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EIGHTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

REPORT OF THE INTERREGIONAL PREPARATORY MEETING FOR THE EIGHTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS ON TOPIC III: "EFFECTIVE NATIONAL AND INTERNATIONAL ACTION AGAINST (a) ORGANIZED CRIME; (b) TERRORIST CRIMINAL ACTIVITIES"

Vienna, 14-18 March 1988

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INTRODUCTION

1. The discussion guide (A/CONF.144/PM.1) for the interregional and regional preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders included a review of each of the substantive topics recommended by the Committee on Crime Prevention and Control for inclusion in the provisional agenda of the Eighth Congress. The Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic 3, "Effective national and international action against: (a) organized crime; (b) terrorist criminal activities", was the second of a series of interregional meetings, each convened to discuss one of the substantive agenda items of the Eighth Congress, to be held in 1990, in accordance with Economic and Social Council resolution 1987/49 of 28 May 1987 and General Assembly resolution 42/59 of 30 November 1987.

I. ATTENDANCE AND ORGANIZATION OF WORK

A. Venue and date of the Meeting

2. The Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic 3, "Effective national and international action against: (a) organized crime; (b) terrorist criminal activities" was held at Vienna from 14 to 18 March 1988.

B. Attendance and organization of work

3. The Meeting was attended by experts from different regions of the world and observers from Member States, United Nations bodies and intergovernmental and non-governmental organizations. A list of participants is given in annex I. The agenda of the Meeting was based on the discussion guide, in particular paragraphs 43-74. To facilitate their deliberations, the experts decided to focus on the following issues:

(a) The dimensions of organized crime in today's world;

(b) The scope of criminal acts of a terrorist character and their growing internationalization;

(c) The interfaces between organized crime and terrorism: drug-financed terrorism and related phenomena;

(d) National and international initiatives for the improvement of crime-prevention policies and strategies: (i) the need for more effective national legislation (freezing and forfeiture of illicit funds, banking regulations etc.); (ii) the exchange of information and the co-ordination of preventive policies and activities (law enforcement intelligence, joint arrangements etc.); and (iii) mutual judicial assistance: bilateral and multilateral (extradition, expansion of jurisdiction, regional and international tribunals etc.);

(e) The role of the United Nations in the struggle against international criminality.

C. Election of officers

4. The Meeting elected the following officers by acclamation:

Chairman: H.E. Paul Kwanga Ssemogerere, Minister of External Affairs and Deputy-Prime Minister (Uganda)

Vice-Chairmen: Luis Lamas-Puccio, Professor of Criminal Law and Presidential Adviser (Peru)

Stanislaw Pawlak, Director, Department of International Organizations, Ministry of Foreign Affairs, and Member of the International Law Commission (Poland)

Panat Tasneeyanond, Dean of Law School (Thailand)

Rapporteur: Peter Loof, Chairman of the Board, Australian Institute of Criminology, and Attorney-General's Department (Australia)

D. Opening of the Meeting

5. The Interregional Preparatory Meeting was opened by the Director-General of the United Nations Office at Vienna and Secretary-General of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Margaret J. Anstee.

6. The Director-General stated that an alarming increase in transnational criminal activities had occurred in recent decades. Gravest among them were organized crime and the operations of a large number of terrorist groups, often interlinked with and financed by illicit drug trafficking. The international community seemed to be ill-prepared to cope with those new dimensions of crime. Hence there was a clear need to develop innovative ideas and initiatives that would facilitate the establishment of new forms of international co-operation in crime prevention and criminal justice, as stressed by the Milan Plan of Action, 1/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly.

7. In underlining the importance of resolution 1 of the Seventh Congress, on organized crime, 2/ the Director-General suggested that the action required would include the following: modernization of national criminal laws and procedures; ratification of relevant multilateral treaties; and the signature of bilateral agreements on extradition and mutual legal assistance. She also referred to action called for in resolution 2 of the Seventh Congress, on the struggle against illicit drug trafficking, 3/ and in the Seventh Congress resolution 23, on criminal acts of a terrorist character. 4/

8. To assist the experts in their deliberations, the Director-General suggested a number of areas deserving particular attention. First, mutual judicial assistance appeared to be one of the most effective means of international co-operation in crime prevention and criminal justice. In that connection, a draft model treaty on mutual assistance in criminal matters had been submitted to the Meeting by the Government of Australia. Secondly, with respect to money laundering, national legislation and bilateral and multilateral agreements to facilitate the tracing, freezing, forfeiture and confiscation of assets resulting from the operations of organized crime would effectively assist in coping with that form of criminality. Thirdly, the accelerated penetration of legitimate businesses by organized crime in order to launder profits, to establish a façade for criminal operations and to reduce commercial risk by diversifying investments required a variety of preventive measures. Fourthly, since widespread corruption was often a concomitant of organized crime, ways and means should be explored to assist countries in their fight against bribery and corruption. Fifthly, appropriate policy responses leading to concrete action designed to deal with the links between terrorist groups and organized crime, at both national and international levels, should be

considered. Finally, although the extension of the concept of jurisdiction beyond its traditional dependence on the principle of territoriality and the establishment of a universal jurisdiction belonged to the future, proposals to establish an international tribunal for the adjudication of terrorist acts under the aegis of the United Nations were worthy of attention.

9. In stressing the importance of technical co-operation, the Director-General stated that well-defined strategies to combat organized crime and terrorism had little value for the many countries that lacked essential institutional capabilities, financial resources and skilled personnel. While there had been an increasing demand for the interregional advisory services in crime prevention and criminal justice, the capacity of the Organization to assist in and follow up the implementation of recommendations at the country level had been inadequate because of budgetary constraints. Hence the search for imaginative and practical solutions should be pursued. For example, if specific programmes and projects in crime prevention and criminal justice were given priority by Governments, they might be considered within the context of country programmes of the United Nations Development Programme.

10. The representative of the Committee on Crime Prevention and Control underlined the complexity of the topic and the difficulty of dealing with organized crime and terrorism. The Seventh Congress had already provided general guidelines for action to combat such phenomena, while avoiding the difficult problem of defining acts falling within the category of terrorism and organized crime. The methods to be used in pursuit of the common aim invariably raised a number of delicate issues, and definitions were undoubtedly of great importance. The primary concern, however, was to develop effective international action against the increasing threat of transboundary criminality. The experts should therefore not allow themselves to become absorbed in an analysis of the many interesting intellectual questions involved. Instead, the emphasis should be on the formulation of practical measures.

11. The Chief of the Crime Prevention and Criminal Justice Branch said that the rapid internationalization of both organized crime and terrorist activities that had occurred in recent years was threatening social and public institutions in many countries. Organized crime was infiltrating legitimate businesses, its reach had extended into the international financial system and its association with economic and white-collar crime was becoming increasingly more evident. Its diversification and expansion, its new forms of association with highly profitable operations and its interlinkages with the illegal arms trade, illicit drug trafficking, terrorist activities and corruption were seriously undermining legitimate business activity and society in general. Terrorism and other forms of violence claimed innocent victims and created a climate of fear, intimidating citizens and even jeopardizing relations between States. Terrorism had become a major international issue not only because of its serious nature, but also because States might be directly or indirectly involved in it. Reliable data showed that terrorism was committed from above and below, involving a variety of methods, including illegal deprivation of freedom, executions, threats, assaults and other brutal attacks on life and human dignity.

12. In a world made smaller by improved transport, technological innovations and rapid communications, success in the struggle against organized crime and terrorism clearly required concerted international action in a number of areas that deserved careful consideration by the Meeting. He noted that mutual judicial assistance had been identified by many experts as a new and promising line of action. The draft model on mutual assistance in criminal matters

presented by the Government of Australia should be given careful consideration, as well as measures facilitating the tracing, freezing and forfeiture of the proceeds of illicit activities. The prevention and control of transboundary criminality also required the intensified and accelerated exchange of reliable and up-to-date information between national law enforcement agencies. The strengthening of that form of intelligence-sharing was essential for the identification, apprehension and prosecution of transnational offenders.

13. A further issue deserving attention was the question of jurisdiction. Given the complexity of transboundary criminality in the modern world, the traditional, almost exclusively territorial conception of jurisdiction needed revision. Although some expansion of the concept of jurisdiction had been introduced in recent years in a number of international instruments, such extensions were still inadequate to cope with the present challenges. Closely linked with the question of international jurisdiction was the issue of the establishment of an international criminal court. In that connection, he referred to a recent proposal to establish, under the aegis of the United Nations, a tribunal to investigate acts of international terrorism. The guidance of the Meeting on that issue would not only assist the international community in reformulating the principles of jurisdiction to take into account international realities, but would also help to promote peace and security. Consideration should also be given to another issue of central importance, namely extradition, current arrangements for which were inadequate to cope with the new challenges of transnational criminality.

14. In conclusion, he observed that despite the complexity of the problem, some of the countries most affected by terrorist violence had managed to overcome it by relying on methods that were in accordance with the rule of law and with basic human rights and freedoms.

II. REPORT OF THE DISCUSSION

15. The experts welcomed the discussion guide prepared by the Secretariat and endorsed the approach followed in its presentation of the issues. There was general agreement that the Eighth Congress should formulate practical and concrete measures aimed at the effective solution of the problems under consideration.

16. Some experts emphasized that in discussing topic 3: effective national and international action against organized crime and terrorist criminal activities, it was of great importance to keep constantly in mind that, despite some common ground shared by both subtopics, organized crime and terrorism were distinct phenomena that should not be confused. It was necessary to distinguish their different causation, methods and targets when analysing them, and particularly when formulating recommendations for their prevention and control.

17. In the opinion of some experts, the threats posed by both phenomena should not be exaggerated, since that could risk provoking the wrong psychological reaction by the public. There was an urgent need for more objectivity in that respect, particularly since the number of victims of those criminal activities was rather insignificant. Moreover, at least in the case of organized crime, it could be said that its reality and consequences were limited to a handful of developed societies whose economic systems were at the root of the emergence of profit-oriented criminal organizations.

