

EFFORTS OF THE CENTRE FOR INTERNATIONAL CRIME PREVENTION TO PROMOTE EXPEDITIOUS ENTRY INTO FORCE OF THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND ITS PROTOCOLS AND EXPECTED IMPACT OF THESE NEW INSTRUMENTS

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I. THE PALERMO HIGH-LEVEL SIGNING CONFERENCE

The Convention and the two Protocols finalized by the Ad Hoc Committee at its October 2000 session were submitted to the General Assembly for consideration and action at its fifty-fifth session, together with a draft resolution that the Ad Hoc Committee prepared at its July and October sessions. The General Assembly adopted unanimously the resolution¹ and, by virtue thereof, the Convention and the two Protocols. By striking his gavel in the morning of 15 November, the President of the General Assembly brought to a successful conclusion the strenuous efforts of the international community to negotiate in good faith a set of instruments to collectively fight organized crime. Because of the fully participatory nature of the negotiating process and the sustained political commitment that formed the core of the joint efforts of the all States, the new instruments take into full consideration all legitimate concerns of all countries, big or small. They do so without in any way compromising the quality, functionality and, most importantly, universality of the

instruments. Perhaps one of the most significant features of the negotiation process was that all countries engaged in it came away with a strong sense of ownership of the new instruments. It will be this sense of ownership that will constitute the best guarantee for the expeditious entry into force of the Convention and its Protocols and their subsequent implementation.

The new Convention and the two Protocols were opened for signature on 12 December 2000 at a high-level political signing conference in Palermo. The symbolism and significance of this action by the General Assembly² extend beyond the obvious. By gathering in Palermo, the 149 States present sent a powerful message to the world about their determination to join forces against transnational organized crime. The successful conclusion of the negotiations for the Convention and its Protocols in record time was only the beginning of joint efforts in this field. The political commitment remained as strong as ever. In evidence of this commitment, the Convention was signed by 123 countries and the European Community, while the Protocols against Trafficking in Persons

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¹ General Assembly resolution 55/25 of 15 November 2000.

² The High-Level Political Signing Conference was convened pursuant to General Assembly resolution 54/129 of 17 December 1999.

and Smuggling of Migrants received 81 and 78 signatures respectively.

The Protocol on the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition was finalized at the twelfth session of the Ad Hoc Committee in March 2001. It was submitted to the General Assembly, which had kept the item entitled "Crime Prevention and Criminal Justice" on the agenda of its fifty-fifth session open, in anticipation of the successful completion of the work of the Ad Hoc Committee. The Assembly adopted resolution 55/255 of 31 May 2001, by which it unanimously adopted the Protocol and opened it for signature at United Nations Headquarters in New York on 2 July 2001.

Since Palermo, the number of signatories to the Convention and the first Protocols has increased to 127, 88 and 84 respectively. The third Protocol has been signed by two countries so far, but a significant number of signatures are expected on the occasion of the 56th session of the General Assembly, which opened on 11 September 2001. Five countries have ratified the Convention to date, while there are three parties to the Trafficking in Persons Protocol and two parties to the Smuggling of Migrants Protocol.

II. EFFORTS OF THE CENTRE FOR INTERNATIONAL CRIME PREVENTION TO PROMOTE SPEEDY RATIFICATION OF THE NEW INSTRUMENTS

Immediately after the Palermo Conference, the Centre for International Crime Prevention embarked on a consolidated and comprehensive effort to promote expeditious entry into force of the Convention and its Protocols. The

Centre developed a framework for action, based on a number of key strategic precepts and objectives.

The Centre structured its activities along two major lines: first, bringing itself to a position of being able to respond rapidly to individual requests for assistance; and second, sustaining and nurturing the political will and momentum that made the completion of instruments of such complexity in such a record time.

The first course of action was geared towards achieving the objective of supporting and strengthening the efforts of individual countries, which had already embarked on, or were about to begin the pre-ratification process. Several of these countries were intent on incorporating the Convention and its Protocols into their domestic legal system, but found themselves in need of specialized expertise or consolidated information about the experience of other countries, in order to successfully and expeditiously review their existing legislation. Further, these countries required the same type of assistance in order to amend their existing legislation, or draft new legislation, as the case may be, which would bring their systems in line and in compliance with the new instruments. This course of action was pursued by engaging in consultations with the national authorities of the countries requesting assistance, which were directly responsible for the ratification process and working with them in reviewing existing legislation or drafting amended or new laws.

The second course of action intended to achieve the objective of providing countries the opportunity to exchange experiences and analyze difficulties encountered in the pre-ratification

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process, as well as mutually reinforce each other, on both the political and substantive levels. The Centre decided to pursue this course of action by organizing sub-regional or regional consultations or seminars. The Centre opted for a balance between the sub-regional and regional approach, in order to engage, in groups, countries which share common legal traditions and systems, or pursue common goals in economic and social development, while gradually expanding to cover countries which share geographical regions and are active in that context in pursuing common political objectives. In order to maximize the impact of its activities, the Centre decided to seek close cooperation with sub-regional and regional organizations, which pursue similar objectives and bring into the process the profound knowledge of their respective region or sub-region and their political presence and influence.

