



# Economic and Social Council

Distr.: Limited  
6 February 2006

Original: English

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## Commission on Crime Prevention and Criminal Justice

Fifteenth session

Vienna, 24-28 April 2006

Item 6 (d) of the provisional agenda\*

### International cooperation in combating transnational crime: fraud, the criminal misuse and falsification of identity and related crimes

## Study on fraud, the criminal misuse and falsification of identity and related crimes

### Report of the Secretary-General

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\* E/CN.15/2006/1.



## I. Introduction

1. In its resolution 2004/26 of 21 July 2004, entitled “International cooperation in the prevention, investigation, prosecution and punishment of fraud, the criminal misuse and falsification of identity and related crimes”, the Economic and Social Council requested the Secretary-General to convene, in consultation with regional groups and subject to the availability of extrabudgetary resources, an intergovernmental expert group, with representation based on the regional composition of the Commission on Crime Prevention and Criminal Justice and reflecting the diversity of legal systems and open to any Member State wishing to participate as an observer, in order to prepare a study on fraud and the criminal misuse and falsification of identity that would deal, *inter alia*, with the following issues:

(a) The nature and extent of fraud and the criminal misuse and falsification of identity;

(b) Domestic and transnational trends in fraud and the criminal misuse and falsification of identity;

(c) The relationship between fraud, other forms of economic crime, the criminal misuse and falsification of identity and other illicit activities, including organized crime, money-laundering and terrorism;

(d) The prevention and control of fraud and the criminal misuse and falsification of identity using commercial and criminal law, criminal justice and other means, and how those could be harmonized;

(e) The particular problems posed by fraud and the criminal misuse and falsification of identity for developing countries and countries with economies in transition.

2. In the same resolution, the Economic and Social Council requested the Secretary-General to submit a progress report on the work of the intergovernmental expert group and the plan of work for the study to the Commission on Crime Prevention and Criminal Justice at its fourteenth session and to submit, in a timely manner, a substantive report containing the results of the study to the Commission at its fifteenth session or, if necessary, at its sixteenth session, for its consideration.

3. With the support of the Government of Canada, a meeting of the open-ended Intergovernmental Expert Group to Prepare a Study on Fraud, and the Criminal Misuse and Falsification of Identity was held in Vienna on 17 and 18 March 2005.<sup>1</sup> The report of that meeting was submitted to the Commission on Crime Prevention and Criminal Justice at its fourteenth session, in accordance with Economic and Social Council resolution 2004/26. It was a progress report that summarized the deliberations during the meeting and the recommendations made by the Expert Group with respect to the nature, scope and methodology of the study and the information that should be sought from Member States and other relevant entities to form the basis for it.

4. One of the issues discussed at the meeting of the Expert Group was the time frame for the completion of the study. While the view was expressed that it would be important to make every effort to complete the work for submission to the

Commission on Crime Prevention and Criminal Justice at its fifteenth session, it was noted that the timing would also be governed by the length of time it would take to gather the information required. Furthermore, this approach was in accordance with the mandate given by the Economic and Social Council in its resolution 2004/26, by which the Council had authorized the Secretary-General to submit the report containing the results and findings of the study to the Commission at its sixteenth session, "if necessary", for its consideration. On the understanding that sufficient information and representative data that would allow the elaboration of the substantive report containing the results of the study had not been received by the end of January 2006 (see para. 17 below), and given that more complete data could be gathered and a more comprehensive and valid study could be conducted by deferring the submission of the substantive report for one more year, the Secretary-General has the honour to bring the present interim, procedural report to the attention of the Commission.

5. The present report provides an overview of the action taken by the Secretariat in conformity with the recommendations of the meeting of the Expert Group. It also includes a brief presentation of the methodology used and the mechanisms established with a view to gathering the information and material required for conducting the study. Finally, it includes data updating the material sent by Member States to the Secretariat, as well as information on the time frame of future work geared towards the completion of the study and its submission to the Commission on Crime Prevention and Criminal Justice at its sixteenth session for consideration.

