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IMPLEMENTATION OF THE CONCLUSIONS AND RECOMMENDATIONS OF THE SEVENTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Proposals for concerted international action against forms of crime identified in the Milan Plan of Action

Report of the Secretary-General

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INTRODUCTION

1. The mandate for this report is contained in the following resolution: the Economic and Social Council, in resolution 1986/10, section I, urges the Secretary-General to accord priority to the development of specific proposals to co-ordinate concerted international action against the forms of crime identified in the Milan Plan of Action, 1/ and to transmit such proposals to the Committee on Crime Prevention and Control at its tenth session. In addition, the General Assembly, in resolution 41/107 of 4 December 1986, invited Member States and the Secretary-General, in implementing the results of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to accord priority attention to the forms of crime identified in the Milan Plan of Action. This request for priority was reiterated in Economic and Social Council resolution 1987/53, paragraph 3 (b), of 27 May 1987 and in General Assembly resolution 42/59 of 30 November 1987.

2. The present report contains a preliminary analysis of the phenomena of transboundary criminality, which has been compiled with a view to stimulating a discussion between the experts of the Committee on Crime Prevention and Control. For that purpose, a number of proposals for national and international action in respect to this form of criminality have been formulated. It is clear that the Committee may also wish to take into account the results of the interregional expert meetings, particularly those examining topics 1, 3 and 5 of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, whose recommendations will have a bearing on the issues covered in the present report.

3. In addition to identifying five clusters of criminal phenomena whose consequences have a transboundary character, the report also summarizes several international initiatives directed at coping with the unique challenges resulting from the internationalization of criminal activities. In the light of recent developments, it appears that none of these initiatives has been either sufficiently comprehensive or incisive to have an impact on the problems at hand. This inadequacy seems to derive from a variety of factors, such as the heterogeneity that characterizes the international community and the reliance on certain outdated concepts that have traditionally regulated the intercourse between nations. Be that as it may, an analysis of the international dimensions of criminality leads to the conclusion that purely domestic policies and strategies are insufficient to face the menace represented by transboundary crime.

4. It is thus becoming more and more evident that intensified international co-operation is a major and probably indispensable component of the struggle against international criminality. Such co-operation may take a variety of forms, can be staged in different ways and can be focused to address particularly serious priority issues. For it to become effective, however, this co-operation requires some reformulation of certain entrenched and outdated traditional practices. The United Nations could play a decisive role in this respect, helping to facilitate such developments, as the recommendations contained in the reports of the interregional preparatory meetings for the Eighth Congress demonstrate. The Committee, as the body in charge of United Nations activities in the field of crime prevention and criminal justice, including the quinquennial congresses, may wish to perform, once more, a guiding and pioneering role in this connection by indicating the main directions for further work in this field, particularly in relation to the forthcoming Eighth Congress.

5. An alarming increase in transnational criminal activities has occurred in recent decades. In some cases, this growing internationalization of crime may be the immediate result of the extension of operations to foreign countries by

certain criminal organizations or other entities of a corporate character. In other cases, the international aspect may be the outcome of more or less formal co-operative agreements establishing extensive transnational networks that are composed of two or more nationally based organizations. In still other cases, the international character of the activities may result from the fact that the operations in question necessarily include some sort of international transaction, such as the export and import of illegal goods and services. This internationalization may also be the consequence of a number of natural and other forces that export the results of certain licit or illicit undertakings.

6. To a considerable extent, this new international dimension of crime has emerged as the reflection and outcome of modern advances in electronic and transportation technologies, which have brought about the development of instant communication over great distances, as well as the massive displacement of goods and persons. Thus, licit international trade and commerce and worldwide travel have been paralleled and mimicked by the rapid growth of an international criminality that utilizes the same means of transport and communication. The expansion in the transnational dimensions of criminal and harmful activities has rapidly become a major source of concern for many members of the international community. The deleterious consequences of these acts on national and international, social, political and economic structures and processes, and the apparent relative inadequacy of current prevention and control mechanisms to deal with this kind of transboundary phenomena are becoming increasingly evident.

7. In line with the mounting preoccupation caused by the ever-expanding internationalization and increasing gravity of certain criminal acts, the Seventh Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, Italy, from 26 August to 6 September 1985, approved by consensus the Milan Plan of Action, 1/ which recommended, inter alia, that priority be given to combating terrorism, in all its forms, through co-ordinated and concerted action by the international community, and that a major effort to control and eradicate the phenomena of illicit drug traffic and of organized crime should be undertaken. The Milan Plan of Action affirmed, inter alia, that crime is a major problem of international dimension, demanding a concerted response from the community of nations, and urged the extension of technical co-operation activities to help developing countries to cope with this problem.

8. The Seventh Congress also adopted by consensus the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, which contain recommendations for national, regional and international action. Many of these recommendations are, directly or indirectly, closely related to the issues of transnational criminality discussed in the present report, such as especially harmful crimes (principle 6), criminal negligence in matters pertaining to public health, the exploitation of natural resources and the environment (principle 7), economic crime (principle 8), corporate responsibility (principle 9), and international co-operation in crime prevention and criminal justice (principles 36 to 47).

9. Furthermore, the Seventh Congress also approved by consensus the following resolutions: 1 on organized crime; 2 on the struggle against illicit drug trafficking; 3 on international co-operation in drug abuse control; 5 on technical co-operation in the field of crime prevention and criminal justice; 22 on crime prevention in the context of development; and 23 on criminal acts of a terrorist character. 2/ These and other decisions and resolutions of the Seventh Congress were unanimously endorsed by the General Assembly in its resolution 40/32 of 29 November 1985.

I. INTERNATIONAL ASPECTS AND DIMENSIONS OF CONTEMPORARY CRIMINALITY

10. International crime is a term generally used to mean breaches of established international conventions, whereas transnational crime is an expression used to cover, in a less formal way, a much wider area of illicit conduct. This difference notwithstanding, the two terms will be used more or less interchangeably in this report.

11. It is feasible to group most crimes and/or harmful acts possessing an international character in five clusters, as follows: (a) internationally organized, mafia-type crimes with profit as the ultimate aim; (b) terrorist activities of a transnational nature; (c) economic offences involving operations and transactions in more than one country; (d) illicit exportation and importation of art objects belonging to the cultural and religious patrimony of a nation; and (e) activities that, through pollution or otherwise, affect the ecological balance and environmental viability of other countries beyond the one in which they originate.

A. Organized crime

12. Customarily employed, the term organized crime refers to large-scale and complex criminal activities carried out by tightly or loosely organized associations and aimed at the establishment, supply and exploitation of markets for illegal goods and services for the purpose of profit and enrichment of the association's members, at the expense of society. Such activities and operations are usually carried out with a ruthless disregard of the law, and often involve offences against the person, including threats, intimidation and physical violence. A frequent side-effect of these activities is the corruption of public officials and powerful political figures by bribes and favours.

13. Only a few decades ago, organized, or syndicated crime as it is also known, was primarily a phenomenon restricted to some Western countries and to a handful of developing countries serving as sources of, or transit points for, the illegal goods and services handled by criminal organizations. Since the end of the Second World War, however, a marked international expansion and intensification of organized criminal activities has been witnessed. 3/

14. The increasing internationalization of organized crime is evidenced by the extension of its operations to additional Western countries, 4/ its spreading to a much larger number of developing countries, both as new sources and as new markets for the goods and services provided by the criminal organizations, 5/ and its apparent extension to some Eastern European countries. 6/ The damage inflicted on the economic apparatus, political system and social stability of all affected countries is often very serious, particularly on the more vulnerable and fragile structures of developing countries.

