

2. *Recommends* that in the course of the programme budget planning process, allocation should be made for special operational activities and advisory services in situations of urgent need and for programme organization, evaluation and reporting obligations;

3. *Determines* that in the areas noted in paragraph 1 of the present section, the objectives should be:

(a) To concentrate the majority of programme resources on the provision of training, advisory services and technical cooperation in a limited number of areas of recognized need, taking into account the need for technical assistance to developing countries, in order to achieve a synergetic effect, allowing intense and effective use of materials, resources and experience from both regular budgetary resources and voluntary contributions;

(b) In the case of special operational activities and advisory services in situations of urgent need, to offer timely and practical assistance to Governments, upon request, in situations that do not permit a problem to be adopted as a regular priority by the Commission on Crime Prevention and Criminal Justice; in implementing these special operational activities and advisory services, the Secretariat should place major emphasis on serving as a broker and clearing-house, providing advisory services and training to Member States from within existing budgetary resources and through voluntary contributions; the Secretariat should submit to the Commission at its second session a narrative and statistical report on the implementation of these special operational activities and advisory services, together with a statement of expenditure and any appropriate recommendations;

(c) With regard to programme organization, evaluation and reporting obligations, to assist the Commission in reaching agreement on the general goals of the programme and the needs to be met; to ascertain the capacity available to meet those needs; to determine the objectives, specific activities and mechanisms to be used for that purpose; to remain cognizant of pertinent developments and advise the Commission on them, and discharge other reporting responsibilities; and to mobilize support for the programme;

4. *Invites* the Commission to keep its priorities under review and to ensure that the programme developments related to the substantive preparations for the United Nations congresses on the prevention of crime and the treatment of offenders take those priorities into account;

5. *Accords* high priority to the United Nations crime prevention and criminal justice programme, in accordance with General Assembly resolution 46/152, and requests an appropriate share of the overall resources of the United Nations for the programme.

VII

FOLLOW-UP

1. *Urges* the Department of Economic and Social Development of the Secretariat, the United Nations Development Programme and other pertinent funding agencies and bodies to give full support to technical assistance projects in crime prevention and criminal justice and to encourage technical cooperation in this field among developed and developing countries;

2. *Decides* that the Commission on Crime Prevention and Criminal Justice shall include in its agenda, beginning with its second session, a standing item on technical assist-

ance, which would deal with the most practical course of action to be followed to render the programme fully operational and enable it to respond to the specific needs of Governments, including financial needs, if possible;

3. *Decides also* that the Commission shall include in its agenda, beginning with its second session, a standing item on existing United Nations standards and norms in the field of crime prevention and criminal justice, which serve as recommendations to Member States, and on, *inter alia*, their use and application;

4. *Requests* the Secretary-General to report to the Economic and Social Council at its substantive session of 1993, through the Commission on Crime Prevention and Criminal Justice, on the progress made in the implementation of the various provisions of the present resolution.

41st plenary meeting
30 July 1992

1992/23. Organized crime

The Economic and Social Council,

Alarmed by the rapid growth and geographical extension of organized crime in its various forms, both nationally and internationally,

Concerned about the menace that these developments represent to social stability, economic development, democratic institutions and legitimate business,

Aware that the transnational nature of a large portion of the activities of organized crime requires the intensification of technical and scientific cooperation, as indicated on several occasions by the Committee on Crime Prevention and Control,

Recognizing the importance of initiatives taken in this area by the Committee,

Recalling that the Economic and Social Council, in its resolution 1989/70 of 24 May 1989, called upon Governments, international organizations and interested non-governmental organizations to cooperate with the Committee in promoting international cooperation in combating organized crime,

Recalling also that the General Assembly, in its resolution 44/71 of 8 December 1989, requested the Committee to consider ways of strengthening international cooperation in combating organized crime and to submit its views, through the Economic and Social Council, to the General Assembly at its forty-seventh session,

Recalling further that the General Assembly, in its resolution 44/72 of 8 December 1989, requested the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to propose control measures aimed at eradicating the activities of organized crime,

Noting that the Eighth Congress, in its resolution 24, adopted the Guidelines for the prevention and control of organized crime,⁵⁸

Noting also that the General Assembly, in its resolution 45/121 of 14 December 1990, welcomed the instruments and resolutions adopted by the Eighth Congress and invited Governments to be guided by them in the formulation of appropriate legislation and policy directives,

Noting further that the General Assembly, also in its resolution 45/121, endorsed the decision of the Eighth Congress that priority attention should be given to specific

practical measures to combat international crime over the forthcoming five-year period,

Noting that the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime, held at Smolenice, Czechoslovakia, from 27 to 31 May 1991,⁵⁹ formulated important recommendations in this area,

Noting also that the International Seminar on Organized Crime, held at Suzdal, Russian Federation, from 21 to 25 October 1991,⁶⁰ pursuant to General Assembly resolution 45/123 of 14 December 1990, formulated practical measures against organized crime, aimed at enhancing the struggle against the different manifestations of organized crime,

Reaffirming that priority must be given to the struggle against all activities of organized crime, including money laundering, the infiltration of legitimate business and the corruption of public officials,