## **II. Methodology and information-gathering**

6. In relation to the methodological and procedural issues linked to the elaboration of the study, the Expert Group noted that, in order to conduct the actual work of the study, including the gathering and analysis of data and the preparation of a draft report containing its findings and results, a smaller group of volunteer technical experts on fraud and identity fraud was needed. Although a number of Member States had already volunteered to provide experts to participate in and contribute to the work, the Expert Group invited Member States not represented at the meeting to consider designating specialized experts for that purpose.

7. At its meeting the Expert Group agreed that the study should consider information and materials provided by the experts themselves, data available from governmental sources, including relevant and appropriate policy, legislative, research and other materials, and, where relevant and feasible, information from commercial and other intergovernmental or non-governmental sources. The Expert Group also agreed that a questionnaire should be prepared and disseminated by the Secretariat to Member States to obtain information on fraud and the criminal misuse and falsification of identity. The Expert Group further agreed that the questionnaire should consist of a single survey instrument in two basic parts, one dealing with fraud and the other with identity fraud,<sup>2</sup> based on the outlines contained in the technical paper submitted by the delegation of Canada at the meeting and taking into consideration Economic and Social Council resolution 2004/26, the annotated agenda of the meeting and the views expressed during the meeting.

8. In view of the above, the Secretariat undertook to prepare a draft questionnaire in collaboration with the Expert Group. For that purpose, there was also preliminary consultation with experts attending the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok from 18 to 25 April 2005. It should be recalled that issues related to the scope of the study and the types of criminality that might be covered therein had a prominent place in the proceedings of the Eleventh Congress, as they were discussed in the Workshop on Measures to Combat Economic Crime, including Money-Laundering and the Workshop on Measures to Combat Computer-related Crime. In addition, in the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,<sup>3</sup> which was adopted at the high-level segment of the Eleventh Congress, Member States were called upon to strengthen policies, measures and institutions for national action and international cooperation in the prevention, investigation and prosecution of economic and financial crimes and such crimes conducted via, or facilitated by, information technologies. The Bangkok Declaration also included specific reference to the crucial importance of tackling document and identity fraud in order to curb organized crime and terrorism. Furthermore, Member States committed themselves to improving international cooperation, including through technical assistance, to combat document and identity fraud, in particular the fraudulent use of travel documents, through improved security measures, and encourage the adoption of appropriate national legislation.<sup>4</sup>

9. A first draft of the questionnaire elaborated for the purposes of the study was submitted as a conference room paper<sup>5</sup> to the Commission on Crime Prevention and Criminal Justice at its fourteenth session for consideration and review. The draft questionnaire was further updated prior to its dissemination to take into account, to the extent possible, comments and remarks received from Member States.

10. The questionnaire, as amended and finalized, was attached to a note verbale dated 15 September 2005 and disseminated to Member States with a view to obtaining the necessary information for the elaboration of the study. Member States were asked to respond to the questionnaire as fully as possible at their earliest convenience, but not later than 10 January 2006. The questionnaire was also sent to the experts who had attended the meeting of the Expert Group for their consideration, with a view to their submitting to the Group data, observations or conclusions in specific subject areas of the study.

11. In conformity with Economic and Social Council resolution 2004/26, the Secretariat maintained direct contacts with the United Nations Commission on International Trade Law (UNCITRAL). Such contacts were deemed necessary in view of the fact that the Commission on Crime Prevention and Criminal Justice, while discussing the problem of fraud at its thirteenth session, in 2004, and considering the recommendation of a resolution for adoption by the Economic and Social Council, had taken into account the earlier work of UNCITRAL bodies. Furthermore, it had considered the problem from a criminal and public law perspective and in a broader context, including private law aspects and commercial and other types of fraud. In this connection, a representative of the secretariat of UNCITRAL had attended the meeting of the Expert Group and given an overview of the recent work of UNCITRAL in the area of commercial fraud, highlighting the need for the integration of private commercial law and public criminal law elements

in the study and drawing attention to relevant information that had already been gathered by the UNCITRAL secretariat from private commercial and other sources, which could be used in the study.