18. Many experts, however, disagreed with that point of view. They believed that, first, the perniciousness of a criminal phenomenon could not and should not be evaluated exclusively in statistical terms; secondly, it was not true that organized crime was a phenomenon whose impact was restricted to developed industrial countries. On the contrary, the activities of organized crime were far more destructive in developing countries, which were often highly vulnerable to the operations of criminal organizations. Organized crime had deeply infiltrated the agencies of public administration and political structures in a number of developing countries, where it bribed government officials at all levels, including the armed forces, and contributed to the electoral campaigns of political parties, thereby undermining the fabric of society, generating widespread demoralization and having a pervasive effect through all levels of society. Widespread corruption constituted, moreover, a serious impediment to effective international co-operation by the countries concerned, precisely because, in some cases, the officials in charge of implementing such co-operation were on the payroll of organized crime. In addition, money-laundering and other financial operations carried out by organized crime in developing countries were a source of grave financial problems for those countries. Organized crime in those countries had come to represent a new entrepreneur class, the finanical power of which was often used in a manner contrary to national interests. Organized crime therefore had a devastating effect in all countries, and tended to spill over national borders in a most insidious manner.

19. According to some experts, organized crime could be viewed as a noxious side-effect of technological advances, having remote victimization as one of its most evident consequences. Thus organized crime had expanded as international markets had grown, and new groups were emerging to take their place beside the older, historically better-known criminal associations.

20. The characteristics of organized crime required, in the opinion of some experts, changes and innovations in national legislation, particularly in the areas of banking and finance. That was necessary in order to facilitate the control of money-laundering and the tracing, freezing, forfeiture and confiscation of the proceeds of crime. In view of the complexity and volume of the financial operations of organized crime, it was essential to pursue an interdisciplinary approach that would involve the combined expertise of lawyers, the police, accountants, financial analysts, computer specialists and investigators of corporate affairs. The tracing of international money flows would remain, however, an extremely difficult enterprise. None the less, in some countries that endeavour had been greatly enhanced by means of specific legislation on bank transactions. An additional problem was tax havens, particularly since the countries in which they were located almost always refused to co-operate in such investigations.

21. A number of experts thought that, for serious cases of organized crime or trafficking in narcotic drugs and psychotropic substances, it would be helpful to introduce legislation that placed on the person holding the assets the onus of demonstrating that the assets had been lawfully acquired. That amounted, however, to a revolution in legal practice and theory, and as such should include the necessary safeguards to protect the human rights of the suspect. The same caution applied, mutatis mutandis, to the idea of establishing a specific agency to deal with all matters concerning the activities of organized crime and to centralize all pertinent information on that subject.

22. Terrorism was generally recognized as a serious threat to many countries. The experts stressed their unconditional condemnation of terrorism, regardless of its motivation and in whatever form it might take. Several experts

emphasized that national liberation struggles should not be confused with terrorism. The former, however, should be conducted in accordance with the purposes and principles of the Charter of the United Nations and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, 5/ and with strict observance of the Geneva conventions relating to armed conflicts. The complete elimination of international terrorism, however, could only be achieved when its underlying causes, such as colonialism, racism and massive violations of human rights, had been removed.

23. A number of experts expressed the opinion that attempts at defining terrorism did not seem at that time to be a fruitful enterprise. Several experts considered it necessary to describe the manifestations of such phenomena or to establish a list of specific acts covered by the relevant conventions. In any case, terrorism ought to be totally excluded from the list of political crimes.

24. In the opinion of several experts, the most fruitful approach might be the revision and improvement of existing agreements by identifying and closing loopholes in those instruments. That might be done by the conclusion of additional protocols to the various conventions with the aim, in particular, of strengthening extradition procedures. Countries that were not parties to the conventions should be encouraged to sign them.

25. Many experts thought that the main problem with respect to the conventions was the faulty implementation of their provisions. Many countries ratified instruments but then failed to integrate the provisions into their national legislation. Such an omission robbed the conventions of most of their effectiveness. In certain countries, however, in accordance with their constitutional provisions, once a treaty was ratified it automatically became an integral part of domestic legislation. In that connection, some experts thought that the United Nations could take a leading role in monitoring the implementation of existing treaties and obtaining information by the use of extensive surveys and questionnaires. The information thus obtained should be made available to the public. As a result, public opinion throughout the world might bring increased pressure to bear in favour of treaty compliance. The proposal for a handbook on combating international terrorism was also mentioned as a possible United Nations contribution to the prevention and control of such terrorism.

26. Other experts held the view that it would be useful to promote the codification of international criminal law and to create an international tribunal, under United Nations auspices, with jurisdiction over crimes of transboundary terrorism. The view was also expressed that emphasis should be placed on the work of the International Law Commission on a draft code of crimes against the peace and security of humanity, as a more effective instrument than other United Nations resolutions and declarations. In that connection, United Nations resolutions on terrorism adopted since 1972 were of a political rather than a legal character and, lacking implementation procedures, they were of only symbolic importance.

27. A number of experts thought that State terrorism was an important dimension of the phenomenon under consideration. Such terrorism consisted in operations sponsored, organized, encouraged, directed or supported, either individually or collectively, materially or logistically, by a State or group of States for the purpose of intimidating another State, person, group or organization. It should not be forgotten, however, that States as such had no criminal responsibility: the officials of the State would be held responsible for acts of State terrorism.

28. The possibilities of international co-operation were mentioned by several experts. Such co-operation could, in their opinion, greatly contribute to saving human lives. There existed some regional arrangements that had succeeded in intensifying and improving co-operation. The International Criminal Police Organization (INTERPOL) also seemed to have a considerable role to play in the international struggle against terrorism and organized crime.

29. The experts discussed the desirability of establishing a central agency within each country that would effectively channel requests for co-operation from other countries. Some of the experts thought that that was an indispensable arrangement at the national level, without which the process of granting assistance would be far too unwieldy. Other experts, however, feared the dangers of abuse by national authorities that such a superstructure might create. In their opinion, it was perhaps more important to reduce the existing barriers between different agencies in every national administration. In that connection, it was suggested that direct contact between investigative and judicial authorities of different countries should be facilitated.

30. Specific legal instruments had been established by several countries to give effect to the various conventions adopted by the United Nations during the last four decades on such topics as the protection of civil aviation and navigation. In the opinion of some experts, however, those instruments had not been sufficiently well adapted to cope with the problem. International criminality received a constant flow of new recruits, a fact that by itself largely neutralized any successes that law enforcement agencies had had in apprehending international offenders. It would therefore be a valuable endeavour for the United Nations to stimulate the development of effective crime prevention strategies with respect to transnationally organized crime, including programmes aimed at more adequately controlling the illegal supply of narcotic drugs and psychotropic substances.

31. To help alleviate the shortage of resources and of adequately trained personnel in many countries, the experts considered that the United Nations might organize a system for the orderly exchange of information, a programme that would be of benefit to the entire international community. It was also advisable for the United Nations to take specific steps to support the efforts of Member States to ensure the rapid implementation of existing instruments.

32. The experts took note of two drafts, one being a draft bilateral model treaty on mutual judicial assistance in criminal matters, and the other a draft multilateral treaty on extradition. They decided to annex those drafts to the present report, on the understanding, however, that that inclusion did not signify that the Meeting had approved or endorsed the drafts. None the less, the experts thought that the drafts could be fruitfully examined by other preparatory meetings, on the basis of comments and observations to be forwarded to the Secretariat by the experts, with a view to the revision and eventual submission of the drafts to the tenth session of the Committee on Crime Prevention and Control. The ideas and initiatives contained in the draft documents were in themselves positive developments, but they had to be carefully examined by Member States and should, moreover, reflect the variety of legal systems in the world.

33. Some experts preferred a lengthier, more detailed approach to the formulation of model treaties. In their opinion, such an approach presented the advantage of offering a wider gamut of possibilities, from which countries could easily remove those provisions with which they did not agree. That

would be easier than adding entirely new items that were absent from the original model. Most experts, moreover, supported the idea that the provisions of future models should complement rather than replace existing co-operative arrangements. In addition, the view was expressed that drafts could actually serve as a model for new national legislation, thereby contributing to the harmonization and increasing uniformity of domestic legislations, a trend which, if successful, could greatly facilitate further co-operation in the prevention of transboundary criminality.

34. For some experts, an important but sometimes neglected issue was the lack of arrangements ensuring the right of the defence to seek and obtain information favouring the accused. In that regard, the principle of fairness required that any imbalance favouring the prosecution should be redressed by including the relevant provisions in future models.

35. The Executive Director of the United Nations Fund for Drug Abuse Control addressed the Meeting and underlined the differences between the traditional forms of organized crime and the illicit drug trafficking operations managed by contemporary criminal organizations. He referred to the interlinkage between modern organized crime and terrorist and guerrilla movements, and pointed out that there was solid evidence for the existence of such an interlinkage.

36. The Executive Director described how the power of traditional organized crime had increased enormously as the illicit drug traffic had become part of its operations. That new activity had enabled organized crime to extend its network to cover the entire world. Four major criminal organizations currently existed. Their organizational structures and lines of authority were not, however, as clearly defined and established as those of legitimate corporate institutions. None the less, they did function as organizations.

37. The four major organizations were sometimes based in more than one country, and a good share of their operations was of a transnational nature. The extraordinary power possessed by some of them was one of the major sources of concern for law enforcement agencies in many countries. Although the organizations sometimes clashed violently with each other, they rapidly found ways of co-operating, often on the basis of jurisdictional arrangements.

38. The impact of such organizations on different countries was often unequal, depending on a number of social, political and economic factors. In certain countries, public institutions did not always react to criminal activities: that was the result in some cases of cultural factors that generated considerable tolerance for the criminal phenomena, and in other, more serious cases, of the inherent weakness of those institutions. The Government was in the latter cases so weak that its authority was more formal than real. Organized crime was running such countries and dominating their societies to the point where the victims did not perceive the victimization to which they were subjected, but regarded the criminal organization as a benefactor.