1. *Takes note* of the recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime, held at Smolenice, Czechoslovakia, and the practical measures against organized crime, formulated by the International Seminar on Organized Crime, held at Suzdal, Russian Federation, contained in annexes I and II to the present resolution, and offers them for consideration by Governments in their efforts to enhance the struggle against organized crime, both nationally and internationally;

2. *Requests* the Secretary-General to continue the analysis of information on the impact of organized criminal activities upon society at large, including data on the nature, extent, forms and dimensions of organized crime, on legislative measures and the promotion of international cooperation aimed at controlling organized crime, with special emphasis on economic crimes and the laundering of illicit funds, and on judicial practice as regards cases involving organized crime, with a view to keeping the Commission on Crime Prevention and Criminal Justice informed;

3. *Invites* Member States to give favourable consideration to the organization of practice-oriented workshops, research projects and training programmes to deal with specific aspects of organized criminal activities, with a view to exchanging ideas concerning law enforcement methods for control of those activities, which have proved to be both effective and consistent with the concept of respect for human rights.

*41st plenary meeting
30 July 1992*

ANNEX I

Recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime, held at Smolenice, Czechoslovakia, from 27 to 31 May 1991

The following recommendations were drawn up by the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime for the attention of the Intergovernmental Working Group on the Creation of an Effective International Crime and Justice Programme and the Committee on Crime Prevention and Control,⁶¹ at its twelfth session. They are drawn from the discussions of the substantive agenda items, as well as from the papers presented by experts and the United Nations or United Nations-affiliated institutes for the prevention of crime and the treatment of offenders:

1. The process of studying and combating transnational crime and crimes with transnational aspects should take into account a number

of factors, such as the considerable changes in the political, economic and social situation in the world and the extensive development of international business activities, including the creation of common markets and other forms of integration. It should also take into account the vulnerability of national frontiers, the high level of modern communication, the expansion of the international banking system and resultant simplification of money transfer, the extensive use of computer technology, the universal spread of illegal business in arms and explosives, the growth in the number of enterprises producing and using radioactive and chemical substances and the extensive use of such substances, and the limited geographical reach of national laws and national law enforcement authorities, differences in legal systems, and the limited effect of international procedures for obtaining evidence, apprehension and extradition of offenders.

2. In view of the political and economic changes taking place in many countries, including the newly emerging "market economies", new laws and regulations should be developed to permit anticipation of, and response to, changing situations and emerging economic realities. Exchanges of information on, and experiences with, economic crime and its control by criminal sanctions should be intensified. Due consideration should be given to regulatory mechanisms as essential complements to penal sanctions.

3. In view of the increasing seriousness and gravity of organized crime, terrorism and other transnational crimes, Governments should be encouraged to conclude bilateral and multilateral agreements to carry out or enhance the effectiveness of extradition proceedings and mutual assistance in criminal matters, using as a basis United Nations model treaties and other treaties and agreements concluded at the regional and international levels. The role of regional and subregional intergovernmental organizations in supporting the United Nations in this field would be essential. Appropriate coordination mechanisms should be established and maintained.

4. Countries should consider establishing a national organization with powers to plan and coordinate the domestic criminal justice and crime prevention programme. The composition of this organization should include representatives of the various relevant sectors of Government and the community.

5. Countries should agree to share information and intelligence on non-controversial matters. To facilitate such exchanges, countries should establish national databases with linkage to all other countries. A technical committee should be set up to overview these activities.

6. Countries should study the practices on extradition prevailing in certain regional groups, for example the Council of Europe. This could help to eliminate the difficulties associated with the technical requirements that are the main obstacles to extradition being granted.

7. National and international efforts to achieve more effective strategies to deal with transnational crime should focus on:

(a) Harmonization of legislation and avoidance of conflicts of jurisdiction that may result in serious transnational offenders escaping justice;

(b) Penalization of certain forms of behaviour to eliminate gaps in national legislation;

(c) Cooperation through extradition, mutual assistance, enforcement of foreign judgements, transfer of criminal proceedings, transfer of offenders, including designation of an appropriate coordinating authority to expedite the implementation of treaties;

(d) Integration of the various modalities of international cooperation to provide better and more efficient results;

(e) Reassessment of traditional principles of international cooperation, such as reciprocity, double criminality, specialty, the political offence exception and the non-extradition of nationals and territoriality;

(f) A lessening of the divergence of national conceptions of criminal justice, including substantive law and procedural rules and practices, with due respect for human rights considerations;

(g) The sharing of law enforcement intelligence (information) and the increase of joint activities in inter-State law enforcement collaboration;

(h) The development of effective financial mechanisms to trace the proceeds of illicit activities;

(i) The development of subregional or regional "judicial spaces", with a view to exploring the possibilities for their expansion, in accordance with particular and specific emerging needs;

(j) The inclusion of international and transnational crimes in national legislation, in particular with a view to eliminating safe havens;

(k) The development of the means to prevent, detect and prosecute abuses of power by public officials and other forms of corrupt behaviour;

(l) The development of education and training programmes in international criminal law at the level of legal education, as well as within public agencies;

(m) The development of specialized education and training of judges, prosecutors and law enforcement officials in the areas of transnational crime, money laundering and other economic offences, including corruption, and elaboration of the required training material;

(n) The development of regional centres to increase the availability of specialized library material, documents and research results, with the capacity to provide technical legal advice to countries of the region;

(o) Acceptance of the principle that all countries, regardless of how seriously they are affected by transnational crime, have to collaborate and share information on its nature and extent, to facilitate appropriate policy formulation and planning;

(p) The development of interfaces with existing international and regional networks such as the International Criminal Police Organization (ICPO/Interpol) and other international bodies;

(q) Strengthening of an awareness on the part of Governments and relevant national agencies of the important correlation between socio-economic development and crime control programmes, with appropriate budget and resource allocations, including international aid for crime prevention schemes.