The underlying premise of all of the Centre's activities is that at this stage, emphasis should be placed on supporting and promoting the efforts of countries to bring the new instruments in force. Implementation of the Convention and its Protocols would be a subsequent goal, which would require a much broader and more detailed set of strategies and activities. Implementation would also require a much more comprehensive and larger technical cooperation programme, supported by a considerably expanded and sustained financial base. The Convention has established its own mechanism, the Conference of the Parties, which is charged with the task of overseeing and guiding implementation efforts.

In this context, the Centre made proposals to donor countries and was gratified by the immediate response. Several countries, among which Japan

figures prominently, made voluntary contributions to the special account established under the United Nations Crime Prevention and Criminal Justice Fund, which was set up in accordance with the General Assembly adopting the Convention. At the time of writing this paper, the Centre had undertaken the following activities:

In January 2001, the Centre attended the annual meeting of the Law Ministers and Attorneys-General of the Caribbean Community, at the invitation of that organization, and presented the Convention and the two Protocols that had at the time been adopted by the General Assembly. The CARICOM countries had not been able to attend the Palermo Conference and, as a consequence, were a group of countries that had not signed the new instruments. Working closely with the CARICOM Secretariat, the Centre managed to secure the commitment of the majority of the CARICOM countries to sign the Convention and its Protocols, as appropriate. Bahamas signed the Convention and the two Protocols in March, and several more of the CARICOM countries have confirmed their intention to do so at a special signing ceremony which will take place during the current session of the General Assembly. As a follow-up, the Centre is organizing, in cooperation with the Commonwealth Secretariat, a Ministerial Seminar in Trinidad and Tobago at the end of November to review progress on the ratification process and help the CARICOM countries analyze the requirements for ratification.

In March, the Centre organized, in close cooperation with the Southern Africa Development Community, a sub-regional Ministerial Seminar in Pretoria, South Africa for the 14 SADC States. The

SADC States agreed to work intensely towards ratification and review progress towards the end of the year.

In April, the Centre organized another Ministerial Seminar in Guatemala for the countries of Central America and in July, the Centre participated in a meeting of the ASEAN countries devoted to the common efforts towards transnational organized crime and the ratification of the Convention and its Protocols.

The Centre is planning similar events for the ten countries of the Economic Cooperation Organization in Teheran, Islamic Republic of Iran, for the countries of the Economic Community of West Africa (ECOWAS) in Ouagadougou, Burkina Faso, for the countries of the Latin American region in Quito, Ecuador, for the entire African region in Algiers, Algeria, and for the countries of Central and Eastern Europe, in Vilnius, Lithuania. The Centre is also engaged in consultations with interested host countries in order to organize a similar regional event for the countries of the Asia and Pacific region.

The Centre is cooperating closely with the Inter-Parliamentary Union and attended its most recent annual conference in Ouagadougou, Burkina Faso, engaging in very useful dialogue with parliamentarians from around the world on the contents of the new instruments and the crucial importance of their support at the legislative level.

The Centre has been joined in its efforts by the International Scientific and Professional Advisory Council (ISPAC), which organized an interregional meeting involving thirty countries on the ratification of the Convention and its Protocols, on 14 and 15 September in Courmayeur, Italy.

Meanwhile, the Centre has begun responding to individual requests for assistance and has built into its work plan several more advisory missions before the end of the year.

In all of these activities, the Centre has been using a "checklist" containing substantive elements of ratification plans. This tool is reproduced below.

A. Substantive Elements of Ratification Plan

1. Legislative Action

Article 5—Criminalization of Participation in an Organized Criminal Group

Establish the following criminal offences as distinct from those involving the attempt or completion of a criminal activity:

- Agreeing to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit.
- Conduct by a person, who with knowledge of an organized criminal group or its intention, takes an active part in:
 - Criminal activities of the organized criminal group.
 - Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim.
- Organizing, directing, aiding, abetting, facilitating or counseling the commission of crime involving an organized criminal group.

Ensure that domestic law covers all serious crimes involving organized criminal groups.

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Article 6—Criminalization of the Laundering of Proceeds of Crime

Establish the following criminal offences:

- The conversion or transfer of known proceeds of crime, to conceal or disguise the illicit origin.
- The concealment or disguise of the true nature, source, location, disposition, movement or ownership of known proceeds of crime.
- The knowing acquisition, possession or use of proceeds of crime.
- Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of the above offences.

Ensure that above criminalization applies to widest range of predicate offences (both within and outside domestic jurisdiction).

Article 8—Criminalization of Corruption

Establish the following criminal offences:

- The promise, offering of an undue advantage or giving to a public official, in order that the official act or refrain from acting in the exercise of his or her official duties.
- The solicitation or acceptance by a public official of an undue advantage, in order that the official act or refrain from acting in the exercise of his or her official duties.
- The participation as an accomplice in the above offence.

Article 10—Legal Persons

Establish the liability of legal persons (to the extent consistent with the State's legal principles) for participation in serious crimes involving an organized

criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of the Convention.

