative methods that make it possible to “penetrate” criminal organizations; and investigative methods and legal measures aimed at preserving illicit profits, thus facilitating their confiscation.
20. As far as intelligence is concerned, it is clear that organized crime is a phenomenon that needs to be studied and understood more than other less structured crimes. It is crucial to obtain more information on the general organization of criminal groups, on the types of activities on which those groups thrive, on the interrelationships of the various groups, on the means that they commonly use to sustain themselves and on anything else that provides a better view of this very complex combination of activities, people and means.

21. Specialized investigative units should be created to fulfill the investigative requirements. Measures should also be adopted in order to facilitate the use of means of information-gathering, such as the interception of communications, controlled delivery and testimony of cooperating witnesses.

22. In promoting the use of these measures for gathering intelligence and collecting evidence, it is necessary to keep in mind the fact that the limits of the law must not be exceeded. In some countries, these measures have proved to be of the utmost importance for the successful outcome of investigations.
23. The Conference should also discuss the issue of financial investigations. Three main requirements should be emphasized: the development of a technical understanding of the financial operations involved by the relevant police departments and among prosecutors (and as far as trials are concerned, also among judges); the need to eliminate obstacles created by the law during investigations in relation to the operations of financial institutions; and the need to assign an active role to financial institutions (and, when appropriate, to other economic entities, which are often used in money-laundering) in the first steps of an investigation of suspicious transactions.

24. It should be noted that the strategy of “penetrating” criminal organizations, both for intelligence purposes and for purposes related to gathering of evidence, strongly depends on the testimony of members of criminal organizations. This should lead to the introduction of measures that can encourage such testimony, provide the cooperating witnesses and their families with the necessary protection, through adequate protection programmes, and - within the limits imposed by national laws - provide “rewards” in the form of penalty reductions for witnesses who are also charged with criminal offences.

25. One final important issue that should be discussed by the Conference is international cooperation during investigations and judicial proceedings. The analysis and consideration by the Conference should be developed along four fronts. Because of the importance of bilateral and multilateral assistance (with particular reference to extradition and mutual assistance in investigation and gathering of evidence), the lack of relevant agreements critically hinders the development of effective cooperation.

26. First, the Conference should take into account this problem and should promote the development of international agreements in the above-mentioned areas. More widespread promotion of “model” treaties adopted by the United Nations could help foster the rapid conclusion of such agreements.

27. The second front is improving the practical application of existing agreements. This could be achieved by informal arrangements and operational instruments - such as the publication and exchange of manuals for a better understanding of national procedures, the creation of “central national authorities” in charge of interstate affairs and specialized in solving particular problems raised by them; and the creation of “contact points”, in the relevant public offices, which should facilitate the proceedings.
28. The third front - perhaps the most difficult one - is devising adequate ad hoc measures of international cooperation that are aimed specifically at fighting organized crime and are more specific than those generally applicable to other crimes. Such measures should take into account the above-mentioned structural characteristics of organized crime and could benefit from a comparative study between what is described in the "model treaties", and frequently contained in existing agreements, and the provisions of more specialized and advanced conventions concerning serious criminal offences such as those in United Nations conventions on drug trafficking.

29. The fourth front is the international exchange of intelligence, also as a preventive measure. Among other things, a study of the most adequate forms of international assistance among "non-police administrative bodies" could be useful; such bodies would include, for example, the administrative bodies of financial sectors that are competent in such areas as the analysis of financial flows and/or in the investigation of suspicious transactions.

30. The Conference should be concerned with the general problem of researching and passing on information, at the international level, on organized crime and on legislative and organizational regulations set up in individual countries. The role of the United Nations in this matter should be of great importance and the Conference should outline the tasks of the Commission on Crime Prevention and
Criminal Justice and of the programme in this area. Moreover, this activity could be the foundation for the development of technical cooperation with countries that are in need of such assistance.

31. For effective international cooperation against organized crime, there is also a need to initiate activities involving strengthened technical cooperation, in which the more developed countries will have to show their strong commitment by investing the necessary resources. No action at the international level can achieve positive results if developing countries are not given an opportunity to create and improve an appropriate judicial system and to use proper tools for investigations, evaluations, intervention, interchange, incrimination and the carrying out of penalties.

32. Awareness of the seriousness of this international challenge can be encouraged by the systematic exchange of experiences, by the proper training of police and judicial staff and by the use of effective countermeasures. All this awareness will have a positive effect on the operational plans and legislative reforms that will have to be gradually carried out in order to fight organized crime at the international level.

33. This prospect becomes more evident when considering the fact that criminal organizations are inclined to expand their illegal activities in developing regions as long as more effective countermeasures are adopted elsewhere. In such a situation, organized crime will concentrate on those countries where the financial and economic sectors show lower resistance to criminal infiltration.

34. It is, therefore, of fundamental importance that all existing technical, bilateral and multilateral activities involving technical cooperation be well focused and that the means for coordinating such activities be studied in order to avoid overlapping.

35. A final aspect that should be given serious consideration is proper economic compensation for the victims of organized crime. This compensation should be charged to the person responsible for the crimes committed. Consideration should be given to the creation of a special fund to compensate victims when compensation cannot be charged to the person responsible; such a fund might be partially subsidized by confiscated capital.

36. Discussions on the possible close approximation of national legislation with regard to the criminalization of organized crime and related criminal justice measures should be actively pursued.

37. As to technical cooperation, the following three areas of intervention appear to be of particular interest:

(a) Assistance should be provided in drafting legislation in those countries that still do not have a penal system suitable for fighting organized crime;

(b) Special training courses for all personnel involved in the field should be planned and carried out. Specific training should be provided for police staff, investigating judges and magistrates, and all those officials who provide technical cooperation to investigative bodies;
(c) Technical assistance should be provided to those high-risk areas through the gathering, analysis and exchange of data on criminal organizations and related activities.

38. In relation to the question of which instruments are proper for the development of future action, it is believed that bilateral cooperation, especially through agreements between a growing but still limited number of countries, has highlighted inadequacies in the fight against organized crime. Through new agreements, new judicial measures and instruments could be tested. These could involve the whole international community.

39. It is the Conference that will identify the action and decisions to be carried out within the programme of work of the Commission. The Economic and Social Council, in its resolution 1993/29, stated that one of the objectives of the Conference would be to consider the feasibility of elaborating international instruments, including conventions, against organized transnational crime.

40. It is believed that decisions will be taken only when more precise ministerial choices concerning substantive matters become clear. This could lead to the elaboration of binding instruments, as indicated in Council resolution 1993/29, or the opportunity to establish tools other than binding legal agreements, such as models of technical agreements; manuals for police and judicial cooperation; publications or other communication methods, as well as computerized databases for storing and updating information on organized crime and on legal and practical countermeasures adopted in different countries.