8. Efforts should be pursued to formulate effective strategies for dealing with environmental offences. An assessment of the administrative, civil and criminal laws enforced by different countries should be made in order to identify gaps and propose appropriate remedies. Adequate attention should be given not only to the sanctioning strategies but also to the prevention of environmental abuse and the protection of the environment.

9. Efforts should be made to allow the widest possible distribution of information on stolen art objects so as to prevent their illegal sale, thereby effectively stemming the international traffic in movable cultural property.

10. In order to benefit from both successes achieved and failures, an assessment should be made of the results of cooperation already undertaken to prevent the use of the banking system and financial institutions for money laundering, including successful preventive measures. Initiatives such as the development by the Council of Europe of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, which was opened for signature on 8 November 1990,⁶² should be encouraged and efforts should be pursued to develop a multilateral agreement with universal application. The model decree for confiscation⁶³ is a very practical model, which could prove extremely useful in such an application. A detailed analysis of its provisions is available from the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the Secretariat.

11. Efforts should be made to gather information on corruption and anti-corruption strategies, with a view to assisting Governments in combating corruption and in providing a basis for formulating more effective policies to deal with it. Emphasis should be placed on the formulation of curricula for anti-corruption training courses, benefiting, in particular, developing countries. In addition to research, training and technical assistance in the most advanced methods of corruption control through repression, equal attention should be paid to prevention and education. The efforts of independent commissions against corruption can be useful in devising controls in public administration and in increasing public intolerance for waste and corruption. In its resolution 7,⁵⁸ the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders specifically requested the Department of Technical Cooperation for Development of the Secretariat to provide assistance for such outreach, requested the Secretary-General to publish in all the official languages the manual on practical measures against corruption,⁶⁴ which had already been prepared, and requested the Crime Prevention and Criminal Justice Branch to develop a draft international code of conduct for public offi-

cial for submission to the Ninth Congress on the Prevention of Crime and the Treatment of Offenders.

12. Recognizing that, while bilateral and regional cooperation may provide mechanisms for specific arrangements to prevent or investigate certain types of transnational criminality, they cannot provide a comprehensive solution in matters of cooperation in combating serious forms of organized crime at the international level. Multilateral cooperation should be made more effective, through the United Nations, which has the general mandate and the international constituency necessary to provide countries with guidance and assistance in the prevention and control of transnational crime. This could be pursued in the context of a genuinely international crime and justice programme, which would be capable of responding to the challenges of such crime.

13. United Nations surveys on crime trends should also include information on trends in transnational crime in order to permit an in-depth analysis of its scale, structure and dynamic, and of the extent of its material cost and potential social consequences. In the further development of the United Nations Criminal Justice Information Network, attention should be paid to the setting up of databases on transnational crime.

14. The idea of establishing a world foundation on crime prevention and assistance to victims of transnational crime should be pursued. The proposed foundation could help to identify and mobilize financial resources in support of the implementation of international crime prevention and criminal justice programmes, raise public awareness about crime trends and the rights of victims, develop innovative means of responding to technical assistance needs and provide financial support to victims.

15. The United Nations crime prevention and criminal justice programme should aim at developing the new mechanisms, procedures, conventions and institutions necessary to combat crime with transnational aspects and dimensions and to assist Governments in reducing domestic crime. For example:

(a) This could, in particular, include assistance to countries in:

(i) Gathering information on, and analysing, the incidence of crime and the efficacy of the response to crime;

(ii) Preventing crime and helping victims of crime;

(iii) Enhancing the criminal justice process through improved methods for the investigation of crime and developing pre-trial, trial and appellate review procedures;

(iv) Improving the administration of sentences and the reintegration of offenders into society and the control of recidivism;

(b) On the international level, the mandates should include:

(i) The drafting of international conventions, declarations and recommendations pertaining to the definition of international offences;

(ii) The enhancement of existing cooperative mechanisms and the development of new ones, including such mechanisms as mutual assistance and extradition;

(iii) The organization of trainee programmes for developing countries;

(iv) The drafting of model penal provisions dealing with selected offences;

(c) The mandate should further include the development and encouragement of coordinated subregional, regional and international activities from the investigative to the adjudicative stages, including ascertainment of the practicality of establishing subregional and regional penal tribunals with transferred jurisdiction, in order to meet more effectively the problems of particularly severe domestic crime and crime transcending national frontiers;

(d) Consideration should also be given to coordination by the United Nations of cooperative arrangements at the bilateral level, including the exchange of crime prevention and criminal justice personnel, such as police officers at different levels, who could in this manner conduct comparative studies in the area of criminal investigations into drug-trafficking and other similar activities. In addition, criminal justice attachés at embassies and consulates could help one another to reach a better understanding of the laws and court processes and procedures of their countries. This could be a very useful means of facilitating effective cooperation with respect to transnational crimes involving different countries;