Article 23—Criminalization of Obstruction of Justice

Establish following criminal offences:

- The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or the production of evidence in a proceeding.
- The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official.

**B. Procedural Legislation/
Administrative Measures**

Article 11—Prosecution, Adjudication and Sanctions

Make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.

Establish under domestic law (where appropriate) a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where alleged offender has evaded the administration of justice.

Article 12—Confiscation and Seizure

Adopt the following measures to enable confiscation of:

- Proceeds of crime derived from offences or property the value of which corresponds to that of such proceeds.
- Property, equipment or other instrumentalities used in or destined for use in offences.

- Adopt measures to enable the identification, tracing, freezing or seizure of any item referred to in para 1 of the article for the purpose of eventual confiscation.

Empower courts or other competent authorities to order that bank, financial or commercial records be made available or be seized (bank secrecy shall not be a legitimate reason for failure to comply).

Article 15—Jurisdiction

Adopt measures to establish jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:

- The offence is committed in the territory of that State Party
- The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.
- May also establish jurisdiction when:
 - 2.(a) The offence is committed against a national of that State Party.
 - 2.(b) The offence is committed by a national of that State Party or a stateless person, who has his or her habitual residence in its territory.
 - 2.(c) The offence is:
 - 2.(c)(i) One of those established in accordance with article 5, para 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory.
 - 2.(c)(ii) One of those established in accordance with article 6, para 1 (b)(ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, para 1

(a)(i) or (ii) or (b)(i), of this Convention within its territory.

- Adopt measures to establish jurisdiction over the offences when the alleged offender is present in the territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

May also adopt measures to establish jurisdiction over the offences when the alleged offender is present in the territory and it does not extradite him or her.

Article 24—Protection of Witnesses

Provide evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness.

Take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings and their relatives and other persons close to them.

Article 25—Assistance and Protection of Victims

Take appropriate measures within its means to provide assistance and protection to victims of offences covered by this convention, in particular in cases of threat of retaliation or intimidation (in so far as legislation is concerned).

Establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this convention (in so far as legislation is concerned).

Article 26—Measures to Enhance Cooperation with Law Enforcement Authorities

Consider providing for the possibility of mitigating punishment of an accused

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person who provides substantial cooperation.

Consider providing for the possibility of granting immunity from prosecution to a person, who provides substantial cooperation.

Take appropriate measures to encourage persons, who participate or who have participated in organized criminal groups:

- 1.(a) To supply information for investigative and evidentiary purposes.
- 1.(b) To provide factual, concrete help contributing to depriving organized criminal groups of their resources or of the proceeds of crime.

2. International Cooperation Measures

Article 16—Extradition

Review current extradition arrangements and/or legislation to ensure compliance with Article 16. In particular:

- If States make extradition conditional on the existence of a treaty: review extradition treaties currently in force to ensure that offences covered by the Convention and the Protocols are extraditable offences and seek were appropriate to conclude extradition treaties with other State parties to this Convention.
- If States do not make extradition conditional on the existence of a treaty, review legislation or arrangements to ensure recognition of the offences covered by the Convention and the Protocols as extraditable offences.
- Review legislation applicable to extradition to ensure expeditious extradition procedures for offences

covered by the Convention and the Protocols.

- Review legislation applicable to extradition to provide for simplification of evidentiary requirements relating to extradition for offences covered by the Convention and the Protocols.
- Review legislation to ensure extradition requests under the Convention are not refused on the sole ground that the offence is also considered to involve fiscal matters.

Article 18—Mutual Legal Assistance

Review current mutual legal assistance arrangements and/or legislation to ensure compliance with Article 18. In particular:

- Review mutual legal assistance legislation, treaties, agreements or arrangements, as appropriate, to ensure that such assistance is extended where the requesting State has reasonable grounds to suspect that an offence established or covered by the Convention and the Protocols is transnational in nature.
- Review legislation and other administrative arrangements to ensure confidentiality of information provided by another State as a result of a request for mutual legal assistance under the Convention.
- Review legislation to ensure that requests for mutual legal assistance under the Convention are not refused on the ground of bank secrecy.
- Designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to competent authorities.

Notify the Secretary-General of the UN at the time of ratification, acceptance or

approval of or accession to this Convention of the language or languages acceptable to each State for the transmission of requests for mutual legal assistance.

III. EXPECTED IMPACT OF THE CONVENTION AND ITS PROTOCOLS

Combating crime and the organizations that pursue it for achieving wealth and power is the central goal of the new instruments. It denotes the perception of the problem and the will of countries to act. Shifting from this dimension to the reality prevailing in each country, the perception of the problem and the will to act are influenced by many intervening variables, which condition the effectiveness of the action. These variables include a number of objective elements, such as the level of resources available, the qualifications and professional skills of decision-makers and those charged with implementation, in particular the criminal justice system personnel, including law enforcement agencies.

The Convention and its Protocols have been designed and negotiated as cooperation tools that will enable countries throughout the world to work together in raising the standards, consolidating their approach and maximizing the effects of joint action against transnational organized crime. The new instruments contain a variety of mechanisms employed in the achievement of these objectives. Their strength lies in the ingenuous and careful combination of measures, as well as in the innovative solutions they contain to problems of a substantive as much as a political nature.