12. In addition, and in furtherance of the relevant recommendation of the meeting of the Expert Group, joint action with the UNCITRAL secretariat was undertaken with a view to collecting information from commercial and other private-sector sources. In this context, a joint letter, to which the above-mentioned questionnaire on fraud and identity fraud was attached, was sent to private-sector companies in October 2005 seeking information on issues falling within the scope of the study. The letter emphasized the vital importance of such information for capturing the complete picture of the problems to be addressed in the study, as well as its usefulness for ensuring a fair and balanced outcome in terms of not only the material that would form the basis of the study, but also its findings and recommendations. It was further pointed out that, as the questionnaire was designed to ensure the submission of information on both criminal and commercial aspects, it was not expected that private-sector entities would respond to all the questions therein, and therefore partial responses focusing mainly on the commercial aspects were encouraged. Finally, it was stressed that any data received from the private sector would remain confidential and, if published, anonymous.

13. The scientific rapporteur of the meeting of the Expert Group had the opportunity to report on this joint activity and its envisaged purpose during the Group of Experts Meeting on Commercial Fraud, organized by the UNCITRAL secretariat in Vienna from 12 to 14 October 2005. The scientific rapporteur further highlighted that the note verbale sent to Member States with a view to collecting information for the study had also encouraged national authorities to send the attached questionnaire to private-sector companies domiciled in their countries, asking for relevant information.

14. Further information on the subject areas of the study, particularly on aspects related to identity fraud, is expected to be provided by Member States within the framework of the reporting mechanism established by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime. The Conference held its second session in Vienna from 10 to 21 October 2005. The Conference adopted, *inter alia*, decision 2/3, entitled "Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime", and decision 2/4, entitled "Implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime".<sup>6</sup> In those decisions, the Conference of the Parties requested the Secretariat to collect information from States parties and signatories to the Protocols in the context of the programme of work approved by the Conference, including on matters related to the security and control of travel or identity documents (article 12 of both Protocols), as well as their legitimacy and validity (article 13 of both Protocols). For that purpose, questionnaires were developed by the Secretariat, in accordance with guidance provided by the Conference of the Parties, with a view to gathering information on those issues as well. It is envisaged that the responses to be received, reviewed and assessed by the Secretariat, with a view to the third session of the Conference of the Parties, in October 2006, will provide an additional source of information for the

part of the study that deals with the criminal misuse and falsification of identity (identity fraud).

15. The Secretariat will further utilize the work and discussions of the second World Summit of Attorneys General and General Prosecutors, Chief Prosecutors and Ministers of Justice, held in Doha from 14 to 16 November 2005. That Summit was organized by Qatar, and assistance was provided by the Secretariat in its preparation and substantive servicing, in accordance with Economic and Social Council resolution 2004/30 of 21 July 2004. It is expected that the recommendations approved by the Summit as a result of thorough discussions and a constructive exchange of views at its first workshop on the requirements of prosecution services to deal with new and sophisticated forms of crime, particularly cybercrime and economic and financial crime,<sup>7</sup> will form a solid basis for the formulation of the conclusions and recommendations of the study.

16. Moreover, the Secretariat is in contact with the International Civil Aviation Organization (ICAO) to explore the possibility of further cooperation and exchange of information, especially on issues relating to travel documents, as recommended by the Expert Group. In this connection, it should be noted that ICAO forwarded to the Secretariat guidance material prepared under the auspices of the Group of Eight Lyon/Roma Group relating to minimum security standards for the handling and issuance of machine-readable and other passports, as well as the Guidelines for Dealing with External Passport and Other Travel/Identity Document Fraud. This material will also be taken into consideration for the purposes of the study, particularly when focusing on best practices and measures to curb identity fraud.