(e) The United Nations government-appointed national correspondents in the field of crime prevention and criminal justice should be

come more operational. Ideally, their functions should be coordinated by an office or individual in an agency or institution with responsibilities in the criminal justice systems of the countries; this would permit them to ensure that action was taken when necessary and to respond accurately and with authority to United Nations inquiries;

(f) Technical cooperation, particularly at the regional and sub-regional levels, should be intensified through the development of technical assistance projects benefiting developing countries. Special consideration should be given to the strengthening of the operational capacity of the crime prevention and criminal justice programme and its interregional advisory services, to ensure that the most recent developments in modern technology and expertise are placed at the disposal of all Member States. Efforts should also be made to create regional advisers on crime prevention and criminal justice to provide services to the respective regions, in close contact with the regional institutes for the prevention of crime and the treatment of offenders;

(g) The United Nations crime prevention and criminal justice programme of work should be coordinated with that of ICPO/Interpol and other relevant organizations.

ANNEX II

Practical measures against organized crime, formulated by the International Seminar on Organized Crime, held at Suzdal, Russian Federation, from 21 to 25 October 1991

1. The International Seminar on Organized Crime, which was attended by leading law enforcement officials and experts from 15 countries, the United Nations Secretariat, the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, the International Criminal Police Organization (ICPO/Interpol) and the Office of International Criminal Justice of the University of Illinois at Chicago, United States of America, formulated the following practical measures against organized crime, which are based on a distillation of their considerable experience in its prevention and control. The applicability of these measures depends on particular legal and judicial systems, on the availability of resources and on the specific manifestations of organized crime.

I. PROFILE OF ORGANIZED CRIMINAL GROUPS

2. The evolution of organized crime and the forms it takes vary from country to country, although there are common features. The formation of criminal associations is influenced by various social, economic and legal factors. It is, however, possible to single out two basic ways in which organized crime evolves in the majority of countries. These are: involvement in illegal activities (such as property offences, money laundering, drug trafficking, currency violations, intimidation, prostitution, gambling and trafficking in arms and antiquities) and participation in the legal economic sphere (directly or through parasitic means such as extortion). Such participation always tends to use illegal competitive means and can be of greater economic impact than the involvement in entirely illegal activities. In both cases criminal methods are used because the backbone of organized criminal formations is composed of criminal elements.

3. No uniform definition of organized crime has yet been developed. In essence, however, it is usually understood as being a relatively large group of continuous and controlled criminal entities that carry out crimes for profit and seek to create a system of protection against social control by illegal means such as violence, intimidation, corruption and large-scale theft. A more general description would be "any group of individuals organized for the purpose of profiting by illegal means on a continuing basis".

4. Organized crime can be divided into many types. One such type is the traditional or the Mafia-style family, where structured hierarchies, internal rules, discipline, codes of behaviour and diversity in illegal activities are common practice. Included in such organizations are the largest and most developed types of criminal groups, involved in a multiplicity of illegal activities. Another type is the professional. Members of such organizations join together for a certain criminal venture. Such organizations are fluid and not as rigidly structured as those of the traditional type. They are exemplified by entities involved in counterfeiting, car theft, armed robbery, extortion and so forth. The composition of a professional criminal organization may be constantly changing and its members may be involved in a variety of similar criminal enterprises. In addition, there are many organized groups that

dominate particular territories, and others that are involved in particular types of crime.

5. There are also organized crime groups divided on the basis of ethnic, cultural and historical ties. These ties link them to their countries of origin, thus forming a major network extending beyond national borders. Exploiting the features of their origins, such as language and customs, they are able to insulate themselves from the actions of law enforcement agencies. Many organized crime groups have significant ethnic or national components and are often commonly referred to by ethnic or national labels. Because of their prevalence and the lack of a practical alternative, these labels are used in the present document, even though such terminology involves oversimplification, risks stereotyping and can be offensive to the vast majority of law-abiding members of that ethnic group or nationality.

6. Identification of these types of organized criminal groups does not necessarily imply rigid borderlines between them. Nearly every organized criminal entity may involve a multiplicity of component features. New forms involving different elements frequently arise. Some countries, for example, have seen the emergence of urban street formations, including juvenile gangs. Organized crime is, indeed, very adaptable; it is often characterized by rapid adaptation of the forms of its activities to the national criminal justice policy and to the protective mechanisms of States. Its leaders are often individuals of great intelligence and extreme cruelty, and are true professionals in crime, making them a particular threat to society.

7. Organized crime produces social, political and economic evils. Among the social evils are the adverse effects of illegal drugs on the behaviour and health of individuals, the growth of violence involving firearms, the fear of crime, manipulation and control of bodies such as labour unions and the increased cost of purchasing goods and services. For example, in one highly developed country, the largest organized crime group has controlled four of that nation's labour unions.

8. The political effects can include infiltration into and influence over political parties and the apparatus of government, including local administrations, and corruption of politicians and state officials. This often leads to a loss of public confidence in the Government and the political process and a breakdown of consensus within society. Many countries report that members of their police forces and armed forces have been corrupted by drug traffickers. Also, assassinations of government officials, judges, mayors and law enforcement officials in certain countries have alarmed public opinion throughout the world.