Substantive criminal law must adapt to the challenges posed by organized crime in different ways. Those countries which have had more threats posed by organized crime have been the first to react, by refining their legislation. The main changes relate to the crime of participating in an organized criminal group and to the confiscation of assets acquired through criminal activities. In some countries, legislation allows the confiscation of crime proceeds through civil action against the proceed (*in rem*). This can be seen as a further expansion of the capability of the law in dealing with the changing trends of organized crime.

The Convention has solidified and expanded the trend of modified criminal legislation to include the offence of "participation in an organized criminal group". In many countries, this would coincide with the crime of "conspiracy". The Convention's negotiators went to great lengths to ensure the full compatibility of the legal concepts and traditions, which are at the core of these two approaches. The purpose of the new instrument was not to engage in efforts towards full unification of national legislation, recognizing the futility of the task, but to bring about a sufficient degree of harmonization, understood in the sense of convergence and compatibility. Criminal legislation is the point of departure and reference for the collective efforts of a criminal justice system. Criminal justice systems, however, are constructed on the basis of legal, cultural and social traditions, which are evidenced throughout that systems operations and methods of work. The transnational nature of the threat demands close interoperability and cooperation of criminal justice systems representing numerous and diverse traditions and approaches. The purpose of the new Convention and its Protocols is

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to achieve harmony in that interoperability and cooperation.

The success of efforts against the laundering of criminal proceeds directly depends on the level of accessibility of law enforcement agencies to the activities of financial bodies. A problem here is that opening up the activities of the financial bodies to outside scrutiny can affect their competitive position. However, the activities of organized crime may undermine the entire financial market, affecting the whole society. Furthermore, the money derived from organized crime often circulates through the same channels as money concealed from taxation authorities. In view of this, it is vital for the banks to maintain records of the identity of their clients, and to cooperate with law enforcement agencies whenever there are suspicious deposits or other transactions. It may be necessary to strengthen mechanisms of control over banking operations and even to centralize information of this kind.

In the last decade, many countries have introduced in their criminal laws the crime of money laundering in compliance with the Vienna United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. However, due to the fact that drug trafficking is only one of the sources of the proceeds of crime, there is a tendency in many Western countries to expand the predicate offences from drug offences to virtually all serious crimes. But the approach had been far from uniform. In most other regions of the world, countries which criminalised money laundering as a separate offence often limited its application to drug proceeds. The new Convention intends to set a standard of criminalisation of money laundering that would not greatly expand the predicate offences.

Compliance with the obligation contained in the new Convention would result in extending money laundering legislation to all serious crime, as defined in the Convention, and to the offences established by the Convention and its Protocols.

A number of areas have been identified as implementation priorities for an effective anti-money laundering strategy. These areas are predicated on a number of assumptions about the presence of certain enforcement mechanisms. Key among them, is the concept that a net or web operates at three complementary levels—international, regional and national. Political support, adequate resources, and high professionalism are essential conditions for effective action at all three levels. Governmental institutions must allocate adequate means and facilities to successfully regulate or exercise other types of control over activities which enjoy the benefit of a high level of sophistication and which may involve a high volume of legitimate transactions, as may be the case with electronic transfer technology.

The key element that characterizes the approach of the new Convention, not only with respect to criminalisation, but also with regard to the measures that countries should take in order to put in place an effective regime against money laundering, is the fact that the new Convention sets a truly global standard. That standard is the product of a negotiation process, which was characterized by respect for diversity and took into account the concerns of all countries. The result is a combination of actions that countries can subscribe to and incorporate into their systems, without constraints of a substantive or political nature.

Corruption greatly facilitates the activities of organized criminal groups. In view of this, many countries have enacted special anti-corruption legislation. Prosecution of corruption is difficult and the adjudication of the alleged offender even more difficult, especially when organized crime is involved due to the problems in obtaining evidence. Laws often create incentives for solidarity between corrupted and corrupter, with both punished equally. For these reasons, there is broad agreement within the international community that it is urgently necessary to develop new sets of policies against corruption, from regulatory to criminal ones. Many regulations in areas sensitive to corruption need be reshaped (preventive policies), with the incorporation of incentives to the reporting of corruption cases in the same legislation which criminalizes the corrupted officials and with the creation (at a legislative or judicial level) of a conflict of interest between the corrupter and the corrupted, in order to get evidence.

The new Convention includes a specific criminalization provision against corruption and an article setting out a set of basic measures against this form of criminal activity. The inclusion of both provisions was done on the understanding that the purpose of the Convention was by definition limited in this particular area. It was deemed appropriate to set a standard insofar as corruption is a modality that features prominently in the operations of organized criminal groups, either as a direct activity or as corollary to their other activities. The negotiators of the Convention realized that the issue of corruption was much broader than the scope and purposes of the new Convention. It would risk not doing justice to the concerted political will

prevailing among the international community to deal with corruption in a comprehensive manner to try and cover such a broad issue in this Convention. Thus, the decision was made, relatively early on in the negotiation process, to limit the provisions on corruption to those absolutely essential for the purposes of the new Convention and embark on negotiations of a new separate Convention against corruption at a later stage. The process of embarking on these negotiations is already under way. In July 2001, an open-ended intergovernmental group of experts met in Vienna and successfully complied with the mandate given to it by the General Assembly to draft terms of reference for the negotiation of the new Convention. Subject to final approval by the General Assembly at its current session, a new Ad Hoc Committee will begin negotiations on the new instrument in early 2002.