39. In other countries, confrontation between public institutions and criminal organizations was the rule. Such confrontations claimed many victims, since the criminals often physically eliminated anybody trying to organize or direct the fight against organized crime. Confrontation, however, was the best proof that the State apparatus existed and was still defending itself, although in some countries the powers of the State were seriously weakened by the infiltration of public institutions and the widespread corruption of officials.

40. In connection with terrorism, the Executive Director expressed the view that it was often difficult to distinguish between that phenomenon and guerrilla warfare, differences between the two phenomena being mainly of a quantitative nature. Guerrilla warfare appeared as an escalation of terrorism in those cases in which the State apparatus proved unable effectively to control the terrorist phenomenon.

41. Both terrorist groups and guerrilla movements were in great need of funds to sustain their activities and to acquire weapons. Such a need almost inevitably led those groups to establish some linkage with drug traffickers. The linkages could take a variety of forms. For instance, drugs could be exchanged for weapons or protection could be provided to drug traffickers in exchange for funds. In other cases, drug production could be subject to a tribute or tax, particularly when the terrorist elements were in control of drug-producing territories. Or the terrorist group or guerrilla movement could attempt to establish its own channels for the distribution and marketing of illicit drugs. Such linkages existed in a number of countries, both developed and developing.

42. The Executive Director pointed out that the nature of the problem made it very difficult to generalize concerning its solution. In each case, the constellation of forces was unique. Action had to be chosen in terms of an analysis of each specific situation. What action to take depended on such factors as the solidity of State institutions, the level of socio-economic development, the seriousness of infiltration of public institutions and the degree of corruption that organized crime had been able to generate. Training seminars, technical assistance, co-operation agreements, new legislation etc. were of little use in the absence of functioning domestic institutions. Under such circumstances, those who tried to work against organized crime were committing suicide. The Executive Director subscribed therefore to the idea of an international police force under United Nations auspices. Since the problem was of an international character, he believed that the response had to be commensurate to the challenge.

43. In connection with the recommendations adopted by the Meeting of Experts held at Siracusa, many participants acknowledged the value of the effort involved and thought those recommendations deserved careful study. Nevertheless, several experts expressed considerable reservations with regard to the conclusions and recommendations adopted at Siracusa. Also, one observer pointed out that the mandate for the present Meeting was circumscribed by the framework of the Eighth Congress, the topic of which was the prevention of crime and the treatment of offenders. In the observer's opinion, the recommendations concerning terrorism should be focused on matters of penal law, to the exclusion of considerations of a political nature, such as the convening of an international conference, since that would fall within the sphere of international public law. Consequently, the observer indicated that a juridical and pragmatic approach to terrorism should include consideration of the following questions: law enforcement and police co-operation; preventive measures and the exchange of information; extradition and, in particular, the implementation of the principle of aut dedere aut iudicare; the safety of civil aviation and navigation; and the treatment of offenders. Attempting to define terrorism did not appear to be a useful or productive exercise. Furthermore, the work of other bodies, such as the International Law Commission, on the same topic should be taken into consideration. If the conclusions reached at Siracusa were supported by the Interregional Preparatory Meeting, the formulations of those other bodies would also have to be supported. The problem was that the conclusions of the different bodies were not necessarily compatible. The Siracusa recommendations, although commendable,

were far too ambitious. In addition, some experts thought that some of the proposals might run counter to the principle of sovereignty and to other provisions of the Charter of the United Nations. The political implications of many of the issues raised by the Siracusa recommendations risked provoking insoluble problems at the Eighth Congress, and could therefore endanger its success. The best approach would therefore be of a more pragmatic nature, with emphasis on such items as preventive action and police co-operation.

44. Some experts believed that the key to the prevention of terrorism lay in facilitating extradition procedures. It was not the seriousness of the punishment that deterred criminals but the certainty of prosecution. Such certainty could only be created by the existence of reliable and effective extradition arrangements. Without such improvements, the fight against terrorism could not possibly succeed.

45. Several experts were of the opinion that resolution 23 of the Seventh Congress was the best basis on which the Meeting could formulate useful and generally acceptable recommendations for international co-operation against terrorist activities. They also considered that that resolution constituted the actual mandate for the task entrusted to the Meeting.

46. An expert who had attended the Meeting at Siracusa enumerated some possible forms of international law enforcement. One of those forms could be the expansion and reinforcement of the activities of INTERPOL to increase the efficiency of that organization. That was difficult, however, because of the prohibition on participation of INTERPOL in any activity related to political crimes. In that connection, the observer of INTERPOL explained that, according to two resolutions of their General Assembly, the channels of INTERPOL could well be used for the exchange of information as well as for the identification and localization of offenders when terrorist crimes were of an international nature. Another possibility was a regional approach, as attempted by the Council of Europe. In that respect, the creation of a European judicial space was being seriously discussed, and a similar initiative might also be undertaken in the near future in the Andean region.

47. Some experts expressed the opinion that domestic legislation containing severe penalties for terrorist acts and a policy of no concessions to the demands of terrorists were among the best options available to States. In addition, international co-operation in the training and exchange of information, as well as the establishment of specialized counter-terrorist groups and of a specialized investigative agency, held considerable promise.

48. Many experts underlined the desirability of implementing the principle of aut dedere aut iudicare, which had already been included in some of the more recent international conventions dealing with terrorist activities. That implementation needed to be accompanied, however, by a certain degree of consistency in the sanctions contemplated in the different domestic legislations.

49. Some experts noted that there was a danger of sham prosecutions and sham extraditions. In other words, a State that refused to extradite could prosecute the offender, giving him an extremely light sentence, or the offender could be deported to a country having no extradition agreement with the requesting State. There were also various alternatives to extradition, such as deportation. Such mechanisms, however, could lend themselves to flagrant violations of the rights of the accused and should, therefore, be hedged with safeguards against potential abuses.

50. Some experts felt the need to reiterate that the legitimacy of wars of national liberation, as recognized by the United Nations, did not legitimize recourse to illegitimate methods. It was essential to insist on the fact that international law imposed limitations on all conflicts without exception. That included wars of national liberation.

51. Experts emphasized the crucial role of the United Nations in the prevention and control of criminal acts of a terrorist character. In their opinion, international arrangements should go beyond being mere slogans. In that connection, one expert made a specific reference to a recent statement by the leader of his country, who had suggested the establishment, under United Nations auspices, of a tribunal with jurisdiction over international terrorist acts. The Eighth Congress should make its own contributions to the solution of the problem, following the path indicated by the Seventh Congress resolution 23 rather than duplicating previous General Assembly resolutions. Furthermore, since the causes of terrorism were generally recognized as one of the most important aspects of the problem, the formulation of special recommendations aimed at the removal of such underlying causes could be a major contribution to the reduction of terrorism.

III. CONCLUSIONS AND RECOMMENDATIONS

52. The Meeting recognized that the growing threat of organized criminality and terrorism, with their destabilizing and corrupting effects on peoples, States and the democratic process, created a climate in which international co-operation and new initiatives were not only desirable but imperative. To that end, the following recommendations were proposed for national, regional and international action.

A. Organized crime

53. Taking into account that the Seventh Congress resolution 1 on organized crime 6/ called for the development of guidelines on measures to deal with that phenomenon and for the strengthening of international co-operation, including the formulation of model treaties on mutual legal assistance and extradition, the Meeting focused its attention on a wide range of measures, policies and principles in the following areas: preventive strategies; criminal legislation; criminal investigation; and law enforcement.

1. Guidelines

(a) Preventive strategies

54. Raising public awareness and mobilizing public support are important elements of any preventive action. Education and promotional programmes and the process of public exposure have been successful in many areas in changing community attitudes and in enlisting public support. Measures of that kind have helped to counter public revenue fraud and can be further developed and utilized on a systematic basis, targeting areas of special social and economic harm to the community and enlisting the co-operation of the mass media in playing a positive role in that regard.

55. Research into the structure of organized crime and the evaluation of the effectiveness of existing countermeasures can contribute to the establishment of a more informed basis for prevention programmes. For example, research in relation to corruption, its causes, nature and effect, its links to organized crime and anti-corruption measures is a prerequisite to the development of preventive programmes.

56. Possible devices to prevent or minimize the impact of organized crime should be continuously explored. While the whole question of crime prevention is a relatively underdeveloped area in many countries, specific measures in a number of spheres have been effective. Detailed programmes in certain technical areas have emerged that are designed to place obstacles in the way of a potential offender, reduce opportunities for crime and make its commission more conspicuous. Fraud control programmes represent a significant and positive step in that direction. Such measures include risk analysis to assess vulnerability to fraud, control strategies in relation to such areas as systems and procedures, management and staff, physical security, information and intelligence, computers, investigative strategies and training programmes. The creation of anti-corruption agencies or other mechanisms should be pursued. Crime impact studies and identifying criminogenic factors of new programmes would provide opportunities for the adoption of remedial and preventive measures at the planning stage.

57. Improvements in the efficiency of law enforcement and criminal justice are also important preventive strategies based on more efficient and fair processes that will act as a deterrent to crime and strengthen guarantees of human rights. Improved planning processes designed to integrate and co-ordinate relevant criminal justice agencies that often operate independently of each other, as stressed in the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 7/ will also serve as a deterrent to crime.

58. Better training to upgrade skills and professional qualifications of law enforcement and judicial personnel should be undertaken to improve effectiveness, consistency and fairness in national criminal justice systems. Regional and joint training programmes should be developed in order to exchange information on successful techniques and new technology.

59. The efforts of drug-producing countries aimed at the eradication of the illicit production and processing of drugs should be recognized and supported. In particular, developed countries should grant adequate technical and financial assistance for the implementation of crop substitution programmes. The latter countries should also increase their efforts to achieve a radical reduction in illicit drug demand and consumption within their national borders.

(b) Criminal legislation

60. Legislation defining new offences with respect to money laundering and organized fraud and the offence of opening and operating accounts in a false name should be encouraged. Computer crime is another area that requires consideration. In addition, there is a need for reform in the civil, fiscal and regulatory legislation having a bearing on the control of organized crime. The Eighth Congress should be informed of significant innovations that have occurred in several countries in recent years in that respect in order to facilitate the development on a wider basis of the criminal law dealing with organized crime.