9. It is not possible to identify accurately or even to estimate all the economic consequences of organized crime. It infiltrates legitimate business, tainting all those with whom it comes into contact, as well as corrupting officials whose services are required to launder illicit profits. In some countries, the profits of organized crime can be compared to those of entire branches of industry; for example, the trade in illegal drugs has been estimated to be the second largest industry in the world, by value of goods. The income of organized crime groups equals the gross national product of many countries.

10. The ability of organized crime to generate a vast supply of capital, to infiltrate legitimate business and to ruin rivals by means of control over prices represents a serious threat to the very future of any society. Legitimate commerce can be undermined by the shadow economy, with all the political and social dangers following that process. The large illicit sums infiltrating the world economy affect a country's balance of payments, the monetary system, bank cooperation, the profitability of private firms and the prices of consumer goods and services.

11. The cooperation between the largest organized criminal entities and the growing internationalization of organized crime may create a system with such economic strength that it poses a threat that many countries would not be able to counteract on their own.

II. SUBSTANTIVE LEGISLATION

12. In practically all countries, those engaged in the illegal activities of organized criminal entities are subject to criminal liability in accordance with various laws which establish certain offences, or within the framework of common law in particular categories of crimes. Long experience in organized crime control has led many countries to adopt specific statutes designed to restrict the possibilities for organized crime to flourish. These statutes are both preventive and repressive. Evidence-gathering presents considerable difficulties and there are limits to the application of sanctions and measures against the illegal activities of those involved. Legislation should be kept

under review in order to ensure that it is responsive to changing circumstances.

13. It is very important that penal statutes should provide a means of establishing the criminal liability of both the actual perpetrators of a crime and the leaders of criminal entities (who are usually not directly involved in a specific crime). Unless criminal liability of the leadership or membership of criminal entities is established, it will only be possible to prosecute the lower rank of criminals, and not those who control them.

14. The danger and scope of organized crime are considerable. In some countries it may be considered advisable to enact legislation that has a direct impact on the crimes committed by members of organized crime enterprises. Such legislation would be directed not against any specific criminal act but against all serious crimes committed in a concerted manner by a group of individuals acting together for a common purpose. It may also be considered advisable to enact legislation prohibiting membership in a criminal association. It is advisable to specify in such legislation the elements of the offences committed by organized criminals and the factors that aggravate their seriousness.

15. To counteract effectively the laundering of proceeds of crime it is important that all countries adopt norms for banking and financial institutions and establish criminal liability in order to enable them to comply with the provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, of 1988.⁶⁵ Other instruments not limited to drug trafficking, such as regional conventions and model regulations, may also be of value.

16. One approach is to create an obligation to report to competent bodies every financial transaction in excess of an amount stipulated by the legislation, or an obligation to report every suspicious transaction. The establishment of criminal liability in case of failure to abide by such obligations will be of great assistance in combating money laundering. A proper inquiry into particularly suspicious transactions can be initiated on the basis of reports received, and reports can be used by investigators seeking to piece together how a criminal organization handles its flow of money. The reports also can serve the important function of corroborating the testimony of cooperating witnesses and they may bring to the attention of investigators a geographical region that has suddenly shown an increase in sizeable financial transactions (indicating that the area may have become the object of organized crime activities), or a bank where there have been suspicious developments in financial transactions. Appropriate international mechanisms should be developed for the exchange of such information.

17. The success of efforts to combat the laundering of "black money" directly depends on how accessible the activities of financial bodies are to the law enforcement agencies. The problem here is that opening up the activities of the financial bodies of any country to outside scrutiny can affect their competitive position. The activities of organized crime can, however, undermine an entire society. Furthermore, the money derived from organized crime often circulates through the same channels as money concealed from the taxation authorities. In view of this, it is vital for the banks to maintain records of the identity of their clients, and to cooperate with law enforcement agencies whenever there are suspicious deposits or other transactions. It may be necessary to strengthen mechanisms of control over banking operations and even to centralize information of this kind. Governments should encourage banks to take as much responsibility as possible for the controls on criminality.

18. At present, money laundering is considered a crime in some countries only. This gives international organized crime the chance to benefit by using the banking and other services of countries that lack such legislation. All countries should therefore include in their criminal codes a crime of "money laundering", in accordance with the provisions of article 3 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Consideration should be given to ensuring that such legislation embraces all proceeds of organized crime.

19. Corruption greatly facilitates the activities of organized criminal groups. In view of this, many countries have enacted special anti-corruption legislation. The fight against organized crime would be greatly assisted if all countries were to follow the anti-corruption recommendations adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders⁶⁸ and make appropriate use of the manual on practical measures against corruption⁶⁴ approved at that Congress. It is important that countries take steps to

prevent organized crime groups from corrupting individuals and organizations in the economic and financial sectors, particularly in such areas as State contracts and trade services.

20. A crime committed by an organized group may be considered an aggravated one. The criminal codes of many countries define the commission of a crime by an organized group as a qualifying feature.