15. Organized crime networks are extremely effective in reducing detection and increasing overall profitability. While rivalry over the monopoly of certain markets and the absence of arbitration mechanisms frequently erupts in violent gang wars aimed at the elimination of competitors, these internal conflicts seldom succeed in undermining the division of labour and the overall power and organizational structure of organized crime.

16. The illicit world markets established and managed by internationally organized crime permit the exchange of a large variety of illegal goods and services. In this process, the management of the criminal operations involved has come to resemble closely the methods and techniques of contemporary

businesses of a legal nature. This application of modern management techniques to the perpetration of criminal undertakings has further increased the overall efficiency of the entire criminal network, 7/ thereby contributing to the attainment of very high profit levels. In one major industrialized country, for instance, the net income of organized crime, that is to say, the gross revenues less such overhead costs as salaries, transportation, entertainment and payoffs, is conservatively estimated, by an official commission, to amount to $US 30 billion a year. 8/

17. The transnational activities of organized crime include, inter alia, illicit drug trafficking; traffic in persons for the purposes of sexual enslavement or economic exploitation and, increasingly in recent years, illegal adoption of children; large-scale counterfeiting, illicit currency manipulations, illegal transfer of capital and of unlawfully acquired assets, fraudulent bankruptcy and large-scale maritime insurance fraud; smuggling; and certain modern versions of piracy. 9/ The near future may witness substantial additions to this list, as new fashions emerge and as certain technological advances continue.

18. There are two common negative consequences of the international operations of organized crime that require special attention: massive and widespread corruption, and large-scale infiltration of legal business.

19. With respect to corruption, bribery of public officials at all levels and of influential politicians is a favourite instrument employed by organized crime in its drive to ensure protection and escape detection, and to avoid disruption of its international activities. The destructive impact of these practices on the moral fabric of the societies affected can hardly be exaggerated. Thus, widespread corruption undermines all sense of duty among the public officials involved in it and generates demoralization and cynicism among the general public, who feels powerless against it.

20. The control of corruption, whether associated or not with the transnational activities of organized crime, must be seen, therefore, as one of the major tasks in the struggle against the most serious manifestations of criminality. The difficulties encountered in this endeavour cannot be minimized, particularly in view of the key powerful positions sometimes occupied by the beneficiaries of corruption within the national administrations and political structures of some countries. In a few extreme cases, the level of corruption, reinforced by the widespread intimidation of officials and other persons unwilling to accept bribes, may be so pronounced that prevention programmes that are only of a domestic nature may be effectively neutralized and rendered inoperative. 10/

21. The infiltration of legitimate businesses often serves as an additional risk-reduction tactic. It is necessitated by the pressing need of organized crime to launder at least part of the huge profits yielded by their national and international transactions and operations. It has been suggested that only the smaller part of such profits is used for the continuation of the criminal activities in question and that the larger share, channelled through so-called off-shore financial centres, goes into overseas holdings and is absorbed in the international flow of capital. 11/ Finally, the penetration of legitimate business operations, in particular those engaged in international trade and commerce, offers organized crime the actual means for establishing channels to transport the illegal merchandise that is the real object of their transactions, such as drugs and weapons, across national borders and customs. 12/

22. In this connection, it appears that existing national legislation and the relevant international conventions and instruments are not fully adequate to deal effectively with the complex task at hand. The abuse of bank secrecy, as practised by certain countries, represents, moreover, a powerful obstacle to the tracking down and detection of illegal funds. 13/

B. Transnational criminal acts of a terrorist character

23. Although there exists no generally agreed upon definition of terrorism at the international level, for present purposes, international terrorism may be conceptualized as terrorist acts committed by one or more individuals, regardless of motivation, that have an international dimension because the authors plan their action, are directed or come from, flee to and seek refuge in, or otherwise receive any form of assistance from a country or countries other than the one in which the acts themselves take place.

24. In a world characterized by instant communication, rapid technological change and increasing geographical mobility, the opportunities and means for international terrorism have multiplied. At the same time, the impact and lethal nature of terrorist attacks have greatly increased. In addition, certain developments in weaponry and explosives have augmented the difficulties inherent in their detection. 14/ As a result, an alarming proliferation of such activities has been witnessed in recent decades in spite of the considerable resources allocated by governmental authorities to their prevention and control. Still more alarming is that, as noted by a specialist in the field, "... now that terrorists use rockets and missiles, it is believable that they will use chemical and biological weapons in a short time, and many circles expect that nuclear weapons will become part of the terrorist arsenals in the near future". 15/

25. Attempts at devising international mechanisms capable of coping with the challenge of terrorism were initiated before the Second World War. Thus, after the assassination of King Alexander of Yugoslavia and the French Foreign Minister, Louis Barthou, at Marseilles, in 1934, the Council of the League of Nations established a committee of experts to study the problem. The resulting International Conference on the Repression of Terrorism adopted a Convention against Terrorism on 16 November 1937, the Protocol of which contained a Statute for an international criminal court. "It was the first time that an international convention set aside the dogma of sovereignty of States to establish the supremacy of international penal judgements which previously had been the exclusive province of national jurisdictions." 16/ The Convention, unfortunately, never entered into effect, since it was ratified by only one country.

26. The Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Kyoto, Japan, from 17 to 26 August 1970, reacted to increased terrorist activity, although the topic was not contained in the formal agenda. Thus, hijackings and kidnappings as a means of obtaining unlawful concessions from Governments were specifically mentioned in the discussions as examples of new and emergent forms of crime. 17/

27. By the time of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva, Switzerland, from 1 to 12 September 1975, the marked increase in terrorist activities in the intervening years motivated the inclusion of the subject in the agenda (item 5): "Changes in the forms and dimensions of criminality - transnational and national". In the discussion of the subtopic dealing with terrorism, it was emphasized that international terrorism, of whatever kind, was a genuine area of concern to the United Nations. There was also agreement that measures

should be studied with a view to strengthening the forces of criminal justice by: (a) extending universal jurisdiction to all such crimes, as was already the case for air piracy, especially if they endangered the lives of innocent persons; (b) ensuring the observance of extradition laws; (c) reinforcing the operational capacity and technical co-operation of the International Criminal Police Organization (INTERPOL) through mutual exchange of information and assistance. 18/

28. The internationalization of terrorist activities has occurred against a background of chronic tension and conflicts between nations, and often in conjunction with unresolved grievances on the part of ethnic or social groups, which feel that their legitimate aspirations are being denied by the prevailing social and political structures and the existing distribution and relations of power within a given society. It is precisely this context that appears to constitute the major obstacle to the establishment of true and effective international co-operation for the eradication of transnational terrorism. 19/, 20/ This is particularly alarming in view of growing evidence indicating the establishment of much closer international co-operation between terrorist organizations. This process, in which violent movements in different countries, often with extremely diverse ideologies, have formed links with one another, is seen as giving rise to the establishment of a true "terrorist international". 21/

29. The greater efficiency and destructive power evidenced by terrorism in recent years and the greater operational capability attained through the international co-ordination of terrorist groups 22/ constitute a particularly alarming development in view of the marked vulnerability of many contemporary societies to carefully aimed acts of sabotage that may reach the nerve centres of large urban conglomerates or even entire countries. Furthermore, since one of the main objectives of terrorist organizations is the publicity obtained by their attacks, the visibility of the target adds propaganda value to the enterprise. 23/