The Convention pays particular attention to the problem of deterring and punishing misconduct by legal entities, such as multinational and other corporations. Individual executives may frequently be beyond national jurisdiction and personal responsibility may be difficult to establish. Criminal punishment of the entity itself, by fine or by forfeiture of property or legal rights, is utilized in some jurisdictions against corporate misconduct, and an increasing number of countries are including corporate crimes in their legislation. Criminalization of a legal entity for corporate crimes is a powerful deterrent tool, intervening in the invisible or intangible good of the "reputation". The growth of economic crimes strictly connected with organized crime, such as frauds, calls for more attention to the activities of legitimate enterprises. These are the places where the infiltration of organized crime begins the process of

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pollution of the legitimate economy and corporate sanctions can help to reduce the vulnerability of the economic systems.

The new Convention establishes an obligation to direct appropriate attention to this matter. The fact that the Convention leaves the choice of the nature of the liability that countries will decide to incorporate in their legislation is yet another reflection of the care with which the Convention approaches the issue of diversities among national systems. The approach of the Convention in this area has been one of pragmatism. If countries concentrate on the effectiveness of measures designed to attribute liability to legal persons, and on the appropriate enforcement of these measures, instead of trying to introduce concepts that might be alien to their legal system and might create conflicts of a nature related to fundamental principles of these systems, the result cannot but be beneficial for international cooperation.

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

The Convention takes the approach that the procedures for freezing, seizure, and confiscation need to be broad in their scope and permit the confiscation of a wide range of assets of an offender in order to eliminate all gain from the criminal activity. A subsidiary benefit of

such action is allowing law enforcement agencies to use confiscated assets or funds to further the activities of the agency. This can have a powerful incentive effect. International agreements may provide also for sharing such assets.

The Convention will also set in motion consideration to allowing certain liberal evidentiary rules to be used in the procedures for confiscation of the assets of criminals involved in organized crime.

Confiscation has acquired growing importance as a necessary complement to anti-money laundering policies drawing on the experience of those countries, which have practiced it. Drawing on the experience of those countries, which have practiced it, other countries could be encouraged to develop these sanctions in their legislation.

The Convention builds on the experience which suggests the advantages provided by using information obtained with the help of electronic surveillance, undercover agents, controlled delivery, the testimony of accomplices and similar methods of investigation for the collection of evidence. The use of the testimony of accomplices can be extremely helpful in prosecutions involving organized crime. Careful assessment and use of such testimony can enable law enforcement authorities to penetrate the layers of secrecy which are characteristic of organized criminal groups and which would otherwise protect them from prosecution.

The Convention attributes great importance to provisions for the protection of witnesses. Its application will encourage national systems of criminal justice to pay close attention to

these programmes, with legislation aimed at providing for the security of a witness. In particular, attention is expected to be focused on the adoption of measures for the protection of witnesses that allow for the relocation and change of identity of witnesses, along with their physical protection if there is a threat posed by a defendant and the defendant's associates. This can necessitate making arrangements to provide the witnesses with documents enabling them (and their family) to establish a new identity, with temporary housing, providing for the transportation of household furniture and other personal belongings to a new location, subsistence payments, assisting them in obtaining employment, and providing other necessary services to assist the witnesses in leading a full and normal life. In considering the type of protection to be provided, the financial circumstances of a country must be taken into account. In addition, provision need to be made for the safe custody of incarcerated witnesses, including separate accommodation. Legislation may also be necessary to deal with the practical problems that may arise in connection with relocated witnesses, such as child custody disputes and crimes committed under their new identity.

Witness assistance programmes have been key issues in the fight against organized crime for those countries which have experienced on a large scale this phenomenon and the consequent number of cooperating witnesses. The quality of their contribution and the evidence they allow to collect depend also on the quality of protection (physical, psychological, and economical) provided. The Convention will set in motion processes at the national level, and agreements at the international level, in this field.

If effective action is to be taken against organized crime, the law enforcement authorities must be able to prevent and detect any manifestation of such crime. This requires the systematic collection and analysis of all relevant information from all appropriate sources in order to make possible the production and use of intelligence for both strategic and tactical purposes. The methods employed for the collection and utilization of such information may be authorized and controlled by legislation. Even so, it is important that the technical facilities and techniques which law enforcement authorities are allowed to use are always sophisticated enough to enable them to match those employed by organized crime.