21. In addition to the traditional sanctions of incarceration or fines that may be imposed upon conviction, consideration should be given to other sanctions designed to deter organized criminality. Some countries use judicially imposed limitations on property, residence, association and daily activities of persons formally adjudged to be criminally dangerous, often taking past convictions into account. The granting of licences and public contracts may be conditional on the absence of criminal connections and proof of good reputation. Individuals and legal entities engaged in economic or financial activities involving great risk to the public, for example deposit-taking institutions or those that deal with toxic waste, should be subject to sufficiently severe and sufficiently enforced regulation to prevent wrongdoing, in particular since penal punishments rarely provide proper compensation for victims. Particular attention must be paid to the deterrence and punishment of misconduct by legal entities, such as multinational and other corporations. Individual executives may frequently be beyond national jurisdiction and personal responsibility may be difficult to establish. Criminal punishment of the entity itself, by fine or by forfeiture of property or legal rights, is used in some jurisdictions against corporate misconduct.

22. Crimes committed for economic gain can be successfully countered by the forfeiture of such gains and of any other assets of the individuals and organization involved. In some legal systems, great significance is attributed to the freezing, seizure and confiscation of assets related to illegal activity. The need for more effective organized crime control makes it necessary to regard forfeiture as a strategic weapon, an economic method of discouraging organized crime activities and the means of eliminating the financial advantages of such antisocial activities.

23. The procedures for freezing, seizure and confiscation should be broad in their scope and permit the confiscation of a wide range of assets of an offender. The State should be able to eliminate all gain to offenders from their criminal activity. A subsidiary benefit of such action is that law enforcement agencies may be allowed to use confiscated assets or funds to further the activities of the agency. This can be a powerful incentive. International agreements may provide for the sharing of such assets.

24. In dealing with organized crime, it is appropriate to have the following types of assets subject to confiscation: (a) any property constituting the proceeds of organized criminal actions and any assets obtained with the help of these proceeds; and (b) any property used or intended to be used, in any manner or part, to commit or facilitate the commission of a crime by an organized group, including land, buildings and other private property.

25. Consideration may be given to allowing certain evidentiary rules to be used in the procedures for confiscation of the assets of criminals involved in organized crime. For example, if it is proved that defendants had acquired assets during the time they were committing offences for which they had been convicted, and there is no other likely method by which they could have acquired the assets, then it may be reasonably inferred that the assets are the proceeds of crime. In the drafting of legislation related to such confiscation, whether preventive or repressive, the liberty and property rights of individuals must be protected in accordance with national constitutional principles.

III. PROCEDURAL LEGISLATION

26. In many countries criminal procedures oblige the court, prosecutor, investigator and police, as appropriate, to carry out investigations within their power whenever there are indications that a crime has been committed. There may, however, be discretionary powers that allow the law enforcement agencies to choose not to investigate a crime or to initiate a prosecution. Where this discretion exists it is often used by investigators when working with informants from criminal circles. Its use requires a high degree of professional responsibility on the part of investigators. Legal systems should be encouraged to recognize the possibility, in some cases, of granting minor criminals immunity from prosecution for their acts, for the purpose of disclosing the leaders of organized criminal groups.

27. The criminal laws of many countries specify the elements that must be established to prove that an offence has been committed. These may include: the act of committing a crime; the defendant's guilt and motives for the crime; any aggravating or extenuating circumstances, including the defendant's record, and the nature and amount of damage inflicted by the crime. Evaluation of the evidence is carried out by the official performing the investigation, the prosecutor, and finally by the court. In practice, there is no difference in the standard of evidence required in respect of crimes committed by organized crime groups against other crimes.

28. Deciding on the verdict must remain a task for the authority exercising judicial powers over serious offences committed by organized crime. In doing so, the principle of the presumption of innocence must be followed.

29. The experience of many countries suggests that it may be advantageous to use information obtained with the help of electronic surveillance, undercover agents, controlled delivery of drugs, the testimony of accomplices and other methods of preliminary investigation as evidence. The acceptability of such methods of preliminary investigation should be limited by strict observance of legal requirements and criminal procedural principles.

30. The use of the testimony of accomplices can be extremely helpful in prosecutions involving organized crime. Careful assessment and use of such testimony can enable the law enforcement process to penetrate the layers of secrecy that are characteristic of criminal organizations and would otherwise protect them from prosecution. Some countries also find it advantageous to enact legislation obliging witnesses to testify truthfully and providing for sanctions if they refuse to do so.

31. The restriction of the liberty of the defendant prior to conviction is frequently allowed by law when there are specified grounds. The main form of such restriction of liberty prior to conviction is pre-trial detention. This can be ordered if it is appropriate in view of the seriousness of the case and the possible sentence upon conviction and for other reasons such as the possibility that the defendant will seek to evade justice or has tried to escape, the possibility of concealment of evidence, or the possibility that the defendant will commit further offences or otherwise be a danger to the community.

32. It may be appropriate to have conditional release provisions, so that a defendant who has been accused of an offence could be released upon the payment of a certain sum of money unless the judicial authorities believe that pre-trial detention is necessary. The question of whether a criminal may be released on bail should normally be a matter for a judicial or other competent body but the financial resources of an organized criminal often make release inexpedient. The appropriateness of granting conditional release and other benefits in cases of organized criminality must be evaluated with regard to the criminal record of the accused and the gravity of the accusation.