30. The above-mentioned vulnerability is, in part, the outcome of the growing reliance of complex systems on computers as information processing instruments. The application of electronic gadgetry has become so widespread in recent years, that a modern social and economic order is becoming more and more unthinkable without the use of computers. This extensive reliance on ever more rapid and more efficient computers, which undoubtedly is having a positive impact in many areas of human society and in numerous countries, could be exploited by terrorist organizations bent on wreaking havoc on the social order. As some people, known as hackers, have, in recent years, been capable of penetrating highly protected and sensitive computer systems, nothing guarantees that terrorists could not accomplish similar feats resulting in widespread chaos and a staggering loss of human life. 24/

31. In spite of the difficulties encountered by the attempts to establish effective co-operation mechanisms for the prevention and control of transnational terrorism, the United Nations system has had some degree of success in creating international instruments aimed at the prevention of certain forms of this phenomenon. 25/ Thus, the International Civil Aviation Organization (ICAO) adopted the Convention on Offences and Certain Acts Committed on Board Aircraft, known as the Tokyo Convention, in 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, known as the Hague Convention, in 1970; and the Convention for the Suppression of Unlawful Acts against the Safety of Civilian Aviation, known as the Montreal Convention, in 1971. Furthermore, the General Assembly, by resolution 3166 (XXVIII) adopted the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents in 1973; and, by resolution

34/146, the International Convention against the Taking of Hostages, in 1979. Finally, the International Atomic Energy Agency concluded the Convention on the Physical Protection of Nuclear Material in 1980.

32. In addition, three conventions with a regional scope have been adopted for the purpose of combating transnational terrorism: the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, known as the Organization of American States (OAS) Convention, of 1971; the European Convention on the Suppression of Terrorism, known as the European Convention, of 1971; and the Agreement on the Application of the European Convention for the Suppression of Terrorism, known as the Dublin Agreement, of 1979.

33. The central disposition of the international conventions obligates a State that apprehends an alleged terrorist in its territory to either extradite him or her or to submit his or her case to its own authorities for prosecution, the latter course being followed when extradition fails (aut dedere aut iudicare). The conventions also obligate the parties to take steps towards apprehending the accused and hold them in custody. Thus, the main objective of these provisions is to ensure that the alleged offender is prosecuted. To this end, the obligation to submit the alleged offender for prosecution, in case extradition is denied, is strongly formulated. The obligation is not so much to try the accused, however, as to submit the case to the appropriate prosecuting authority. Consequently, if the criminal justice system lacks independence there exists a considerable possibility of political intervention in preventing the trial, a conviction or the implementaton of the punishment. Moreover, even if the criminal justice system does function independently, and without political interference, it may still be extremely difficult to obtain the evidence needed to convict somebody for a crime committed in a foreign country.

34. Of the three regional instruments, the OAS Convention has been largely superseded by the Convention on Internationally Protected Persons. In any case, although its key provisions focus on extradition or punishment of alleged offenders under national legislation, the long-standing regional tradition of granting asylum has often undermined any real chance of extradition taking place. A more serious shortcoming is that if a State decides against a request for extradition, it is totally free to refuse to prosecute an alleged offender without violating the Convention.

35. The European Convention attempts to define more narrowly the applicability of the political offence exception to activities of a terrorist nature, such as hijacking, kidnapping, hostage-taking and the use of explosives. Further, it creates the obligation for the State party to the Convention to submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution in instances where it has refused to extradite the alleged offender. In attempting to exclude various common crimes, as well as terrorism, from the political offence exception to extradition, however, the Convention has met with considerable resistance among State parties, which, upon signing or ratifiying it, have reserved the right to refuse to extradite for an offence that they consider political.

C. Transnational economic crimes

36. Economic crimes were examined by the Fifth Congress, in 1975, as a sub-topic of agenda item 5: "Changes in forms and dimensions of criminality - transnational and national", as was also the case with organized crime and

terrorism. The discussion of the issues raised by economic criminality led to the conclusion that more effective control over abuses by national and transnational enterprises could be achieved by the following: (a) establishment of national securities and exchange commissions and, possibly, the establishment of a similar body at the international level; (b) legislation against national and transnational abuses of economic power in the exercise of commercial activities by national and transnational enterprises; (c) greater participation of shareholders in the affairs of major corporations or of workers in public enterprises; (d) provision of more information on economic criminality by such bodies as commissions of inquiry, consumer groups and labour unions; and (e) initiation of special studies on corruption and smuggling, in view of their extremely detrimental effect on national economies and international trade, particularly in developing countries.

37. Five years later, at the Sixth Congress, the issue of economic crimes was subsumed as a subtopic of agenda item 5: "Crime and the abuse of power: offences and offenders beyond the reach of the law". In this connection, the Sixth Congress adopted resolution 7, which recommends, inter alia, that effective strategies should be developed internationally, regionally and nationally to prevent, prosecute and control such abuses. The resolution also recommends that co-operative efforts should be intensified between Member States to prevent, prosecute and control abuses of economic power that extend beyond national boundaries and territorial jurisdictions. These efforts should include mutual legal assistance treaties or conventions establishing procedures for the gathering of evidence and the extradition of persons. 26/

38. Basically, two sorts of offences are customarily subsumed under this category. First and most importantly, the category includes harmful acts or crimes committed by one or more persons for the purpose of maximizing, maintaining or obtaining economic profit for the legally constituted multinational corporations for which they work, and with the knowledge and tacit or explicit approval of higher policy-making or decision-making instances within the established corporate structure, such as managers or directors. In this area, there is substantial work in progress on the part of the Commission on Transnational Corporations of the United Nations. Secondly, the category may also include offences committed by individuals not employed by corporations, who represent their activities as legal financial or commercial operations, whereas from the beginning their conscious intent has been to defraud individual investors, public or private institutions, or Governments, and the operations involved are undertaken or carried out in a transnational context.

39. As far as multinational or transnational corporations are concerned, the size and volume of the operations of some of them unavoidably provide them with a level of economic power that, when yielded by unscrupulous corporate officials, may easily be transformed into an effective instrument of pressure against unco-operative government officials. Thus, the threat to terminate a certain operation, or to withdraw or withhold certain investments, may force public administrators to ignore serious violations of the law or of the constitutive contract between a national Government and the corporation involved.

40. In numerous cases, transnational economic criminality concentrates on income tax evasion by, inter alia, the falsification of import or export invoices. Typically, this is very often a far more serious problem for the developing than the developed countries, where the scarcity of properly trained personnel is a major obstacle to effective detection. Moreover, the currencies of those countries, usually soft currencies, are further weakened by the circumventing of foreign exchange controls.