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

Computerized information systems are of particular benefit in combatting

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organized crime where resources permit. Computers are used to store information on the various persons and organizations suspected of being involved in organized crime, as well as information about the crimes committed, and those under preparation. Where there are different law enforcement agencies collecting information, appropriate arrangements need to be made to allow a regular exchange of information between local and national (or federal) authorities, and between local police forces in different areas. Careful attention must be paid to the compatibility of computerized systems, and the convertibility of manual systems to computerized ones. Creation of a centralized data bank may be appropriate in some countries, with the information shared internationally on the basis of mutual agreements. Furthermore, technical assistance in setting up and organizing criminal intelligence systems represents a mutual benefit to both developing and developed countries.

Particular attention has to be paid to information from confidential police sources, including prisoners. However, important intelligence comes from other sources, in particular, financial and taxation bodies. When permitted to do so, they can be of great assistance, as they frequently find themselves directly in contact with organized groups seeking to utilize the proceeds of crime. Also of value may be legislative inquiries and official and public records. An essential resource in the effective investigation of organized crime is the capability to collect, and present in an intelligible manner as evidence, complicated financial and commercial information. The collection of information concerning forfeitable assets allows the forfeiture of such property and makes it available for police use.

The infiltration of organized crime into legal enterprises and any contacts it may make in political circles, can create a superficial respectability, facilitate corruption and be used by criminals to hinder investigations of their activities. Therefore, law enforcement agencies, when collecting data on the criminal activity of a particular person or organization need to obtain the most comprehensive intelligence picture possible. A range of measures have been adopted, which include the following: a) to develop intelligence, through informants, searches and other techniques, in order to uncover large-scale organized criminal enterprises; b) to determine the factors and conditions facilitating the development of organized criminal activity; c) to provide for centralized collection, storage and analysis of information (including use of criminal organization charts) and for the tactical application of such information; d) to ensure cooperation with law enforcement authorities and other bodies involved using a multi-agency approach; e) to study other countries' experience of organized crime control; and g) to develop on the basis of the above factors a systemic approach to criminal policy, based on appropriate legislation, proper allocation of resources and mobilization of public support.

To lift the veil of secrecy, conspiracy and fear-induced silence of possible witnesses, as well as to understand how the criminal groups function, who directs their activities and, where their illegal income is channelled, police bodies generally collect intelligence and evidence by using undercover methods. With appropriate safeguards, secret operations directed against organized crime can be conducted effectively through the use of undercover agents and informants, often in conjunction with the

use of technical facilities to intercept and to record conversations, the contents of which may facilitate the disclosure of crimes. These techniques may include wire-taps, surveillance by means of closed circuit systems, night vision equipment, as well as video and audio recording of on-going events. In some jurisdictions, such technical surveillance may be used only in cases when other mechanisms of investigation have failed, or there are no reasons to think that they lead to the directed results, or where other mechanisms are too dangerous.

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

The Convention and its Protocols are expected to spark considerable activity and improve methods in the field of collection, analysis and exchange of intelligence and information. One of the key features of cooperation in this are under the Convention and its Protocols is the standard-setting element of the new instruments, thus guarding against the inherent risks posed by the necessarily intrusive nature of many of the methods used for the collection of information and intelligence.

Organized crime may be investigated by a variety of law enforcement agencies with different jurisdictions. In this

connection, it is essential to ensure that close coordination is maintained between central and peripheral structures, as well as effective liaison between intelligence and operations. In countries with federal structures it is also essential that effective mechanisms be established to ensure coordination of jurisdiction, intelligence and operations among federal policing agencies and those of other Governmental units. Whole coordination within and between agencies and units is a condition for to successful action against organized crime, a clear delineation of jurisdiction contributes to a harmonious and effective working relationship.

When resources permit, there may be great value in the formation of one or more specialized units dedicated to the investigation of organized crime, particularly in the areas of corruption, money laundering and illegal drug trafficking. However, the danger must be recognized that exclusive jurisdiction over an area of investigation may create susceptibility to corruption, and appropriate safeguards should be developed.

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

Investigators and in particular those leading the investigation should be selected on the basis of their ability, experience, moral qualities, and

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dedication. The importance of basic and in-service training should not be underestimated not only for the police, but also prosecutors and judges. High professionalism and specialization are key factors of success.

The relationships between investigative functions and prosecutorial, and judicial organs vary markedly between different legal systems. To combat organized crime, effectively, in any system, it is necessary to ensure that there is harmonious coordination among them. Obviously, due respect must be accorded to maintaining the proper relationships between the functions, keeping in mind the importance of preserving the independence and impartiality of the judiciary, as well as the proper role of defence lawyers.

The Convention and its Protocols contain specific provisions on cooperation between law enforcement agencies and, most importantly, detailed provisions on training and technical cooperation. Regarding the latter, the Convention and its Protocols were negotiated on the basis of a fundamental assumption. It was clearly understood by all countries involved in the negotiating process that the joint fight against transnational organized crime would entail the incorporation into the new instruments of a number of obligations. Many of these obligations would be onerous for many developing countries, which had limited resources and competing priorities for these resources. Conversely, it was also understood that effective cooperation against transnational organized crime required sustained commitment on the part of all countries, manifested among other things by a decision to bring limited resources to bear in the common effort. However, when that was done, it was clearly accepted that for many countries

there would still be needs, which would be covered through the provision of technical assistance. In this respect, it was the common belief that effectiveness and efficiency in international cooperation depended on the equally sustained commitment to efforts to promote the provision of this technical assistance.