33. Provisions for the protection of witnesses are of great importance in combating organized crime. It is therefore recommended that national systems of criminal justice pay close attention to provisions, programmes and any legislation aimed at providing for the security of a witness. In particular, they should consider adopting measures for the protection of witnesses that allow for the relocation and change of identity of those witnesses, along with their physical protection if a threat is posed by a defendant and the defendant's associates. This can necessitate making arrangements to provide the witnesses with documents enabling them (and their families) to establish a new identity, with temporary housing, providing for the transportation of household furniture and other personal belongings to a new location, subsistence payments, assisting them in obtaining employment, and providing other necessary services to help the witnesses to lead a full and normal life. In considering the type of protection to be provided, the financial circumstances of a country must be taken into account. In addition, provision should be made for the safe custody of incarcerated witnesses, including separate accommodation. Legislation may also be necessary to deal with the practical problems that can arise in connection with relocated witnesses, such as child custody disputes and crimes committed in the witnesses' new identities.

IV. LAW ENFORCEMENT METHODS

34. If effective action is to be taken against organized crime, the law enforcement authorities need to be able to predict and detect organized criminal activity. This requires the systematic collection and

analysis of all relevant information from all sources in order to make it possible to produce and use intelligence for both strategic and tactical purposes. The methods employed for the collection and utilization of such information may be authorized and controlled by legislation. Even so, it is important that the technical facilities and techniques that the law enforcement authorities are allowed to use should always be sophisticated enough to enable them to match those employed by organized crime.

35. The production of intelligence requires the collection, collation and analysis of a wide range of information on the persons and organizations suspected of being involved in organized criminal activity, often including information that at first sight is not directly related to organized crime. There may be no rigid borderline between strategic and tactical intelligence but the main aim of tactical intelligence is to help in the planning of particular police operations and to identify the sources for obtaining the evidence that makes it possible to arrest a suspect and to prove guilt. Trained intelligence analysis greatly increases the effective application of law enforcement intelligence. It is important to note that there is often a need to continue the collection of information at all appropriate stages of the legal process. Intelligence should always be collected in such a manner that, even years later, it can be retrieved and used as evidence.

36. Where resources permit, computerized information systems may be of particular benefit in combating organized crime. Computers should be used to store information both on the persons and organizations suspected of being involved in organized criminal activity and on the crimes committed or being planned. Where there are different law enforcement agencies collecting information on organized crime, arrangements need to be made to allow an exchange of information, for example between local and national (or federal) authorities, and between local police forces in different areas. Careful attention must be paid to the compatibility of computerized systems, and the convertibility of manual systems to computerized systems. Creation of a centralized data bank may be appropriate in some countries. This information can be shared internationally on the basis of agreements. Technical assistance in criminal intelligence systems may be of mutual benefit to developing and developed countries.

37. Particular attention should be paid to information from confidential police sources, including prisoners. Further important intelligence will come from other sources, however, including open sources and international liaison. In particular, financial and taxation bodies, when permitted to do so, may be of great assistance in organized crime control, as they frequently find themselves directly in contact with organized groups when these groups seek to use the proceeds of criminal activity. Legislative inquiries and official and public records may also be of value. An essential resource in the effective investigation of organized crime is the capability to collect complicated financial and commercial information and present it in an intelligible manner as evidence. Information concerning forfeitable assets should also be collected, so that such property can be forfeited and made available for police use.

38. The infiltration of organized crime into legal enterprises and any contacts it may make in political circles can create a superficial respectability, facilitate corruption and be used by criminals to hinder investigation of their activities. Therefore, law enforcement agencies, when collecting various data on the criminal activity of a particular person or organization, should try to obtain the most comprehensive intelligence picture possible. Law enforcement agencies should adopt a range of measures, which may include the following:

(a) Developing intelligence, through informants, searches and other techniques, to uncover large-scale organized criminal enterprises;

(b) Determining the factors and conditions that facilitate the development of organized criminal activity;

(c) Providing for centralized collection, storage and analysis of information (including use of criminal organization charts) and for the tactical application of such information;

(d) Ensuring cooperation with law enforcement authorities and other bodies involved, using a multi-agency approach;

(e) Studying the experience of other countries in organized crime control;

(f) Developing, on the basis of the above factors, an integral criminal policy of legislation, allocation of resources and mobilization of public support.

39. To lift the veil of secrecy, conspiracy and fear-induced silence of possible witnesses, as well as to understand how the criminal communities function, who directs their activity, where their illegal income is channelled and so on, it is recommended that law enforcement bodies of all countries collect intelligence and evidence of criminal activities by undercover means. With the right safeguards, secret operations directed against organized crime can be conducted effectively through the use of undercover agents and informants, often in conjunction with the use of technical facilities to intercept and to record conversations the contents of which may facilitate the disclosure of crimes. These techniques may include wire-taps, surveillance by means of closed-circuit systems, night vision equipment etc., as well as video and audio recording of ongoing events. In some jurisdictions, such technical surveillance may be used only if other mechanisms of investigation have failed or there is no reason to think that they will lead to the desired results, or if other mechanisms are deemed to be too dangerous.