41. There can be no doubt that the majority of operations undertaken by transnational corporations or by international actors of a non-corporate nature are not only legal, but also may represent an asset for the receiving countries that may see their economies substantially reinforced by the corresponding investments. This should not lead, however, to an under-evaluation of the massive harmfulness of the undertakings of the criminal operators. Since the victims of this form of international criminality are often developing countries, the operations in question frequently cause considerable damage to development programmes. Furthermore, these criminal operations are very frequently associated with corruption, thus leading to negative consequences identical to those indicated in the case of organized crime, i.e. malfunctioning and inefficiency of the State apparatus, widespread demoralization, political instability and the wholesale undermining of the basic structures of social life. 27/

42. One additional phenomenon in relation to economic criminality, both national and transnational, is the emergence of what has come to be known as computer crimes. 28/ It has become obvious in recent years that the rapidly increasing utilization of computer technology and world-wide computer networks as an integral part of contemporary international financial and banking operations has created conditions that greatly facilitate criminal economic operations within and between countries. Such misuses, to which the multiplication of comparatively inexpensive personal and home computers has also contributed, are certainly not restricted to economic offences, as was indicated above with respect to terrorist activities. Some experts believe that almost all crimes, with the exception of rape but including murder, could be committed by means of the available computer technology and its ever-widening applications. 29/

43. The abuse of computers as a modality of economic crime is undergoing a very rapid increase. Thus, one major industrial country reported 7 such offences in 1985 and 174 in 1986. Although it is difficult to imagine that such a rate of growth will continue unabated throughout this decade, the potential damage to the orderly development of international economic transactions is evident and is particularly alarming in view of the massive volume of international financial operations carried out daily through these channels.

44. An additional source of concern in this respect is the difficulty of detecting computer offences. This is the result of the opportunities available to a good computer specialist of erasing most traces of his or her activities. Another characteristic of computer criminality that further complicates the difficulty of detection is that, thanks to the existence of world-wide communications networks based on numerous satellites, such crimes can be committed in fractions of seconds, while their investigation may take weeks if not months, thus providing the offender with valuable lead-time.

D. Crimes against the environment

45. Serious and sometimes irreversible damage to the environment, such as various forms of massive air, water and land pollution, which threaten to gravely affect the ecological balance, cease being exclusively a matter of national concern when their destructive impact makes itself felt beyond the borders of the country in which such activities are initiated. Thus, the massive use of chemical herbicides and detergents, the release of large amounts of gases in the atmosphere, the careless and indiscriminate disposal of poisonous and radioactive industrial wastes, to mention only the most salient examples, can no longer continue to be considered as falling within the prerogatives and the jurisdiction of a single country. The harm they

cause to the environment, and therefore to life and property, does not stop at the national borders of the country responsible.

46. This is particularly true of a number of practices that generate a global threat, such as the damage done to the ozone layer through the industrial use of certain gases, or the massive escape of radioactivity into the atmosphere. Consequently, environmental criminality may well be an area in which the traditional and very narrowly interpreted concepts of sovereignty and of criminal responsibility may be in urgent need of re-examination and re-adjustment to the international realities created, at least in part, by the development and uncontrolled utilization of certain technologies. 30/ This is the conclusion reached by the World Commission on Environment and Development when it states that "the traditional forms of national sovereignty are increasingly challenged by the realities of ecological and economic interdependence. Nowhere is this more true than in shared ecosystems and in those parts of the planet that fall outside national jurisdictions". 31/

47. In this connection, the Convention on the Protection of the Environment, known as the Nordic Environmental Convention, concluded between the Nordic States at Stockholm on 19 February 1972, possesses, in terms of regional co-operation, a pioneering value in that it almost completely abolishes terms such as national borders and exclusive sovereignty. "It is, in this convention, explicitly laid down that a State considering the permissibility of environmentally harmful activities must take into account what nuisance these activities may cause any other contracting State." 32/

48. International awareness of the threat to the ecological system represented by the various sorts of massive pollution is not new, as illustrated by the convening at Stockholm, in June 1972, of the United Nations Conference on the Human Environment. The Conference adopted a Declaration on the Human Environment, to which a set of 26 principles were attached, as well as a Plan of Action 33/ containing 109 recommendations related to the protection of the environment and the preservation of the ecosystem. Principle 21 explicitly declares that States have "in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

49. Since then, international interest in the protection of the environment has not abated, as illustrated by the adoption of several specialized international instruments and the establishment of the International Environmental Information System (INFOTERRA). Recent examples are the adoption by the Governing Council of the United Nations Environmental Programme, by resolutions 14/25 and 14/27 of 17 June 1987, of the Goals and Principles of Environmental Impact Assessment, which was developed by the Working Group of Experts on Environmental Law, and the London Guidelines for the Exchange of Information on Chemicals in International Trade, respectively. In addition, Governing Council resolution 14/30 of 17 June 1987, approved the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes.

50. None the less, many recent incidents gravely affecting numerous countries have newly highlighted the potential devastating international consequences of certain common practices and procedures. In addition, such events have illustrated the insufficiencies of the existing bilateral and multilateral arrangements for redress of and retribution for inflicted damages. The dumping of industrial wastes into the oceans, the appearance of so-called acid rain, the massive escape of radioactive gases, the leakage of chemical

products into transnational waterways and other such phenomena which have resulted in the progressive destruction of entire forests, the radioactive contamination of crops and dairy products in vast areas, and the nearly total annihilation of animal life in major rivers and lakes painfully document the international dimensions of pollution. 34/

51. Some of the phenomena that are threatening the ecological balance are the consequences of negligence or of human failure. Others are the result of practices that are undertaken in full knowledge of their deleterious consequences, for the purpose of profit maximization 35/ or of attaining, as fast as possible, a higher level of economic or industrial development with the least immediate cost.

E. Crimes against the cultural heritage

52. From an international perspective, the category of crimes against the cultural heritage is composed of the procurement and/or acquisition of archaeological and artistic objects that have been classified by the national authorities as part of the cultural heritage of a nation, for the purpose of exporting them to other countries, in violation of existing prohibitions. This transnational traffic, which threatens to deplete the cultural heritage of many nations, particularly in the third world, has caused deep concern in numerous countries. This concern led to the adoption, by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its sixteenth session, in 1970, of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. This Convention, however, has apparently found a not very receptive echo among some developed countries, only a handful of which have so far either ratified or accepted it. 36/

53. The Fifth Congress examined offences involving works of art and other cultural property as a subtopic of agenda item 5, "Changes in forms and dimensions of criminality - transnational and national", and arrived at the following conclusions: (a) there was a need for a better exchange of information concerning the protection of cultural objects at the international level; (b) such information should include particulars of national legislation designed to facilitate recovery of property that had been the object of illicit traffic and to deal effectively with those who engaged in theft or destruction of cultural property, by licensing requirements for auctioneers and dealers in antiques; (c) consideration should be given to the desirability of a code of ethics for professional dealers in art objects; and (d) new efforts should be made to obtain wider ratification, acceptance or adherence to the 1970 UNESCO Convention.

54. In an attempt to cope with the same problem, the Organization of American States approved resolution 210(V-O)/76, on 16 June 1976, which contained the Convention on the Defense of the Archeological, Historical and Artistic Patrimony of the American Nations, known as the San Salvador Convention. Of particular interest in the present context is that the Convention, in article 14, specifically includes the offences against the cultural patrimony in the extradition treaties in existence between States parties to the Convention.

55. Some experts believe that if the present rate of unauthorized digging of such sites continues unimpeded, the entire cultural heritage of numerous nations will have been disposed of by international traders within a few more decades. Valuable contributions to an understanding of the problem and to the search for solutions have been made by the United Nations Social Defence Research Institute (UNSDRI), the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD; Spanish acronym) and by the Arab Security Studies and Training Centre.

56. Although the harm caused by these offences is perhaps subtler and, consequently, more difficult to observe than is the case for the often quite material effects of the other forms of transnational criminality, it is no less real and harmful. What seems to be at stake is the meaning of life and self that people obtain through their identification with the norms and values of their culture. To the extent that a culture does not exist merely in the form of abstract concepts but finds expression and anchorage in material objects, the plundering and alienation of such objects undermine the cultural constellation, both in its contemporary as well as in its historical dimensions.