61. Forfeiture of the proceeds of crime represents one of the most significant recent developments. Important in that context are the following: provision for the freezing or withholding, and the confiscation or forfeiture, of property used in or derived from the commission of an offence; and orders for pecuniary penalities representing a court assessment of the monetary value of the benefit derived by the offender from the commission of the offence. The Eighth Congress should be informed of the remedies that have been developed in several countries on those matters, with a view to their more widespread utilization.

(c) Criminal investigation

62. Attention should be focused on new methods of criminal investigation and the techniques developed in various countries of "following the money trail". Important in that context are the following: orders by the competent authority for the production of, or the search for and seizure of, documents relevant to following the money trail; orders requiring financial institutions to provide information to facilitate the following of the money trail and requiring institutions to preserve records to maintain the money trail; monitoring orders directing a financial institution to provide information during specified periods on transactions conducted through accounts held by a particular person; and requirements to report suspect transactions, such as large-scale cash transactions, to the appropriate authority.

63. The use of telecommunications and electronic surveillance is also a relevant and effective procedure, subject to human rights considerations.

64. Schemes for the protection of witnesses against violence and intimidation are becoming increasingly important in the criminal investigation and trial process and in enforcement efforts against organized crime. The procedures involve the provision of protected accommodation and physical protection, relocation, monetary support and a new identity.

(d) Law enforcement

65. Law enforcement has a crucial role in programmes against organized crime. It is important to ensure that law enforcement agencies have adequate powers, subject to proper human rights safeguards. Consideration should be given to the necessity of a specialized agency, with an interdisciplinary team, to deal specifically with organized crime.

2. International co-operation

66. The transnational dimensions of organized crime require urgent development of new and effective co-operative arrangements and the promotion of better understanding and more widespread use of those processes on a more comprehensive basis. Exchange of information between relevant agencies of Member States is also an important activity that needs to be strengthened and further developed.

67. Model legislation for the forfeiture of assets from illegally acquired property should be developed.

68. Specific strategies and methods should be developed for erecting stronger barriers between legitimate financial markets and the market in illegally acquired capital, and co-operative arrangements applicable to offshore finance and to operations involving global electronic fund transfers should be devised, through the close co-ordination of the international organizations and agencies concerned.

69. Consistent and continuous global international interdiction efforts, combining the exchange of the necessary data and operational resources, should be encouraged and undertaken.

70. Technical co-operation in its various forms, with expanded advisory services, should be strengthened in order to share common experiences and innovations and to assist countries in need.

71. Modern technological advances should be utilized in the area of passport and travel controls, and efforts should be encouraged to monitor and identify cars, boats, aircraft or other objects subject to transnational theft or transfer.

72. Secure global, regional and national data bases containing law enforcement, financial and offenders' records should be established or expanded.

73. Regional conferences bringing together members of the law enforcement, prosecution and judicial authorities should be encouraged.

74. Mutual assistance in the transfer of criminal proceedings and the enforcement of criminal judgements, including confiscation and forfeiture of illegal assets, should be further considered.

75. Comparative research and data collection related to issues of transnational organized crime, its causes, its links to domestic instability and other forms of criminality, as well as its prevention and control, should be supported.

76. The United Nations interregional and regional institutes and concerned intergovernmental and non-governmental organizations should give increased attention to the issue of organized crime.

77. The United Nations Development Programme and other funding agencies of the United Nations system, as well as Member States, should be urged to strengthen their support for national, regional and international programmes on the prevention and control of organized crime.

78. The importance of formulating model mutual assistance and extradition treaties for bilateral negotiations between concerned States was particularly stressed as an effective way of dealing with the complex aspects, consequences and modern evolution of transnational organized crime. In that connection, the Meeting expressed appreciation for the initiative of two experts in submitting relevant drafts of such models that could be used as a basis for further elaboration. The two drafts are annexed to the present report (see para. 32 above).

79. In view of the need for further consideration of the drafts, it was decided that the experts should forward written comments and observations as appropriate to enable the Secretariat to prepare a revised version for submission to the Committee on Crime Prevention and Control at its tenth session. In that connection, the Committee is invited to review the drafts with a view to their further consideration by the regional preparatory meetings for the Eighth Congress and subsequently by the Eighth Congress itself.

B. Criminal terrorist activities

80. The Interregional Preparatory Meeting, having reviewed the relevant paragraphs of the Discussion Guide for the interregional and regional preparatory meetings for the Eighth Congress, which recalled the relevant General Assembly resolutions, such as 1186 (XII) of 11 December 1957, 2625 (XXV) of 24 October 1970, 3034 (XXVII) of 18 December 1972, 3166 (XXVIII) of 14 December 1973, 34/146 of 17 December 1979 and 40/61 of 9 December 1983, as well as the work of the Ad Hoc Committee on International Terrorism and resolution 23 of the Seventh United Nations Congress on the Prevention of

Crime and the Treatment of Offenders, and having examined the recommendations contained in the report of the meeting of the Ad Hoc Group of Experts on International Co-operation for the Prevention and Control of the Various Manifestations of Crime, including Terrorism, after extensive discussion and exchange of views decided to adopt the following conclusions and recommendations for national action and international co-operation in the struggle against transboundary terrorist activities, with a view to their submission to other preparatory meetings, to the tenth session of the Committee on Crime Prevention and Control and to the Eighth Congress.

1. Definition

81. Since the first study of the phenomenon by the United Nations in 1972, the international community has been unable to arrive at a universally agreed meaning of what is included in the term international terrorism. Nor has it reached sufficient general agreement on the measures needed to prevent and control the harmful manifestations of acts of terrorist violence.

82. The need to have a specific definition of international terrorism is however of questionable value for the prevention and control of the manifestations of the phenomenon. A preferred approach is to identify conduct that the international community deems unacceptable, and that it agrees to prevent and control by developing effective means for the implementation and enforcement of measures, in accordance with established principles of international law.

83. The prevention and control of what is generally referred to as international terrorism requires a specific identification of the precise conduct deemed to fall within that term. Furthermore, the international community must understand the underlying causes that bring about such conduct in order to develop measures for its prevention and control.

2. Identification of the problems

84. Existing international norms may not in certain areas be sufficient to control all forms and manifestations of terrorist violence. The following issues are of particular concern: the absence of a clear definition of innocent civilians; the limits of the use of force in connection with wars of national liberation and conflicts of a non-international character; the limits of the use of force by States in response to what they may perceive as constituting acts of terrorist violence; State policies and practices that may be considered by other States as constituting a violation of international treaty obligations; the absence of specific norms on State responsibility in failing to carry out existing international obligations; the abuse of the privilege of diplomatic immunity and the diplomatic pouch; the absence of norms concerning the responsibility of States for acts not prohibited by international law; the absence of international regulation and control of the traffic and trade in arms; the inadequacy of international mechanisms for the peaceful resolution of conflicts and for the enforcement of internationally protected human rights; the lack of universal acceptance of the principle aut dedere aut iudicare and the lack of sufficient international co-operation in the effective and uniform prevention and control of all forms and manifestations of terrorist violence; and the absence of international norms on the use of mercenaries.

3. International co-operation for the effective and uniform prevention and control of terrorism

85. Effective measures for international co-operation in the prevention of terrorist violence should be developed at the international, regional and

bilateral levels. These include: co-operation between law enforcement agencies, prosecution authorities and the judiciary; increasing integration and co-operation within the various agencies responsible for law enforcement and criminal justice, with due regard to fundamental human rights; inclusion of modalities of inter-State co-operation in penal matters at all levels of enforcement and criminal justice; increasing education and training of law enforcement personnel with regard to prevention and modalities of international co-operation in penal matters, including the development of specialized courses on international criminal law and comparative penal law and procedures as a part of legal education as well as professional and judicial training; the development of both general educational and public awareness programmes through the mass media in order to enlighten the public on the dangers of terrorist violence.

4. Jurisdiction

86. Greater uniformity in the laws and practices of States concerning both criminal and extraterritorial jurisdiction should be encouraged, and over-extension of territorial jurisdiction should be avoided in order to prevent unnecessary legal conflicts between States.

87. Jurisdictional priorities should be established giving territoriality the first priority, followed by other principles in accordance with existing international law.

5. Extradition

88. Extradition should be facilitated as one of the most effective procedures for implementing the principle aut dedere aut iudicare, and States should endeavour to develop and effectively implement international extradition treaties, be they part of multilateral conventions, regional conventions or bilateral treaties.

89. The political offence exception should not be a bar to extradition for crimes of terrorist violence under existing international conventions, except where the requested State decides to undertake prosecution of the requested person or transfer the proceedings to another State to conduct the prosecution. In that connection, a draft bilateral model treaty on extradition is annexed to the present report.

90. States are encouraged to rely on existing extradition provisions in multilateral treaties whenever there is an absence of bilateral treaties.

91. In view of the increasing number of multilateral and bilateral treaties, the United Nations should consider the elaboration of a multilateral extradition treaty covering all forms and manifestations of terrorist violence dealt with in previous international conventions. Such a treaty could complement the existing treaties. Alternatively, the United Nations should consider the elaboration of a multilateral treaty to remove gaps and loopholes in existing treaties and current extradition procedures.

92. Lawful alternatives to extradition, such as deportation or voluntary return subject to appropriate judicial guarantees, should be encouraged.

6. Mutual assistance and co-operation

93. The prevention and control of terrorist violence depends on effective mutual co-operation and assistance between States in securing evidence with respect to the prosecution or extradition of the offenders.

94. States are encouraged to lend each other the widest possible mutual assistance and co-operation in penal matters, subject to respect for internationally recognized human rights, and to rely on the relevant provisions of multilateral treaties and specific regional and bilateral treaties. To help achieve this end, a model bilateral draft treaty on mutual assistance is annexed to the present report.

7. Non-applicability of defences

95. The defence of "obedience to superior orders", "act of State" and other eventual international immunities should not apply with respect to persons who have violated international conventions prohibiting acts of terrorist violence.