40. If extreme care is exercised with regard to the reliability of their testimony, and due account is taken of the gravity of their offence, the cooperating witnesses for the prosecution may be a valuable means of infiltrating organized crime groups. Mitigation of sentence or even dismissal of charges, where possible, can motivate lesser criminals to assist in investigations of organized crime. Incorporation of such procedures into national legislation or recognized practice, together with the protective services previously discussed, may serve to attract such cooperating witnesses.

V. ORGANIZATIONAL STRUCTURES

41. Organized crime may be investigated by a variety of law enforcement agencies with different jurisdictions. In this connection, it is advisable to ensure that close coordination is maintained between central and peripheral structures and that law enforcement authorities also ensure effective liaison between intelligence and operations. In countries with federal structures, it is essential that effective mechanisms be established to ensure coordination of jurisdiction, intelligence and operations among federal policing agencies and those of other governmental units. Close coordination within and between agencies and units is essential to successful action against organized crime. A clear delineation of jurisdiction among agencies and units can contribute to a harmonious and effective working relationship.

42. When resources permit, it may be very useful to set up one or more specialized units dedicated to the investigation of organized crime, particularly in the areas of corruption, money laundering and illegal drug trafficking. There is a danger, which must be recognized, that exclusive jurisdiction over an area of investigation may create susceptibility to corruption, and appropriate safeguards against this must be developed.

43. Within any individual law enforcement agency, a strictly centralized senior management system that can scrutinize all aspects of investigations and monitor their course is necessary to ensure that all investigations are conducted in accordance with national laws and with proper respect for human rights. It is important for senior management officials to take due account of the necessity of ensuring financial, logistical and moral support.

44. Investigators, and in particular those leading the investigation, should be selected on the basis of their ability, experience, moral qualities and dedication. The importance of basic and in-service training should not be underestimated, for prosecutors and judges as well as for policemen.

45. The relationships between investigative, prosecutorial and judicial functions vary markedly between different legal systems. To combat organized crime successfully, in any system, it is necessary for these three functions to be harmoniously coordinated. Even so, due respect must be accorded to maintaining the proper relationships between the functions.

VI. INTERNATIONAL COOPERATION

46. International experience shows that organized crime has long crossed national borders and is today transnational. The following crimes, in particular, are found most frequently in international dealings: drug trafficking, contraband, counterfeiting of currency, traffic in stolen motor vehicles, money laundering and traffic in minors and arms. It should be noted that aspects of the evolutionary process undergone by society may make powerful criminal organizations even more impenetrable and facilitate the expansion of their illegal activi-

ties. Therefore, international cooperation between the law enforcement agencies of all countries is vital for effective organized crime control. Law enforcement operations should pay due respect to the sovereignty of all nations. Such cooperation should be developed on a sound legal basis, created at national, bilateral and multilateral levels. While an international jurisdiction is a remote but possible goal, the easiest mechanism is often bilateral inter-State agreements. Although multilateral agreements require extensive negotiation, they can be of great use, as is the case with the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

47. In addition to cooperation in legal matters, effective international action against organized crime can be promoted through bilateral and multilateral cooperation in training, technical assistance and research, and through the exchange of information, in particular for the benefit of developing countries. The United Nations crime and criminal justice programme provides an appropriate framework for these activities. Effective cooperation is also facilitated by making proper use of the valuable facilities and services provided by the International Criminal Police Organization (ICPO/Interpol), and by various regional and subregional arrangements.

48. Since criminal organizations are very mobile and inventive in their use of the slightest deficiencies in national laws, all States should consider making provision to ensure that their judicial and law enforcement agencies respond adequately to requests for legal assistance from other countries. The main forms of cooperation so far established at the national level include exchange of information on organized crime in general and cooperation in specific operational matters; extradition; the transfer of a witness from one country to another; mutual legal assistance to seize and confiscate the proceeds of illegal activities and other assets; and the provision of training and assistance to other police forces, especially for combating illegal drug trafficking.

VII. EVALUATION

49. In order to determine the appropriate level of the law enforcement response, mechanisms to evaluate the gravity of the threat posed by organized crime are needed. The current state of knowledge demonstrates considerable lack of precision in this regard. Some countries have attempted to quantify the financial harm caused by organized crime but these have remained only estimates. More extensive and rigorous research in this area may be of value to legislators and governmental administrators, who have to make appropriate decisions on the allocation of resources to combat organized crime.

50. The prevention and control of organized crime should not remain a matter for the law enforcement authorities alone. It requires broad cooperation with other authorities, the business community, civic organizations and the community as a whole. Mobilization of the public to participate in this work requires educational measures and the responsible cooperation of the mass media to reveal the harm caused by organized crime and its dangers to individuals and to society, and to stimulate public participation in the struggle to defeat it.

1992/24. Preparations for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

The Economic and Social Council,

Considering that, pursuant to General Assembly resolutions 415 (V), annex, of 1 December 1950 and 46/152, annex, of 18 December 1991, the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders is to be convened in 1995,

Recognizing the significant contributions of the United Nations congresses on the prevention of crime and the treatment of offenders to the promotion and strengthening of international cooperation in crime prevention and criminal justice,

Bearing in mind the new role of the congresses stipulated in paragraph 29 of the statement of principles and programme of action of the United Nations crime preven-