57. In the past, the involvement of professionals, such as retailers and art and antique dealers, in this illegal trade has been incontrovertibly ascertained. Further, these operations cannot be easily carried out without the complicity of some officials at different levels. In this respect, it appears that many Governments are still ill-equipped to accomplish the necessary level of control, both from a material as well as a juridical point of view.

58. In addition to the scarcity of resources, which often paralyses public officials by seriously hampering their surveillance activities, both in situ and at the borders, the insufficiency of international instruments makes restitution extremely difficult and time-consuming. The small number of ratifications of the UNESCO Convention by the main importing countries underlines the difficulties in combating these offences at the international level.

59. Although it is true that the most destructive plundering of the cultural heritage of nations and the export of all moveable items have predominantly occurred and continue to occur in developing countries, such criminal activities are by no means restricted to the third world. Historical buildings, archaeological sites, temples, churches and even museums in developed societies have been, in recent years, the theatre of operations for highly sophisticated art thieves resorting to the use of specialized equipment. The seriousness of the threat to the European cultural heritage has been reflected in the opening for signature of the European Convention on Offences relating to Cultural Property, by the Council of Europe, at Delphi, Greece, on 23 June 1985. As stated in the introduction to the explanatory report to the Convention "cultural property in museums, in churches, in private collections, on archaeological sites, has become, these last few years, the victim of unprecedented pillage, theft and destruction. An organized underground brings the loot to market, usually in a country other than the one from where it comes". 37/

II. ATTEMPTED SOLUTIONS AND THEIR SHORTCOMINGS

60. One of the major reasons for the serious difficulties encountered in the prevention and punishment of international offences appears to derive from their very nature, that is to say, from their transnational character. The large number of jurisdictions in the contemporary world and the diversity of existing national legislations pose particular and acute problems to the administration of justice in relation to crimes affecting, directly or indirectly, more than one sovereign State.

61. Extradition, which is, in theory at least, one of the main mechanisms for international co-operation in criminal matters, illustrates the deficiencies of current arrangements. Current extradition treaties are usually concluded

on a bilateral basis. Given the large number of sovereign States now in existence in the world, however, a bilateral approach may no longer be truly adequate to cope with the complexities of transnational criminality. Partly as a reflection of the fact that none of the principles of the traditional law of extradition has received sufficient universal recognition to have been declared a principle of general international law, however, no world-wide, general treaty of extradition has received the acceptance of the international community. Extradition laws remain essentially influenced by the concept of the sovereignty of States, and the granting of extradition is often considered more as an exception to national interest than a contribution to international solidarity. 38/

62. The same difficulties are encountered in respect to jurisdiction. In this connection, it may be asserted that the territorial principle of jurisdiction, which is still the most widely applied, and even the nationality principle appear insufficient to solve jurisdictional problems that emerge in relation to the prosecution and punishment of international offences. The principle of limited jurisdiction over acts of non-nationals committed in a third country is already applied in cases of piracy. Global interest, however, has not yet been carried to the point of recognizing, either in customary law or in international agreements, the principle of universal jurisdiction for other international offences.

63. In recent decades, hijackers have almost been equated with pirates as enemies of the human race. The offence of hijacking has been called aerial piracy, albeit the purpose of the hijacking is often of a political nature, and thus does not fall within the traditional concept. The Hague Convention on the Suppression of Unlawful Seizure of Aircraft (1970), for instance, has enlarged the number of States competent to exercise jurisdiction over hijackers in a manner that includes the introduction of new bases for the exercise of jurisdiction.

64. Such extensions of jurisdiction are taking place in specific areas. Thus, the European Convention on Offences relating to Cultural Property, article 13, paragraph 1, states that each Party "... Shall take the necessary measures in order to establish its competence to prosecute any offences relating to cultural property: (a) committed on its territory, including its internal and territorial waters, or in its airspace; (b) committed on board a ship or an aircraft registered in it; (c) committed outside its territory by one of its nationals; (d) committed outside its territory by a person having his/her habitual residence on its territory; (e) committed outside its territory when the cultural property against which that offence was directed belongs to the said Party or one of its nationals; (f) committed outside its territory when it was directed against cultural property originally found within its territory". Although this paragraph attempts to extend jurisdiction beyond what the territorial principle would traditionally allow, limits to this extension are set in paragraph 2 of the same article, which states that "... in the cases referred to in paragraph 1, sub-paragraphs d and f, a party shall not be competent to intiate proceedings in respect of an offence relating to cultural property committed outside its territory unless the suspected person is on its territory". 39/

65. A similar attempt to extend the limits of jurisdiction was undertaken by an open-ended intergovernmental expert group entrusted with the preparation of a Draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The Draft Convention, paragraph 2 of article 2 bis, states, inter alia, that each Party "... (a) shall also take such measures as may be necessary to establish its jurisdiction ..., when: the alleged offender is

present in its territory and it does not extradite him to another Party on the ground that the offence has been committed: (i) in its territory or on board a ship or aircraft which was registered under its laws at the time the offence was committed, or; (ii) by a national or by a person who has his habitual residence in its territory; (b) may also take such a measure as may be necessary to establish its jurisdiction ... when the alleged offender is present in its territory and it does not extradite him to another party on any other ground than those specified in subparagraph (a) above". 40/

66. As is the case with extradition, the majority of judicial assistance arrangements are of a bilateral nature. Moreover, they have not been concluded in large enough numbers to constitute a thick, world-wide net, and thus have not yet attained an adequate level of effectiveness. The formulation and adoption of multilateral agreements have been hampered by the eminent need to take into consideration the different national legislations concerning such vital issues as, inter alia, the constitutional protection of the rights of the accused. In this connection, a valuable step towards solving such problems and thus establishing a satisfactory multilateral framework for judicial assistance is represented by the Commonwealth Scheme for Mutual Assistance in Criminal Matters, adopted by the Commonwealth Law Ministers at their meeting at Harare, Zimbabwe, from 28 July to 1 August 1986. More recently, the International Conference on Drug Abuse and Illicit Trafficking, held at Vienna, Austria, from 17 to 26 June 1987, recommended that States initiate action to enter into regional or interregional agreements that would serve the purposes of formalizing mutual legal assistance in such activities as (a) taking evidence, including compelling testimony; (b) serving judicial documents; (c) executing requests for searches and seizures; (d) examining objects, sites and conveyances; (e) locating or identifying witnesses or suspects; (f) verifying in narcotics laboratories the illegal nature of substances seized; (g) exchanging information and objects; (h) providing relevant documents and records, including bank, financial, corporate and business records. 41/

67. The Commonwealth Scheme is based on a simple premise, namely, that Commonwealth Governments will, in certain respects, extend to other Commonwealth Governments the facilities that, within their own legal frameworks, are available to their own agencies. This instrument, however, goes beyond the common conception of judicial assistance in that it contains provisions relating to the international forfeiture of the proceeds of crime. In this matter, the International Conference pointed out that the volume of the property and money transactions related to drug trafficking has increased so greatly as to affect some national economies in their entirety, and that the increased use by traffickers and their associates of complex corporate structures and intricate business transactions involving banks, trust companies, firms dealing in real estate and other financial institutions has added to the difficulty in seizing assets obtained as a result of trafficking in drugs. 42/ Consequently, the International Conference recommended that national legislation and regulations be reviewed for the purpose of proposing any necessary modifications that would facilitate and ensure the seizure, freezing and forfeiture of the proceeds from drug trafficking. In the same vein, it suggested that, if some of these assets were located in another State, the latter should assist the other State in seizing those assets. 43/ In a similar spirit, the Draft Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, annex III, contains draft article 3, "Identification, tracing, freezing, seizure and forfeiture of the proceeds of illicit traffic", and draft article 5, "Mutual legal assistance", which, when adopted, will constitute powerful mechanisms in the fight against certain forms of transnational criminality.