8. Conduct of States

96. States that by their conduct violate international law and resort to terrorist violence should be more effectively curbed by the international community, and the United Nations should develop mechanisms for the control of such behaviour, particularly through the strengthening of United Nations machinery for the protection of human rights and the preservation of peace and security.

9. Protection of targets of high vulnerablity

97. Contemporary societies rely increasingly on various technological and scientific means for satisfying common needs, and such means may offer opportunities as targets of terrorist attack, with possibly devastating consequences. The United Nations, in co-operation with the specialized agencies concerned, should convene a conference of experts to identify such highly vulnerable targets and to develop appropriate measures for their protection.

10. Control of weapons, ammunition and explosives

98. States should develop appropriate national legislation for the effective control of weapons, ammunition and explosives and other dangerous materials that find their way into the hands of persons who could use them for the purposes of terrorism.

99. International regulations on the transfer, import, export and storage of such objects should be developed so that customs and border controls can be harmonized to prevent their transnational movement, except for established lawful purposes.

11. Protection of victims

100. States should establish appropriate mechanisms for the protection, and introduce relevant legislation for the assistance, of victims of terrorism, in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. 8/

12. Protection of witnesses

101. States should adopt measures and policies aimed at the effective protection of witnesses of terrorist acts.

13. Treatment of offenders

102. Among the aims of criminal law are deterrence, prevention and the resocialization of offenders, but such aims can seldom be achieved with respect to ideologically motivated offenders. It is therefore recommended that studies be undertaken concerning such offenders, that programmes be designed for them during their imprisonment, and that alternative measures of correction and programmes oriented to social defence be developed.

103. Consideration should be given to the establishment of a uniform standard of penalties to be imposed on terrorists in different countries in order to eliminate significant disparities.

104. All offenders must be treated without discrimination and in accordance with internationally recognized human rights, as enunciated in the Universal Declaration of Human Rights, the International Convenant on Civil and Political Rights, the Slavery Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the Forced Labour Convention, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Standard Minimum Rules for the Treatment of Prisoners. 9/

14. The role of the mass media

105. States should consider the development of guidelines for the mass media or encourage the establishment of voluntary guidelines to control the following: sensationalizing and justifying terrorist violence; dissemination of strategic information on potential targets; and dissemination of tactical information while terrorist acts are taking place, thereby possibly endangering the lives of innocent civilians and law enforcement personnel or impeding effective law enforcement measures to prevent or control such acts and to apprehend the offenders.

106. Nothing herein is intended to restrict the internationally recognized basic human right of freedom of speech and information or to encourage interference in the domestic affairs of other States.

15. Codification of international criminal law and creation of an international criminal court

107. International criminal law should be codified and the work of the International Law Commission on various aspects of codification should be encouraged, in co-operation with the Committee on Crime Prevention and Control.

108. The possibility of establishing a special penal jurisdiction within the International Court of Justice, or a separate international criminal court, should be considered. Such drafts as the 1951 and 1953 draft statutes for the establishment of an international criminal court and the 1980 draft statute for the establishment of an international jurisdiction to implement the International Convention on the Suppression and Punishment of the Crime of Apartheid 10/ should be considered.

16. Enhancing the effectiveness of international co-operation

109. The United Nations, in co-operation with specialized agencies such as the International Civil Aviation Organization, the International Maritime Organization, and the International Atomic Energy Agency, should prepare

annual reports on compliance with existing international conventions, including detailed reporting on incidents and cases (arrest, prosecution, adjudication and sentencing), to be made available for international circulation.

110. States signatory to international conventions prohibiting terrorist violence are urged to ratify those conventions at the earliest opportunity and to take effective measures to enforce their provisions.

111. States that are not signatories to international conventions prohibiting terrorist violence are urged to accede to such conventions at the earliest opportunity and to take effective measures to enforce their provisions.

112. States are urged to sign and ratify the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, adopted by the conference of the International Maritime Organization, held at Rome in 1988, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, adopted by the International Conference on Air Law, convened by ICAO, at Montreal from 9 to 24 February 1988.

113. The United Nations should develop ways and means to encourage prevention policies, strategies and action by States to ensure the effective implementation of relevant international conventions, including enhanced co-operation at the law enforcement, prosecution and judicial levels.

114. A system of reporting and monitoring acts of terrorist violence and the responses of States should be developed within the United Nations, and annual reports should be made and widely circulated to Member States.

115. The central role of the United Nations, and in particular of the Crime Prevention and Criminal Justice Branch, should be strengthened in order to fulfil the above-mentioned objectives and other purposes of the Organization, including the preservation of peace, the strengthening of world order and the combating of criminality.

IV. ADOPTION OF THE REPORT AND CLOSING OF THE MEETING

116. The provisional report was presented to the Meeting by the Rapporteur and unanimously adopted by the experts.

117. The Director of the Social Development Division of the Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna noted that the great complexity of the problems discussed by the Meeting could be attributed to the following three factors: their highly political nature; the powerful resources available to both organized crime and terrorism; and the serious discrepancy between the full recognition of the need for effective international countermeasures and the degree of political will to implement such measures, or, in other words, between what was desirable and what was possible. He believed that the Meeting had succeeded in its task of reducing that discrepancy. Further efforts would have to be made to deal with the cause-and-effect dimension of the problem in a manner free from bias and preconceived ideas. Only the United Nations, as the organization offering the broadest basis for international co-operation, could succeed in such an

undertaking. Within the United Nations, however, there was a need for closer co-operation between bodies concerned with different aspects of the problem, such as the Committee on Crime Prevention and Control, the International Law Commission and the Sixth Committee of the General Assembly.

118. The Chief of the Crime Prevention and Criminal Justice Branch noted that the far-reaching recommendations adopted by the Meeting had been based on a recognition of the importance of international co-operation in the fight against transboundary criminality and, in particular, against organized crime and terrorism. All countries should therefore work together to ensure their implementation.

119. In his closing remarks, the Chairman of the Meeting warned that, as developed countries became more successful in combating organized crime, such criminal activities might be increasingly transferred to developing countries, where institutions and processes were not yet fully capable of dealing with them. The Meeting had alerted the international community to the growing dangers confronting both developed and developing countries. Political will and concerted action were now needed to implement the adopted recommendations.

Notes

1/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ See Seventh United Nations Congress ..., chap. I, sect. E.

3/ Ibid.

4/ Ibid.

5/ General Assembly resolution 2625 (XXV), annex, of 24 October 1970.

6/ See Seventh United Nations Congress ..., chap. I, sect. E.

7/ Ibid., sect. B.

8/ Ibid., sect. C.

9/ Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.83.XIV.1).

10/ Ibid.

Annex I

LIST OF PARTICIPANTS

Experts invited by the Secretary-General

Carmen Antony (Panama), Professor of Criminology

M. Cherif Bassiouni (United States of America), Dean, International Institute of Higher Studies in Criminal Sciences, and Secretary-General of the International Association of Penal Law

Ahmed Galal Ezeldin (Egypt), Deputy Minister of Interior

Vasili P. Ignatoff (Union of Soviet Socialist Republics), Head of Organization and Inspection Office, Ministry of Internal Affairs

H.E. Paul Kwanga Ssemogerere (Uganda), Minister of External Affairs and Deputy-Prime Minister

Peter Loof (Australia), Chairman of the Board, Australian Institute of Criminology, and Attorney-General's Department (Australia)

Luis Lamas-Puccio (Peru), Professor of Criminal Law and Presidential Adviser

Abdul K. Nasution (Indonesia), Chief, Directorate of Education and Training Centre of the Attorney-General's Office

Stanislaw Pawlak (Poland), Director, Department of International Organizations, Ministry of Foreign Affairs, and Member of the International Law Commission

Panat Tasneeyanond (Thailand), Dean of Law School

Representative of the Committee on Crime Prevention and Control

Miguel Sanchez-Mendez (Colombia)

States Members of the United Nations represented by observers

Australia, Austria, Bulgaria, Canada, France, German Democratic Republic, Germany, Federal Republic of, Indonesia, Iran (Islamic Republic of), Nigeria, Philippines, Thailand, Ukrainian Soviet Socialist Republic, United Kingdom of Great Britain and Northern Ireland, United States of America.

United Nations Secretariat units

Department of Technical Co-operation for Development

Economic Commission for Latin America and the Caribbean

United Nations bodies

Helsinki Institute for Crime Prevention and Control affiliated with the United Nations

United Nations Division of Narcotic Drugs

United Nations Social Defence Research Institute

Intergovernmental organizations

Arab Security Studies and Training Centre

International Criminal Police Organization

League of Arab States

Non-governmental organizations

Airport Associations Coordinating Council

Centro Nazionale di Prevention e Difesa Sociale

International Association of Judges

International Centre of Sociological, Penal and Penitentiary Research and Studies

International Commission of Jurists

International Confederation of Free Trade Unions

International Federation of Human Rights

International Federation of Senior Police Officers

International Institute of Humanitarian Law

International Penal and Penitentiary Foundation

International Society of Social Defence

Pax Christi International

Symposium Freedom and Security

Third World Academy of Sciences

World Safety Organization

Individual observers

Richard H. Ward, Office of International Criminal Justice, University of Illinois

Annex II

DRAFT BILATERAL MODEL TREATY ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS*

The _____ and the _____,

Desiring to extend to each other the widest measure of co-operation to combat crime,

Have Agreed as follows:

ARTICLE 1 - SCOPE OF APPLICATION

1. The Contracting Parties shall, in accordance with this Treaty, grant to each other assistance in investigations or proceedings in respect of criminal matters.

2. Criminal matter includes matters connected with revenue offences and foreign exchange control offences.

3. Such assistance shall consist of:

(a) Taking of evidence and obtaining statements of persons;

(b) Provision of documents and other records;

(c) Location and identification of persons;

(d) Execution of requests for search and seizure;

(e) Measures to locate, restrain and forfeit the proceeds of crime and to recover pecuniary penalties in respect of offences;

(f) Making prisoners available to give evidence or assist investigations;

(g) Making other persons available to give evidence or assist investigations;

(h) Service of documents; and

(i) Other assistance consistent with the objects of this Treaty which is not inconsistent with the law of the Requested State.