Due to the inherent characteristics of organized crime, which is simultaneously engaged in providing illegal services and goods and in infiltrating the legitimate economy, the criminal justice system alone cannot successfully fight it. For these reasons, the Convention and its Protocols have incorporated a range of "preventive" policies, aimed at, for example, reducing the demand for illicit goods or deregulating/regulating some markets, in order to minimize their vulnerability to infiltration by organized crime groups. These preventive policies, as opposed to crime control policies, relate to various sectors of the social and economic systems. Their increased use (e.g., the regulation of non bank financial institutions as an anti-money laundering policy), calls for their close integration with crime control policies and, consequently, with the criminal justice systems.

A systemic approach oriented to identifying the most effective strategies against organized crime focuses on two elements: goals and policies. The more these are rationally linked, the better are the chances that the prevention and control system will be effective. "Rationally" is intended to mean that a given society or country should select priorities among the goals desired, being ready and willing to accept trade-off effects, and relating this selection to the choice of those policies which are less costly and present fewer political and

juridical constraints, keeping also in mind that organized crime is at the same time a domestic and an international problem.

In terms of strategies, the main question is that of identifying which are the most effective policies for preventing and controlling organized crime. The distinction between prevention and control is based on the nature of the policies pursued (defensive or offensive). Although they may appear closely interlinked in terms of the effects that they produce, the difference lies in the goals that are to be achieved. For example, with respect to prevention policies, decreasing the demand for illicit goods and services reduces the opportunities for organized crime and prevents its expansion. Conversely, the deregulation, or the introduction of a different type of regulation, of the construction industry has tended to minimize its vulnerability, preventing criminal organizations from obtaining dominant, often monopolistic positions in the market and impeding their infiltration of the legitimate economy. On the other side, crime control policies aim at disrupting the structure of criminal organizations. These two policies, to be effective, should be integrated in a systemic approach. In fact, when crime control policies are used without considering the advantages of preventive measures, and general deterrence receives the overwhelming attention and is intended as the only form of prevention, the criminal justice system becomes overburdened and, therefore, less effective.

When considering how to prevent or reduce the incidence and expansion of organized crime, the main assumptions are the following: a) organized crime is a derivative of a complex society: the more

complex societies become in their organizational structure, the more the crime problem reflects this complexity, featuring varying and more sophisticated organizational patterns; b) the criminal justice system is overloaded. Some experts are questioning whether the economic costs of control policies have reached the point of diminishing utility. Criminal law alone, and law enforcement in isolation, cannot succeed in dealing with the increasing complexity, flexibility and sophistication of large-scale organized crime operations; c) as organized crime is oriented to providing illicit goods and services and to infiltrating legitimate activities through a variety of methods, including corruption and violence, it is necessary to identify preventive strategies that, while reducing the opportunities, also increase the threshold of vulnerability of the economic systems to infiltration. These strategies need to be integrated with—and not opposed to—crime control measures.

These policies should be integrated, as they tend to achieve the same goal. On the one hand, there is the aggregated demand, while on the other, there is only the demand for illegal goods and services. Since the problem is highly complex, it should be treated as such, taking into account the trade-offs and side effects that might occur. Deeper knowledge and thorough evaluation of the different implications, as well as their effects in the different regions of the world are necessary for addressing this side of preventive strategies.

In relation to preventive measures against crime, the strengthening of the values of morality and legality must occupy a prominent position. They are the essential prerequisites for building social and cultural consensus against organized

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crime. The operations of organized crime groups, and their continued existence in territories where they are established and traditionally located, require social consensus which helps minimize the risk of law enforcement activities and in the process facilitates recruitment of new members. Organized crime groups achieve consensus through a redistribution of resources and, consequently, by creating incentives to employment in economically and socially depressed areas, and also creating disincentives through corruption and fear of violence. Building and maintaining high moral standards in political and administrative structures through respect for the law is the first commitment for effective action against organized crime. A culture of morality and legality has strong messages to convey to those who violate the law and to those who allow them to do so. These values need to be implanted, nurtured with extreme care, and passed on to new generations. As organized crime represents the organized violation of these values, it is essential to devise and implement comprehensive strategies to restore legality wherever it has been eroded, and to create "incentives for morality" for those who are exposed or susceptible to corruption. Measures for the protection of the criminal justice system against violence and the fear of violence are in the direction of restoring legality. Codes of conduct established in different areas of Government and administration are also in the direction of restoring morality.

Policies oriented toward civic education can produce important results against organized crime by building a social consensus against it, disseminating information and increasing awareness of the cost of organized crime to society. In this context, mass media play an

important central role. Messages transmitted by the media, however, may have contradictory educational effects, as they may often be oriented to producing spectacular or sensational effects. Fiction crime stories and non-fiction accounts are attracting increasingly wider audiences. Crime, violence, and corruption capture public attention in all parts of the world: the issue of reconciling the rights of information and freedom of artistic expression, with the civic and social responsibility of promoting values of morality and legality, is a very difficult one. The interrelationship between media and crime, and their role in crime prevention, are truly challenging questions that will become even more important in the future. Research and documentation on experiences acquired so far, as well as an increasing attention by educational institutions, are essential for gaining the support of the media in this area.