68. The Australian Government prepared, for the International Seminar on Policies and Strategies to Combat Organized Crime, held at the University of New Mexico, Albuquerque, from 8 to 11 December 1987, a draft model treaty on mutual assistance in criminal matters. This draft was also examined by the Ad Hoc Group of Experts on International Co-operation for the Prevention and Control of the Various Manifestations of Crime, including Terrorism, held at the International Institute of Higher Studies in Criminal Sciences at Siracusa, Sicily, from 21 to 23 January 1988. Both meetings recommended that the Australian draft be further elaborated by the preparatory meetings for the Eighth Congress for the purpose of submitting it to the Congress.

69. The transfer of criminal proceedings is a promising development in international co-operation. Thus, the International Conference on Drug Abuse and Illicit Trafficking suggested that States whose systems of law and rules of evidence and procedure are much alike may wish to consider entering into agreements for the transfer of criminal proceedings as appropriate. Similarly, article 5, paragraph 4, of the Draft Convention states that the parties "shall give favourable consideration to the possibility of ... transferring to one another proceedings for criminal prosecution in cases where such transfer may help to ensure that all persons who commit offences punishable under this Convention are brought to justice". 44/ Further, the International Expert Meeting on United Nations and Law Enforcement, held at Baden, Austria, from 16 to 19 November 1987, recommended the transfer of proceedings as a contribution "to the solution of the problems of concurrent jurisdiction and plurality of proceedings", which "might lead to the reciprocal formal acknowledgement of the validity of foreign criminal judgements". With respect to the transfer of prisoners, it is of interest to point to the existence of the Convention on the Transfer of Persons Who Have Been Sentenced to Loss of Freedom to the State of Which They Are Citizens, signed at Berlin, German Democratic Republic, on 19 May 1978, by eight socialist countries.

70. Another obstacle to effective international co-operation is related to the complexity of many domestic administrative arrangements. Thus, in most countries, a number of agencies within the Government, in addition to the police forces and prosecuting authorities, may be more or less directly involved in some aspects of the detection, prevention and control of certain types of crime. This may be the consequence of the role of those agencies in the supervision of banking and financial operations, foreign trade and customs, quality control and tax matters. This functional fragmentation, which may be sound and justifiable with respect to domestic matters, almost unavoidably results in a diminished capacity to initiate requests for international co-operation, as well as in slow responsiveness vis-à-vis incoming requests.

71. In a number of cases, some of the harmful acts mentioned in the previous paragraphs, such as damage to the environment or the removal and sale of archaeological objects, may have been typified as crimes in some national legislations and not in others. This absence of universal or nearly universal criteria for criminalization is a grave impediment to the establishment of effective international co-operation agreements. This is most clearly the case with respect to the likelihood of extradition, in so far as extradition is, in general, subject to the principle of double criminality, i.e., that the act for the prosecution of which extradition is requested should be a crime in the legislations of both the requesting and the requested country. If that condition is not fulfilled, extradition cannot be granted.

72. A development that has favoured the commission of several forms of transnational economic and commercial crimes has been the enactment by a

number of countries of banking legislation that establishes, for all practical purposes, a duality of banking systems, consisting, grosso modo, of an internal system that contains the normal safeguards and controls required for the sound and responsible operation of banking institutions, and an external system of a much more accommodating nature, aimed at attracting foreign capital. Unfortunately, the lax requirements for bank incorporation and the loose supervision exerted by some Governments with respect to the so-called external system have often attracted customers in need of money-laundering schemes.

73. Off-shore banking legislation often possesses an additional characteristic that constitutes a serious and sometimes even insurmountable obstacle to international co-operation. This is the manner in which this legislation seeks to be a protective screen for all types of banking activity, instead of being a mechanism which tries to ensure that matters of a genuine confidential nature are not disclosed to competitors, the public or even, when appropriate, law enforcement agencies.

74. Further, it is obvious that widespread corruption of public officials seriously limits the possibility of implementing even the best international co-operative arangements. There have been cases in which some persons in key positions within the public administration structures of a country or within political parties have often succeeded in hindering or sabotaging efforts to comply with requests for assistance in criminal matters.

III. WAYS AND MEANS OF STRENGTHENING INTERNATIONAL CO-OPERATION FOR THE PREVENTION OF TRANSBOUNDARY CRIMINALITY

75. The Committee may wish to consider the following suggestions and decide which ones should be elaborated for possible submission to the United Nations congresses on the prevention of crime and the treatment of offenders and to the appropriate legislative bodies of the United Nations.

76. It seems that a modernized conception of jurisdiction is a prerequisite for the effective prosecution of transnational offenders. In addition, this new conception needs to be combined with simpler and more reliable methods of extradition. In this connection, several possible lines of action are possible, inter alia, international action on extradition, international action on jurisdiction, and international law enforcement co-operation, mutual judicial assistance and technical co-operation.

A. Extradition

77. As indicated above, there exists no world-wide convention on extradition. Multilateral extradition conventions, however, have been concluded on subregional, regional or other limited bases, as illustrated by the Benelux Extradition Convention, the European Convention on Extradition, the Inter-American Convention on Extradition, the Arab League Extradition Agreement and the Scheme Relating to the Rendition of Fugitive Offenders within the Commonwealth. These arrangements are sometimes based on geographical, sometimes on political or cultural affinities or, as is the case with the Scheme, on historical links between a group of diverse nations. Their successful conclusion indicates that perhaps the time has come to initiate the elaboration of a universal instrument for extradition.

78. Foremost among the difficulties besetting extradition arrangements is the political offence exception clause, a problem that emerges particularly in connection with the surrender of alleged or convicted terrorists. It is

therefore encouraging to ascertain that even in this most problematic area some progress has been achieved in recent decades, as illustrated by the Hague Convention for the Suppression of Unlawful Seizure of Aircraft. This Convention not only declares the offence of hijacking to be extraditable (article 8), but also commits its States parties to treat hijacking as an ordinary offence of a serious nature, regardless of the motivation of the hijacker. Article 8 of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation is almost identical to article 8 of The Hague Convention, and the Convention on Protected Persons contains a similar provision.

79. In view of the above, the Committee may wish to examine the viability and timeliness of an attempt to elaborate a universal convention on extradition. If the Committee decides, however, that such an enterprise is, at present, unrealistic, it may wish to consider, as an alternate and less ambitious project, the drafting of a model for bilateral extradition treaties that could be used by interested countries as a basis for negotiations aimed at concluding such agreements.

B. Jurisdiction

80. It seems that any convention or conventions designed to deal with the transnational dimensions of criminality would, inevitably, have to expand the jurisdictional capabilities of affected States. Such a convention could contain the list of acts to be considered crimes in all States becoming party to it, in which case a considerable degree of international uniformity would be achieved. Consideration might be given to linking extradition obligations to any expanded jurisdictional capabilities, so that States should either prosecute offenders in its custody or extradite them to a requesting State (aut dedere aut iudicare).