4. Assistance shall not include:

(a) The arrest or detention of any person with a view to extradition;

(b) The execution in the Requested State of criminal judgements imposed in the Requesting State except to the extent permitted by the Laws of the Requested State and this Treaty; and

(c) The transfer of prisoners to serve sentences.

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*Submitted by Peter Loof on behalf of the Government of Australia.

ARTICLE 2 - OTHER ASSISTANCE

1. This Treaty shall not derogate from obligations subsisting between the Contracting Parties whether pursuant to other treaties or arrangements or otherwise nor prevent the Contracting Parties providing assistance to each other pursuant to other treaties or arrangements.

ARTICLE 3 - CENTRAL OFFICE

1. The Contracting Parties shall each appoint a Central Office to transmit and receive requests for the purpose of this Treaty.

2. Requests for assistance shall be made through the Central Offices which shall arrange for the prompt carrying out of such requests.

ARTICLE 4 - REFUSAL OF ASSISTANCE

1. Assistance shall be refused if:

(a) The request relates to an offence that is regarded by the Requested State as:

(i) An offence of a political character; or

(ii) An offence under military law of the Requested State which is not also an offence under the ordinary criminal law of the Requested State;

(b) The request relates to an offence in respect of which the offender has been finally acquitted or pardoned or has served the sentence imposed on him;

(c) There are substantial grounds for believing that the request for assistance has been made to facilitate the prosecution of a person on account of that person's race, sex, religion, nationality or political opinions or that that person's position may be prejudiced for any of these reasons; or

(d) The Requested State is of the opinion that the request, if granted, would seriously impair its sovereignty, security, national interest or other essential interests.

2. Assistance may be refused if:

(a) The request relates to an offence where the acts or omissions alleged to constitute that offence would not, if they had taken place within the jurisdiction of the Requested State, have constituted an offence;

(b) The request relates to an offence which is committed outside the territory of the Requesting State and the law of the Requested State does not provide for the punishment of an offence committed outside its territory in smilar circumstances;

(c) The results of the request for assistance are to be used in relation to an offence which, had it been committed in the Requested State, could no longer be prosecuted by reason of lapse of time or any other reason; or

(d) Provision of the assistance sought could prejudice an investigation or proceeding in the Requested State, prejudice the safety of any person or impose an excessive burden on the resources of that State.

3. Before refusing to grant a request for assistance the Requested State shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

ARTICLE 5 - CONTENTS OF REQUESTS

1. Requests for assistance shall include:

(a) The name of the competent authority conducting the investigation or proceedings to which the request relates;

(b) A description of the nature of the criminal matter including a statement setting out the relevant facts and laws;

(c) Except in cases of request for service of documents, a description of the essential acts, or omissions or matters alleged or sought to be ascertained;

(d) The purpose for which the request is made and the nature of the assistance sought;

(e) Details of any particular procedure or requirement that the Requesting State wishes to be followed;

(f) The requirements, if any, of confidentiality and the reasons therefor; and

(g) Specification of any time-limit within which compliance with the request is desired.

2. Requests for assistance, to the extent necessary and in so far as possible, shall also include:

(a) The identity, nationality and location of the person or persons who are the subject of the investigation or proceeding;

(b) A statement as to whether sworn or affirmed evidence or statements are required;

(c) A description of the information, statement or evidence sought;

(d) A description of the documents, records or articles of evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated; and

(e) Information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled.

3. All documents submitted in support of a request shall be accompanied by a translation into the language of the Requested State.

4. If the Requested State considers that the information contained in the request is not sufficient in accordance with this Treaty to enable the request to be dealt with, that State may request that additional information be furnished.

ARTICLE 6 - EXECUTION OF REQUESTS

1. To the extent permitted by its law, the Requested State shall provide assistance in accordance with the requirements specified in the request and shall respond to the request as soon as practicable after it has been received.

2. The Requested State may postpone the delivery of material requested if such material is required for proceedings in respect of criminal or civil matters in that State. The Requested State shall, upon request, provide certified copies of documents.

3. The Requested State shall promptly inform the Requesting State of circumstances, when they become known to the Requested State, which are likely to cause a significant delay in responding to the request.

4. The Requested State shall promptly inform the Requesting State of a decision of the Requested State not to comply in whole or in part with a request for assistance and the reason for that decision.

ARTICLE 7 - RETURN OF MATERIAL TO REQUESTED STATE

Where required by the Requested State, the Requesting State, after the completion of the proceedings, shall return to the Requested State material provided by the Requested State in fulfilment of the request.

ARTICLE 8 - PROTECTING CONFIDENTIALITY AND RESTRICTING USE OF EVIDENCE AND INFORMATION

1. The Requested State, if so requested, shall keep the application for assistance, the contents of a request and its supporting documents, and the fact of granting of such assistance, confidential. If the request cannot be executed without breaking confidentiality, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.

2. The Requesting State, if so requested, shall keep confidential evidence and information provided by the Requested State, except to the extent that the evidence and information is needed for the investigation and proceeding described in the request.

3. The Requesting State shall not use evidence obtained, nor information derived therefrom, for purposes other than those stated in a request without the prior consent of the Requested State.

ARTICLE 9 - SERVICE OF DOCUMENTS

A request to effect service of a document shall be made to a Requested State not less than 45 days before the date on which the personal appearance of any person is scheduled. In urgent cases, the Requested State may waive this requirement.

ARTICLE 10 - TAKING OF EVIDENCE

1. Where a request is made for the purpose of a proceeding in relation to a criminal matter in the Requesting State the Requested State shall, upon request, take the evidence of witnesses for transmission to the Requesting State.

2. For the purposes of this Treaty, the giving or taking of evidence shall include the production of documents, records or other material.

3. For the purposes of requests under this Article the Requesting State shall specify the questions to be put to the witnesses or the subject matter about which they are to be examined.

4. Where, pursuant to a request for assistance, a person is to give evidence for the purpose of proceedings in the Requesting State, the parties to the relevant proceedings in the Requesting State, their legal representatives or representatives of the Requesting State may, subject to the laws of the Requested State, appear and question the person giving that evidence.

5. A person who is required to give evidence in the Requested State pursuant to a request for assistance may decline to give evidence where either:

(a) The law of the Requested State would permit that witness to decline to give evidence in similar circumstances in proceedings which originated in the Requested State; or

(b) Where the law of the Requesting State would permit him to decline to give evidence in such proceedings in the Requesting State.

6. If any person claims that there is a right to decline to give evidence under the law of the Requesting State, the Requested State shall with respect thereto rely on a certificate of the Central Authority of the Requesting State.

ARTICLE 11 - OBTAINING OF STATEMENTS OF PERSONS

Where a request is made to obtain the statements of persons for the purpose of an investigation or proceeding in relation to a criminal matter in the Requesting State, the Requested State shall endeavour to obtain such statements.

ARTICLE 12 - AVAILABILITY OF PRISONERS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

1. A prisoner in the Requested State may at the request of the Requesting State be temporarily transferred to the Requesting State to give evidence or to assist investigations.

2. The Requested State shall not transfer a prisoner to the Requesting State unless the prisoner consents.

3. While the original sentence of a prisoner in the Requested State has not expired, the Requesting State shall hold the prisoner in custody and shall return him in custody to the Requested State at the conclusion of the proceedings in relation to which his transfer to the Requesting State is sought under paragraph 1 of this Article or at such earlier time as his presence is no longer required.

4. Where the sentence imposed on a person transferred under this Article expires whilst the person is in the Requesting State, that person shall thereafter be treated as a person referred to in Article 13.

ARTICLE 13 - AVAILABILITY OF OTHER PERSONS TO GIVE EVIDENCE OR ASSIST INVESTIGATIONS

1. The Requesting State may request the assistance of the Requested State in making a person available to appear as a witness in proceedings in relation to a criminal matter in the Requesting State, unless that person is the person charged, or to assist investigations in relation to a criminal matter in the Requesting State.

2. The Requested State shall, if satisfied that satisfactory arrangements for that person's security will be made by the Requesting State, request the person to consent to appear as a witness in proceedings or assist in the investigations.

ARTICLE 14 - SAFE CONDUCT

1. A person who consents to give evidence or assist an investigation in the Requesting State under Articles 12 or 13 shall not be detained, prosecuted or punished in the Requesting State for any offence or be subject to any civil suit in respect of any act or omission which preceded the person's departure from the Requested State, or, without that person's consent, be required to give evidence in any proceeding other than the proceeding to which the request relates.

2. Paragraph 1 of this Article shall cease to apply if that person, not being detained as a prisoner transferred under Article 13 and being free to leave, has not left the Requesting State within a period of thirty days after that person has been officially notified that that person's presence is no longer required or, having left, has returned.

3. A person appearing before an authority in a Requesting State pursuant to a request under Articles 12 or 13 shall not be subject to prosecution based on his testimony except that he shall be subject to the laws of that State in relation to contempt and perjury.

4. A person who does not consent to a request pursuant to Article 12 or Article 13 shall not, by reason thereof, be liable to any penalty or be submitted to any coercive measure notwithstanding any contrary statement in the request.

ARTICLE 15 - PROVISION OF PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

1. The Requested State shall provide copies of documents and records that are open to public access as part of a public register or otherwise, or that are available for purchase by the public.

2. The Requested State may in its discretion provide copies of any official document or record in the same manner and under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

ARTICLE 16 - CERTIFICATION AND AUTHENTICATION

1. A request for mutual assistance and the supporting documents thereto, as well as documents or other material supplied in response to such a request, shall be authenticated in accordance with paragraph 2.

2. A document is authenticated for the purposes of this Treaty if:

(a) It purports to be signed or certified by a Judge, Magistrate or other officer in or of the State sending the document; and

(b) It purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official seal of the State sending the document or of a minister of state, or of a department or officer of the Government, of that State.

ARTICLE 17 - SEARCH AND SEIZURE

1. The Requested State shall in so far as its law permits carry out requests for search, seizure and delivery of any material to the Requesting State provided the request contains information that would justify such action under the law of the Requested State.