### **III. Responses from Member States**

17. As at 30 January 2006, the Secretariat had received responses to the questionnaire on fraud and identity fraud from the following 13 Member States: Belarus, Finland, Morocco, Norway, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Turkey and United Kingdom of Great Britain and Northern Ireland. Many of them had also provided copies of their relevant legislation. Several other Member States indicated that they were in the process of conducting consultations and gathering supplementary information prior to submitting their responses to the questionnaire. This material does not form a sufficient and representative basis on which the study on fraud and identity fraud could rely exclusively. It does, however, constitute a first set of information from Governments to be compiled and circulated by the Secretariat to the experts involved in the study project, together with additional material expected to be received in due course from other Member States and from private-sector entities.

### **IV. Concluding remarks: future work and time frame for completion of the study**

18. The Secretariat will continue to serve as the focal point for the submission of responses to the questionnaire and any other material deemed necessary and useful for the elaboration of the study. In this context, the Secretariat sent a reminder to Member States and experts involved in the study project, by means of an

information circular and communication via e-mail, respectively, asking for information and input that could be utilized for the purposes of the study. The Secretary-General avails himself of this opportunity to appeal to Member States that have not yet done so to complete and submit the responses to the questionnaire with a view to ensuring the availability of comprehensive material that would allow a wide-ranging overview of the problems dealt with in the study.

19. In relation to the future work and the time frame for the completion of the study, it is noted that the drafting process for the main part of the report could be launched as soon as the Secretariat receives and circulates to the experts more responses to the questionnaire or other materials related to the study. In that light, it is expected that the drafting exercise could start in due course and the first draft of the report containing the results of the study could be circulated in September or October 2006. Then a final meeting of the Intergovernmental Expert Group could be convened, subject to the availability of extrabudgetary resources, to review the draft report, consider and resolve any outstanding issues within the Expert Group and formulate any recommendations or other outputs resulting from the process.

20. It should be noted that in its resolution 2004/26 the Economic and Social Council requested the Secretary-General to circulate in advance the report on the work of the Intergovernmental Expert Group and the results of the study, including information on useful practices, guidelines or other materials, to all Member States in all official languages, in order to seek their views on the results of the study and to reflect any views or concerns expressed in the final report to the Commission on Crime Prevention and Criminal Justice. In that light, it is stressed that full compliance with the proposed time frame and subsequently early processing and distribution of the final report are extremely important if that report is to form the basis for a substantive discussion and follow-up by the Commission. Furthermore, it is recalled that the issues related to the study constitute new subject areas for many Member States that will need more time to consider the relevant parameters of the study than that needed to address other long-established issues before the Commission.

21. The final, substantive report will contain the completed work of the Expert Group. As already pointed out to the Commission at its fourteenth session, the study, as soon as it is completed, may be used, from a substantive point of view, as the basis for further consideration by the Commission and may also be used as a resource by the law enforcement and policymaking authorities of Member States at the national level and as the basis and springboard for further research or analysis. Moreover, the Economic and Social Council, in its resolution 2004/26, requested the Expert Group to use the information gained by the study for the purpose of developing useful practices, guidelines or other materials in the prevention, investigation and prosecution of fraud and the criminal misuse and falsification of identity. The final report would comply with these requirements.

#### *Notes*

<sup>1</sup> See E/CN.15/2005/11.

<sup>2</sup> There was agreement in the meeting of the Expert Group that, for reasons of convenience, the term "identity fraud" would be used to refer to the problem described in Economic and Social Council resolution 2004/26 as "the criminal misuse and falsification of identity" and that that

would be done on the understanding that such reference would be without reference to further discussions on the activities involved, the problems posed by those activities or the relationships of those activities to other crimes and related issues. The use of that term would also be without prejudice to the selection of an appropriate label or description at the conclusion of the study.

<sup>3</sup> A/CONF.203/18, chap. I, resolution 1.

<sup>4</sup> Ibid., paras. 26 and 27.

<sup>5</sup> E/CN.15/2005/CRP.5.

<sup>6</sup> See CTOC/COP/2005/8, chap. I.

<sup>7</sup> See E/CN.15/2006/17.