81. The concept of universal jurisdiction is probably the most comprehensive and all-encompassing principle for obtaining jurisdiction over offenders. It may be possible, perhaps, to apply to at least the most serious forms of transnational criminality the same jurisdiction principle traditionally applied to piracy, thus providing universal jurisdiction by all States against the perpetrators of such offences. 45/

82. Also here, recent developments have moved in the direction of expanded jurisdiction. Thus, useful precedents can be found in existing conventions designed to cover specific types of acts as, for example, in respect to aerial hijacking in The Hague Convention; to the sabotage of aircraft in the Montreal Convention; and to offences against diplomats in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. The Committee may wish to examine the desirability of undertaking an attempt to formulate general principles to be extended to other transnational crimes on the basis of these examples and of suggesting modalities for granting jurisdiction over such crimes to the International Court of Justice or to regional courts.

83. The Committee may wish to undertake action with respect to corruption. This is a form of criminality that often accompanies the operations of international criminality and whose pernicious influence on society is only too obvious. Action against corruption may take either the form of specific recommendations for changes in the relevant legislation of those countries that deem it necessary, or the elaboration of general guidelines for the control of such undesirable conduct, including the viability of bringing these offences under universal jurisdiction.

C. Law enforcement co-operation

84. Many experts are convinced of the indispensability of some effective form of international policing, particularly in view of the total disregard transnational offenders manifest vis-à-vis borders and territories, while simultaneously taking full advantage of the limitations that such borders and territories impose on national police operations. The same experts point out that, although it has been suggested that INTERPOL could be the vehicle for such operations, the mandates that serve as terms of reference for the Organization's activities tend to limit it to the role of a communications centre and, as such, it has played mainly an indirect role as an international crime prevention agency.

85. These limitations notwithstanding, the ICPO-INTERPOL General Assembly at its fifty-fourth session, held in Washington, D.C., from 1 to 8 October 1985, in reaction to the resolution on criminal acts of terrorist character approved by the Seventh Congress, adopted resolution AGN/54/1, by which the General Secretariat of INTERPOL was requested to prepare an instruction manual outlining the practical possibilities that existed for co-operation in dealing with terrorist cases. A year later, the IPCO-INTERPOL General Assembly, at its fifty-fifth session held at Belgrade, Yugoslavia, from 6 to 13 October 1986, adopted by resolution AGN/55/3, the "Guide for combating international terrorism", containing useful information on the use of the INTERPOL network in the struggle against transnational terrorism.

D. Mutual judicial assistance

86. There exists also the possibility of establishing more solid foundations for international judicial assistance. Traditionally, co-operation between investigative agencies of various countries has been carried out on an informal basis. The corresponding requests for investigative co-operation may seek the performance of a variety of investigative functions, as long as they do not involve compulsory legal process. The limitations of this approach are obvious and need not be discussed here. In spite of such limitations, however, informal co-operation should continue being used, encouraged and facilitated.

87. Formal investigative assistance emerges when the formal investigative powers of another nation become indispensable for the acquisition of evidence needed to continue the investigation or to prepare the case for trial. Such formal investigative assistance is assured either through executive agreements or mutual assistance treaties. Both are recent international innovations.

88. Mutual assistance treaties are, in the opinion of some experts, the most significant development in international law in recent years. They are formulated to overcome all the traditional difficulties encountered in obtaining evidence in a foreign country, and limited only by the provisions of the requested country's national law. Such treaties characteristically commit the full authority of the requested country in any future case in securing, by compulsory process or otherwise, all the necessary evidence required for the investigation and trial of any offence falling within the spectrum of a broad range of commonly recognized criminal acts. These treaties have been extremely useful in overcoming some previously insoluble problems, such as those created by the elaborate secrecy measures surrounding banking transactions in many countries. A different situation obtains in relation to international assistance in the enforcement of criminal judgements rendered in another country, which is an undeveloped area of international criminal law.

89. Since it often appears that the efficiency of measures for combating transnational criminality adopted at the national level is closely dependent on the co-operation of the criminal authorities of other States, a possible solution might be the conclusion of an international convention on mutual assistance in criminal matters. In this respect, the European Convention on Mutual Assistance in Criminal Matters is an interesting attempt to propose solutions in matters relating to international criminality. In particular, the Convention accepts the basic principle that mutual assistance is to be independent of extradition in that it is to be granted even in cases where extradition is refused.

90. In view of these developments, the Committee may wish to study the convenience of formulating a draft international convention on mutual judicial assistance, and instruct the Secretariat accordingly. The resulting draft may be the most adequate vehicle for international co-operation with respect to the tracing, freezing, seizure and confiscation of assets acquired as a result of illicit enrichment and other criminal international commercial operations. In this connection, the draft submitted to the New Mexico and Siracusa meetings might be used by the Committee as a basis for formulating concrete proposals in this area.

E. Differentiated strategy

91. Although there has been a trend in recent decades in some sectors of crime prevention and criminal justice towards decriminalization and depenalization, it appears that, at least in certain areas, some degree of criminalization might be desirable and even indispensable. This may well be the case in the illicit traffic in cultural property where, in international terms, impunity has been by far the rule.

92. The Committee may wish, therefore, to add its voice to that of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation in calling on those States that are not yet parties to the UNESCO Convention mentioned in paragraph 52 above, to take the necessary steps to ratify this instrument. Further, the Committee may wish to examine the possibility of drafting recommendations for stricter criminalization of acts against the cultural patrimony at the national level, for Governments to draw upon if interested. This may be considered necessary, in view of the apparently minimally dissuasive power that the mere confiscation of these objects seems to have upon looters and dealers. It may well be that only heavy fines, loss of art and antique dealership licenses and even prison may be adequate to stem the constant plunder to which archaeological sites and other components of the cultural heritage of nations are constantly being subjected.

93. The Committee may consider it appropriate to examine ways and means of establishing clear international responsibility for damages to the environment, including financial responsibilities, for rapidly informing endangered neighbours and for ceasing and desisting in undertakings that are harmful to the environment and whose impact is likely to affect other countries. In this regard, it may by opportune to elaborate some of the provisions contained in the Guiding Principles of Crime Prevention and Criminal Justice approved by the Seventh Congress.

F. Technical co-operation

94. Another area that the Committee may wish to consider with a view to possible improvement is that of technical co-operation. It is evident that an important source of inefficiency in the prevention of transnational offences

is to be found in the training and equipment deficiencies that are the common characteristic of many crime prevention and criminal justice systems in developing countries. The Committee may want to explore ways and means of motivating developed countries to substantially increase their current level of technical co-operation in this vital area, either bilaterally or through the United Nations. The emphasis should perhaps be placed on the deployment of computer technology and the training of criminal justice personnel, since one of the advantages enjoyed by some transnational offenders lies in their easy access to computers and information technology.

95. Technical co-operation could also take the form of assistance in the drafting of codes and other national legal instruments, to be provided to the requesting countries either bilaterally or through the United Nations. This activity could be generally guided by the avowed intent to create a modicum of harmony and compatibility of legislation throughout the world that would most likely facilitate multilateral co-operation in the future. In this connection, the regional and interregional crime prevention institutes could play a significant role.

Notes

1/ "Milan Plan of Action", Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: Report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: Report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1).