2. The Requested State shall provide such information as may be required by the Requesting State concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the property seized.

3. The Requesting State shall observe any conditions imposed by the Requested State in relation to any seized property which is delivered to the Requesting State.

ARTICLE 18 - PROCEEDS OF CRIME

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds of the crime alleged are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries. In making the request, the Requesting State shall notify the Requested State of the basis of its belief that such proceeds may be located in its jurisdiction.

2. Where pursuant to paragraph 1 suspected proceeds of crime are found the Requested State shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a Court of the Requesting State.

3. The Requested State shall give effect to a pecuniary penalty order in respect of an offence, or forfeiture order in respect of the proceeds of crime, made by a Court of the Requesting State.

4. Either:

(a) The Requested State shall return the property obtained in satisfaction of the pecuniary penalty order and the proceeds of crime to the Requesting State; or

(b) The Requested State shall retain the property obtained in satisfaction of the pecuniary penalty order and the proceeds of crime.

5. In the case of Article 18.4(a) where the property is real property the Requested State shall sell that property and return the proceeds of that property to the Requesting State.

ARTICLE 19 - SUBSIDIARY ARRANGEMENTS

The Central Office of each Contracting Party may enter into subsidiary arrangements with each other consistent with the purposes of this Treaty to the extent that such arrangements are consistent with the laws of both Contracting Parties.

ARTICLE 20 - REPRESENTATION AND EXPENSES

1. Unless otherwise provided in this Treaty the Requested State shall make all necessary arrangements for the representation of the Requesting State in any proceedings arising out of a request for assistance and shall otherwise represent the interest of the Requesting State.

2. The Requested State shall meet the cost of fulfilling the request for assistance except that the Requesting State shall bear:

(a) The expenses associated with conveying any person to or from the territory of the Requested State, and any fees, allowances or expenses payable to that person whilst in the Requesting State pursuant to a request under Articles 12 or 13;

(b) The expenses associated with conveying custodial or escorting officers; and

(c) Where required by the Requested State, exceptional expenses in fulfilling the request.

ARTICLE 21 - CONSULTATION

The Contracting Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of this Treaty either generally or in relation to a particular case.

ARTICLE 22 - ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.

2. This Treaty shall apply to requests made pursuant to it whether or not the relevant acts or omissions occurred prior to this Treaty entering into force.

3. Either Contracting Party may terminate this Treaty by notice in writing at any tyime and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE at
on the day of One Thousand
nine hundred and eighty in and
both texts being equally authentic.

Annex III

DRAFT MODEL EXTRADITION TREATY*

ARTICLE I - APPLICABILITY

1. Extradition Proceedings between Contracting Parties shall be in accordance with the provisions of this Model Treaty.

2. In the event any of the Contracting Parties is also a party to a multilateral convention, that party may rely on this Model to supplement the applicable multilateral convention.

ARTICLE II - OBLIGATION TO EXTRADITE OR PROSECUTE

1. The Contracting Parties agree to mutually extradite persons whom the competent judicial authorities of the Requesting Party have charged with an offence or have adjudicated as guilty of committing an offence.

2. In the event the requested person is charged with the commission of an international crime, the Contracting Parties acknowledge the duty to effectively prosecute or mutually extradite, or extradite to another state where the accused can be effectively prosecuted.

ARTICLE III - APPLICABLE LAW

1. In all extradition proceedings between the Contracting Parties the national law of each of the Requesting and Requested Party shall apply.

2. All proceedings in the Requested State shall be subject to its national laws.

3. Any multilateral convention to which a Contracting Party is a party thereof is applicable to extradite proceedings under this Model with respect to the Contracting Party to such convention.

4. The jurisdiction of a Requesting Party shall be determined in accordance with its national laws.

ARTICLE IV - EXTRADITABLE OFFENCES AND DOUBLE CRIMINALITY

1. Extradition shall be granted in respect of offences punishable by deprivation of liberty of no less than one calendar year under the laws of the Requesting and Requested Party.

2. Whenever a person is requested in order to serve a sentence after having been duly convicted in the Requested State by an ordinary criminal court or tribunal, extradition shall be granted only if the sentence remaining to be served exceeds one calendar year.

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*Submitted by Cherif Bassiouni.

3. In the event that a request for extradition includes several separate offences punishable by different terms of imprisonment, the Requesting State may grant extradition for all such offences even though only one of them is for a period exceeding a calendar year.

4. An extraditable offence is an offence which is prosecutable and punishable under the laws of the Requesting and Requested State and where facts underlying the criminal charge or conviction would support the same equivalent criminal charge or conviction in the Requested State.

ARTICLE V - PRIORITY IN EXTRADITION REQUESTS

1. In the event of multiple extradition requests, priority in granting extradition shall be as follows:

(a) A Contracting Party in whose territory the offence occurred in whole or in part;

(b) Any Contracting Party of which the accused is a national;

(c) Any Contracting Party of which the victim is a national;

(d) Any Contracting Party whose interests have been affected by the commission of the offence.

2. Notwithstanding the above a Requested Party may weigh the national interests of the different Contracting Parties and grant priority to the state whose interests have been affected the most and which is most likely to effectively prosecute the requested alleged offender or carry out the sentence of a convicted offender.

ARTICLE VI - DOCUMENTS AND SUPPORTING EVIDENCE

1. The Requesting Party shall produce duly authenticated and translated copies of such official documents as arrest warrants and judicial decisions regarding the case and the requested person.

2. The Requesting Party shall produce some evidence showing reasonable grounds to believe that the person in question may have or has committed the offence charged or for which he has been convicted in accordance with the extradition request.

3. An extradition request shall be submitted to the Requested Parties in writing by the Requesting Party's minister of justice or the equivalent chief enforcement officer, minister of justice or equivalent chief judicial law enforcement official.

4. An extradition request shall contain information and evidence:

(a) Identifying the requested person, and if possible where he may be found;

(b) Description of the offence charged;

(c) The facts upon which the offence is believed to have been committed or has been adjudged to have been committed;

(d) The text of the applicable legal provisions and a description or explanation of the elements of the offence;

(e) The text of the legal provisions concerning the punishment for the offence;

(f) The text of the legal provisions relating to the time limit on prosecution or the execution of the punishment for the offence.

5. All evidence presented shall be duly authenticated by certification of the competent court having jurisdiction over the case in accordance with the laws of the Requesting Party.

ARTICLE VII - JUDICIAL DETERMINATION

1. Extradition shall be granted by a Requested Party on the basis of a judicial determination made by a court of ordinary jurisdiction under the laws of the said Requested Party.

2. A person found extraditable under the laws of the Requested Party shall have the right to appeal or review of the judicial determination granting that person's extradition to the Requesting Party.

3. Nothing herein is to be construed as limiting the right of a Requested Party's government to appeal a judicial determination of its own courts, denying extradition in accordance with the laws of the said Requested Party.

4. A person whose extradition has been denied by a final judicial order subject to appeal as provided in paragraph 3 shall not be subjected to renewed extradition proceedings unless new evidence is presented against such person by the Requesting or Requested Party.

5. In all extradition proceedings a requested person shall enjoy the same legal rights as any other person brought before the judicial authorities of the Requested State.

6. A requested person shall have the right to be represented by counsel and in the event of indigency to have court appointed counsel to represent him. He shall also have the full opportunity to receive copies of the documents sent by the Requesting Party as well as the evidence that is to be presented in support of the request in order to prepare a defence thereto.

7. A judicial determination for extradition purposes is not a trial on the merits and the rights of the requested persons shall be limited to the following:

(a) Ascertaining the identity of the requested person and whether such person is the one accused or convicted of the offence for which he is requested;

(b) Whether the Requesting State has jurisdiction;

(c) Whether the crime is an extraditable offence;

(d) Whether the documents presented are in accordance with the requirements of this Model;

(e) Whether the requirements of this Model have been satisfied;

(f) That there exists no bar to extradition in accordance with provisions of this Model, or under any other applicable multilateral convention; or, any other grounds for denial of extradition under the national laws of the Requested State.

8. All extradition proceedings shall be in open court and a record thereof should be available for any appeal or review by other means.

ARTICLE VIII - ALTERNATIVES TO EXTRADITION

1. The Contracting Parties agree not to resort to any administrative means to surrender the individual to one another once extradition proceedings are commenced.

2. A final judicial determination of non-extraditability in extradition proceedings entitles the person in question to be released from custody and to the right of voluntary departure to a country of his choice unless he is charged with another offence in the Requested State or unless he is the subject of another extradition request for another offence.

ARTICLE IX - CONDITIONAL EXTRADITION

1. Whenever the laws of the Requested Party prohibit extradition of its nationals, or because of the nature or type of the eventual penalty to be imposed by the Requesting State, then extradition may be conditionally granted to the Requesting State.

2. Conditional extradition in this case may be in the nature of:

(a) Temporary extradition in order to allow the Requesting State to prosecute the individual and thereafter if the individual is acquitted to have that individual returned to the Requested State; or in the event of a conviction to have the individual returned for the execution of the sentence in the Requested State. Such form of conditional extradition upon the return of the surrendered person to carry out his sentence in the Requested State will depend on either the existence of a treaty between the Contracting Parties on "transfer of prisoners" or on the basis of an ad hoc agreement on the subject;

(b) Extradition based upon the Requesting State's providing assurances that the conditions of the Requested State shall be carried out.

3. A person who is being prosecuted or serving a sentence in a Requested State may be conditionally extradited to stand trial or be investigated for a criminal violation in a Requesting State on condition that he be returned to serve the balance of his sentence in the Requested State.

ARTICLE X - GROUNDS FOR DENIAL OF EXTRADITION

1. A Requested Party may refuse to extradite a person if it elects to prosecute that person for an offence committed within its territory. However, in such a case it should grant conditional extradition as specified in Article X.

2. Extradition shall not be granted for offences in connection with taxes, duties, customs, and exchange regulations.

3. It shall be a bar to extradition if prosecution of the person accused is barred by double jeopardy, ne bis in idem, or a statute of limitation, of either the Requested or Requesting Party whichever is longer.

4. Extradition may be denied to a Requesting Party if the Requested Party has reasons to believe that the request has been made for purposes of prosecuting or punishing the person requested on account of his race, religion, creed, nationality, political opinion or belief, or gender or that the criminal procedures to which he will be subjected to may not be fair or impartial or that he would be discriminated against for any of the above stated reasons.

5. A Contracting Party may refuse to extradite a requested person on the basis of nationality or because the penalty that may be inflicted in the Requesting State is contrary to its public policy but in such a case it should grant conditional extradition in accordance with Article X.

6. In the event that a Requesting Party denies extradition for any of the grounds stated above it may either conduct the prosecution of the individual in accordance with its laws or on the basis of a multilateral convention or a bilateral convention between the Parties on the subject of "transfer of criminal proceedings".

7. In the event of denial of extradition of a person requested to serve a sentence for which he has been convicted the Requested Party may on the basis of a multilateral convention or a bilateral convention between the parties on "recognition of foreign penal judgements" assume the said penal judgement and execute the sentence.

8. Extradition may also be denied when:

(a) The warrant of arrest or the judgement of conviction the said person is rendered by a non-judicial body or by an ad hoc or special or extraordinary tribunal which does not satisfy the guarantees of fairness in accordance with the laws of the Requested Party;

(b) If the conviction is rendered in absentia;

(c) If the proceedings leading to and including the judgement did not satisfy the minimum rights recognized to other persons in the Requested State.

In these cases, however, extradition shall be granted if the Requesting Party gives to the Requested Party sufficient assurances to guarantee to the requested person the right to a fair trial or a retrial which safeguards his fundamental rights of defence.

ARTICLE XI - THE POLITICAL OFFENCE EXCEPTION

1. Extradition shall not be granted if the offence in respect of which a person is requested is deemed by the Requested Party to be an offence of a political character. An offence of a political character is:

(a) Any offence that does not involve the use of force and which is committed in the exercise of an internationally protected human right such as that of freedom of expression, association, assembly, religion, and speech, or any activity which is a non-violent expression of the social, political, cultural and economic rights of the person;

(b) An act of violence as a means of a political expression is not deemed of a political character under the provision of this Article unless it is predominantly motivated by a political or ideological goal of the actor and where vilence is incidental to the political or ideological goal of the actor.

2. Except for exceptional circumstances to be determined by the competent judicial authority of the Requested State none of the following shall be regarded as a political offence or an offence of a political character:

(a) Any international crime such as but not limited to: crimes against humanity, genocide, war crimes, torture, unlawful human experimentation, unlawful seizure of aircrafts, offences against civil motive navigation, serious attacks upon the life, physical integrity or liberty of internationally protected persons, kidnapping or taking of hostage or serious unlawful detention of innocent civilians;

(b) Any offence involving the use of a bomb, grenade, rocket, automatic firearm, or letter or parcel bomb or explosive, if this type of weapon is used to endanger the life or safety of persons, or any act of serious violence against the life, physical integrity or liberty of an innocent person;

(c) An attempt to commit any of the above or aiding and abetting any person who commits or attempts to commit any of the offences enumerated above is also an exception to the political offence exception;

3. Nothing in this Article shall effect any obligations which the Contracting Parties may have undertaken or may undertake under any other multilateral convention.

ARTICLE XII - RULE OF SPECIALTY

1. A person who has been extradited shall not in the Requesting State be: proceeded against in the Requesting State nor shall he be sentenced or detained with a view to carrying out a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited, nor shall he, for any other offence, be restricted in his personal freedom, unless that person after having had the opportunity to leave the territory of the Requested Party does not do so within forty-five days or subsequently returns to the territory after the expiration of the above-mentioned period or unless the Requested Party specifically consents.

2. Consent by a Requested Party to variance in the prosecution or punishment of the surrendered person must be on the basis of a valid legal determination made by the competent legal authority of the Requesting State.

3. A surrendered person has the right to raise the applicability of this "Rule of Specialty" before the Requesting Party's judicial and administrative bodies without the need for any action or protest on the part of the Requested State.

ARTICLE XIII - RE-EXTRADITION TO A THIRD STATE

1. The Requesting Party shall not, without the consent of the Requested Party, surrender to another state, a person surrendered to the Requesting Party.

2. Paragraph 1 of this Article does not apply when the person, having had an opportunity to leave the territory of the Party to which he has been surrendered has not done so voluntarily within forty-five days of his final discharge and release from custody, or if he has returned to that state's territory after leaving it.

ARTICLE XIV - SURRENDER OF THE PERSON TO BE EXTRADITED

1. The Requested Party shall inform the Requesting Party of its decision with regard to extradition.

2. If the request is agreed to, the Requesting Party shall be informed of the place and date of the surrender and of the length of time for which the person claimed was detained with a view to his surrender.

3. Subject to the provisions of paragraph 4 of this Article, if the person surrendered has not been delivered to the Requesting Party after the expiration of thirty days from the date of notification of his surrender he is entitled to be released forthwith by the competent judicial authorities of the Requested State.

4. If circumstances beyond the control of either the Requested or Requesting Parties arise which prevent the surrender of the individual within the period of thirty days such circumstances shall be notified to the other Party as well as to the person to be surrendered. However, the new time and date of surrender should not exceed an additional fifteen days otherwise the individual to be surrendered shall have the right to petition the competent judicial authorities of the Requested State to order his release forthwith.

5. Surrender of an individual may however, be postponed beyond the period of time specified hereinabove if the individual is subject to judicial proceedings in the Requested State or if he is executing a sentence in the Requested State. In that case, the surrender will be deferred till after the final decision in the case is rendered or completion of the sentence and all administrative formalities concerning his release from the sentence including a conditional release sentence unless the Contracting Parties agree to transfer and acceptance of "supervision of the conditionally release".

6. In all such cases, however, the individual shall be surrendered to the Requesting Party within thirty days eventually extended by an additional fifteen days as specified in paragraph 4 of this Article.

ARTICLE XV - TRANSIT EXTRADITION

1. The Contracting Parties may request each other for the permission to allow a surrendered individual to transit through their respective territories without the need for any additional extradition proceedings but subject to prior approval of their respective ministries of justice or its equivalent under the legal system of the Parties.

ARTICLE XVI - PROPERTY OF THE SURRENDERED PERSON

1. The property of a person to be surrendered may not be seized and handed over to a Requesting State unless it is so adjudicated by a competent judicial authority. In that case the property shall be itemized and identified and a copy thereof shall be given to the surrendered person or his legal representative.

2. The property of a surrendered person must be returned to such a person after completion of the judicial proceedings against him unless it is duly confiscated by virtue of a decision rendered by a competent judicial authority.

ARTICLE XVII - RELEASE OF AN EXTRADITED PERSON

1. Whenever extradition is denied the requested person is entitled to be released from the custody of the Requested State within a period of no more than twenty-four hours provided that such period of time is necessary to satisfy administrative procedures related to such release.

2. A requested Party may not condition the release of an individual whose extradition was denied on any other basis than one which is related to a violation of its own laws as determined by the Requested State's competent judicial authority.

3. A person who is entitled to be released in accordance with paragraphs one and two of this Article may freely leave the territory of the Requested State for any destination he may wish and the Requested State should not compel his involuntary departure to a state he may not wish to be taken to.

4. A requested Party may however, not allow the total release of a person otherwise entitled to be released under the provisions of this Article within its territory if it wishes to escort such a person to be released to the nearest means of transportation to leave the territory of that state to a foreign destination of choice of the released person.

5. If the released person does not elect to leave the territory of the Requested State to a destination of his choice outside the territory of the Requested State he may then be deported to any state other than the state to which his extradition was denied.

ARTICLE XVIII - LANGUAGE OF COMMUNICATION

1. All communication shall be made in the official language of the Requested State unless specifically waived by the Requesting Party.

ARTICLE XIX - COSTS

1. The Requesting State shall bear the costs of surrender of the individual.

ARTICLE XX - PROVISIONAL ARRESTS

1. In case of urgency the competent authorities of the Requesting Party may request the provisional arrest of the person sought in regard of whom the extradition request is to be made.

2. The Requesting Party shall state, at the time of the request for provisional arrest that sufficient grounds exist to justify the request for provisional arrest and shall also state that the extradition request with all supporting documents and evidence shall be presented within a period not to exceed thirty days from the date of the provisional arrest.

3. If after thirty days from the date of arrest the extradition request and accompanying papers have not been duly filed before the competent judicial authority of the Requesting Party, the person held under provisional arrest shall be entitled to immediate release. Such release, however, shall not prejudice the Requesting State's right to file its completed extradition request, nor shall it prejudice the Requested State's right to rearrest the individual if the extradition request is subsequently duly filed.

Annex IV

LIST OF DOCUMENTS

A. Basic document

A/CONF.144/PM.1	Discussion guide for the interregional and regional preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

B. Background documents

A/CONF.121/20	New dimensions of criminality and crime prevention in the context of development: challenges for the future
A/CONF.121/22/Rev.1	Report of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 August-6 September 1985
General Assembly resolution 40/61	Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes
General Assembly resolution 40/32	Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders
General Assembly resolution 42/159	Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes
Economic and Social Council resolution 1987/49	Preparations for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders
UNSDRI 388	Commentary on International Technical and Scientific Co-operation in Crime Prevention and Criminal Justice, prepared by the United Nations Social Defense Research Institute for the Ad Hoc Group of Experts Meeting on International Co-operation for the Prevention and Control of the Various Manifestations of Crime, including Terrorism, Siracusa, Italy, 20-24 January 1988

Report of the International Expert Meeting on United Nations and Law Enforcement: the role of criminal justice and law enforcement agencies in the maintenance of public safety and social peace, Baden, Austria, 16-19 November 1987

Report of the Ad Hoc Group of Experts Meeting on International Co-operation for the Prevention and Control of the Various Manifestations of Crime, including Terrorism, Siracusa, Italy, 20-24 January 1988