3/ H. E. Alexander and G. E. Caiden, The Politics and Economics of Organized Crime (Lexington, Massachusetts, Health, 1985).

4/ H. G. Behr, Organisiertes Verbrechen (Düsseldorf, ECON Verlag, 1985); D. Lindlau, Der Mob. Recherchen zum organisierten Verbrechen (Hamburg, Hoffmann und Campe, 1987); P. Arlacchi, Mafia Business: The Mafia Ethic and the Spirit of Capitalism (London, Verso, 1986); P. Arlacchi and N. dalla Chiesa, La palude e la città (Milano, Mondadori, 1987).

5/ "Mit 'Crack' auf den Gipfel der Welt gelungen", Der Spiegel, No. 47, 17 November 1986, pp. 208-218.

6/ "The dark past", Time, 8 February 1988, pp. 12-13.

7/ "50 biggest Mafia bosses", Fortune International, No. 23, 10 November 1986, pp. 20-32.

8/ Ibid., p. 32.

9/ G.O.W. Mueller and F. Adler, Outlaws of the Ocean (New York, Heart Marine, 1985), chap. 9.

10/ C. Nicholl, The Fruit Palace (London, Pan Books, 1985).

11/ R. H. Blum, Offshore Haven Banks, Trusts and Companies: The Business of Crime in the Euromarket (New York, Praeger, 1984).

12/ Nicholl, op. cit., pp. 135-144.

13/ "Hitting the criminal where it hurts ...", Quarterly Enforcement and Statistical Review, 2nd quarter 1987, pp. 3-5. Also A. A. Bloop and F. R. Scarpitti, "Casinos and banking: organized crime in the Bahamas", Deviant Behavior, vol. 7, 1986, pp. 301-312.

14/ "The technology of terrorism", Discover, vol. 7, No. 6 (June 1986), pp. 22-31.

15/ A.G. Ezeldin, "International aspects of terrorism and the need for co-operation between governments", Paper presented at the Conference on Terrorism and Organized Crime, University of Illinois, Chicago, 24-27 August 1986. Also P. L. Leventhal and M. M. Hoenig, "The hidden danger: risks of nuclear terrorism", Terrorism, vol. 10, No. 1 (1987), pp. 1-22; B. David, "The capability and motivation of terrorist organizations to use mass-destruction weapons", On Terrorism and Combating Terrorism, A. Merari, ed. (Frederick, Maryland, University Publications of America, 1985), chap. 14; and L. R. Beres, Terrorism and Global Security: The Nuclear Threat, 2nd ed. (Boulder, Colorado, Westview Press, 1987).

16/ P. Bouzat, "Preface", in M. C. Bassiouni, A Draft International Criminal Code and Draft Statutes for an International Criminal Tribunal (Dordrecht, Martinus Nijhoff, 1987), p. xii.

17/ Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Kyoto, Japan, 17-26 August 1970 (United Nations publication, Sales No. 71.IV.8), para. 73.

18/ Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1-12 September 1975 (United Nations publication, Sales No. E.76.IV.2).

19/ H. H. Han, ed., Terrorism, Political Violence and World Order (Panham, Pennsylvania, University Press of America, 1984).

20/ N. Gal-Or, International Co-operation to Suppress Terrorism (New York, St. Martin's Press, 1985).

21/ P. Wilkinson, "Terrorism: international dimensions", The New Terrorism, W. Gutteridge, ed. (London, Mansell, 1986), pp. 29-56; and Z. Gad, "International co-operation among terrorist groups", On Terrorism and Combating Terrorism, A. Merari, ed. (Frederick, Maryland, University Publications of America, 1985), chap. 13. Also J. Adams, The Financing of Terror (London, New English Library, 1986).

22/ "Wanted: a solution to terrorism", Business Traveller, June 1986, pp. 14-22.

23/ H. Nossek, "The impact of mass media on terrorists, supporters and the public at large", On Terrorism and Combating Terrorism, A. Merari, ed. (Frederick, Maryland, University Publications of America, 1985), chap. 9.

24/ P. Zehrer, "Das Leitdelikt unserer Aera: Elektronische Verbrechen", Report on the International Conference on Computer Criminality, St. Johann/Pongau, Salzburg, 21-22 May 1987, Die Presse, 23 May 1987.

25/ J. F. Murphy, Punishing International Terrorists: The Legal Framework for Policy Initiatives (Totowa, New Jersey, Rowman and Allanheld, 1985).

26/ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, 23 August-5 September 1980: Report prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4).

27/ R. J. Michalowski and R. C. Kramer, "The space between laws: the problem of corporate crime in a transnational context", Social Problems, vol. 34, No. 1 (1987), pp. 34-53. Also G. Kaiser, "Economic crime and its control, with special reference to the situation in the Federal Republic of Germany", Eurocriminology, vol. 1, 1987, pp. 44-80.

28/ E. H. Pfuhl, Jr., "Computer abuse: problems of instrumental control", Deviant Behavior, vol. 8, 1987, pp. 113-130.

29/ Zehrer, loc. cit.

30/ B. Johnson Theutenber, "The international environmental law - some basic viewpoints", in Hague Academy of International Law/United Nations University, The Future of the International Law of the Environment (Dordrecht, Martinus Nijhoff, 1985), pp. 233-242. "... to try to abolish, to some extent, the principle of the exclusive sovereignty of a State in this particular regard. The environment recognizes no legal boundaries" (p. 240).

31/ World Commission on Environment and Development, Our Common Future (Oxford, Oxford University Press, 1987), p. 262.

32/ Johnson Theutenberg, loc. cit., p. 240.

33/ Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972 (United Nations publication, Sales No. 73.II.A.14).

34/ A. Gubinski, "Le rôle du droit pénal dans la protection de l'environnement", in Association internationale de droit pénal, Revue internationale du droit pénal, No. 4, 1978, pp. 19-43.

35/ A. A. Block and F. R. Scarpitti, Poisoning for Profit: The Mafia and Toxic Waste (New York, W. Morrow, 1985).

36/ As of 31 July 1987, it has been ratified, accepted or acceded to by 60 States, of which only two are industrialized countries. See "Return or restitution of cultural property to the countries of origin" (A/42/533), appendix II.

37/ Council of Europe, Explanatory Report on the European Convention of Offences Relating to Cultural Property (Strasbourg, 1985), p. 5.

38/ Y. Chauvy, L'extradition (Paris, Presses Universitaires de France, 1981).

39/ Council of Europe, European Convention of Offences relating to Cultural Property, European Treaty Series No. 119 (Strasbourg, 1985).

40/ "Preparation of the New Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances: Report of the open-ended intergovernmental expert group meeting on the preparation of a draft convention against illicit traffic in narcotic drugs und psychotropic substances, Vienna, 25 January-5 February 1988" (E/CN.7/1988/2 (Part IV)), annex II.

41/ "Recommendations regarding a comprehensive multidisciplinary outline of future activities relevant to the problem of drug abuse and illicit trafficking: Report of the Main Committee", Paper prepared for the International Conference on Drug Abuse and Illicit Trafficking, Vienna, 17-26 June 1987 (A/CONF.133/MC/L.1 (Part II)), paras. 240 and 243.

42/ Ibid., paras. 262 and 263.

43/ Ibid., para. 248.

44/ "Preparation of the New Convention ..." annex II, p. 31.

45/ The Law of the Sea: United Nations Convention on the Law of the Sea (United Nations publication, Sales No. E.83.V.5), article 105.