A second goal within the framework of preventive strategies is related to the need to reduce the level of vulnerability of legitimate industries to the infiltration of organized crime groups. The assumption is that organized crime tends to infiltrate the legitimate economy for different purposes, such as: a) laundering and investing the proceeds of crime in less-risky activities; b) acquiring respectability and social consensus for its members; and c) controlling the territory where it operates in order to maximize economic and political advantages and minimize the risk of apprehension, arrest, and conviction (law enforcement risk). Activities in the illegal markets and infiltration in the legitimate business are not separated in the life of an organized crime group. Opportunistic criminal organizations go where there is money to take, and mono-task organizations such as those specializing in drug trafficking

become opportunistic when they have to invest the money produced by their criminal activities. For both, infiltration of legitimate business is part and parcel of their activities. The reverse aspect of the same goal, i.e. reducing vulnerability, means increasing the transparency of the economic system.

Successful policies involve a good chemistry of regulation and deregulation, for example a strong regulation of licensing all those economic activities that could easily be infiltrated by organized crime has recently been pursued in a number of countries. Another example of regulation is the licensing of all those economic activities, such as the banking and financial services, that can be infiltrated by organized crime. In particular, the regulation of the transactions requested by the banks for anti-money laundering purposes helps to identify money-laundering operations and trace criminal organizations. Furthermore, new regulations and codes of conduct of business and professionals also help as an anti-money laundering policy, by keeping high standards of transparency in the system and avoiding illicit infiltration.

Preventive strategies and policies, although not sufficiently used in the past, are increasingly being explored in recent times in the area of organized crime. They are promising and cost effective if carefully planned and implemented. As such, they represent the natural complement to traditional crime control policies.

The Convention and its Protocols promote effective action against organized crime which is based on priorities in objectives and efficient management of resources. It is possible that in those countries where organized

crime does not appear to the public as violent or as damaging as in others, it may not be regarded to as a top priority. Also, street crimes are closer to the day-by-day experience of the general public, than transnational organized crime. Decision makers, who are necessarily sensitive to public opinion and are also aware of the costs and the impact of these forms of crime on the society at large, may be forced to take decisions that privilege an immediate response to street violent crimes. The reality, however, is that there clearly exists a global-local nexus in relation to organized transnational crime.

As far as police action and criminal proceedings are concerned, the Convention and its Protocols promote strategic measures in the following areas:

- improvement of intelligence in order to identify the organizational structure of criminal groups, types of activities of these groups, interrelations between the various groups and the means used to sustain themselves;
- development of investigative methods that permit to “penetrate” criminal organizations, such as the creation of specialized investigative units, the interception of communications, the use of undercover operations and controlled deliveries, the protection of witnesses and victims, and rewards/protection of turncoats;
- investigative methods and other mechanisms aimed at seizing and freezing illicit profits, thus facilitating confiscation, such as the establishment of appropriate structures at the national level (integrated proceeds of crime units, seized property management directorates).

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Strategic measures are also those addressed to the law enforcement agencies in terms of enhanced capability, professionalism and coordination. Strategic intelligence should not be sacrificed to the tactical one. Investment in this area is essential, as is the cooperation between different agencies. The experience of concentrating energies and resources against organized crime in a specialized agency could be an innovative organizational measure only if this concentration truly happens. When this is not possible because of the notorious difficulties and resistance, substantial and effective coordination among existing agencies and between them and the prosecutors should be consistently pursued. Different patterns of cooperation and coordination can be found in the most experienced law enforcement agencies of many countries.

The Convention and its Protocols would promote responses to the growing threat to the economy posed by organized crime through the progressive development of preventive strategies, mostly addressed at preserving the stability of financial institutions and focused on:

- the provision of technical and forensic training for police, prosecutors and judges, enabling them to understand financial operations, and collect evidence;
- the limitation of bank secrecy and other relevant regulations;
- a more active role of financial institutions in appropriate controls, such as suspicious transactions reporting.

The criminal justice system alone, usually overburdened and overloaded, has structural limitations in controlling organized crime. This imposes a deep

investment in preventive strategies, which probably had traditionally been neglected in the past. This development requires that the different systems to which these strategies are addressed are increasingly more integrated. The process which begun asking for more cooperation between the banking system and the criminal justice system should be extended to the educational system and to all the areas of media communications. Commissions of inquiry and overviewing legislative committees could encourage such a process which is a progressive one, involving a wide set of new policies and institutions traditionally outside the area of criminal justice. Property laws in common law systems and civil law in the civil law countries are being confronted with new forms of regulation of confiscated assets. Administrative law and other forms of regulation of public contracts could reduce the probability of corruption and defend the legitimate businesses from the infiltration of organized crime groups. Together with the existing "hard laws", a new set of "soft laws" is being accepted domestically and internationally for achieving new standards.

In conclusion, the Convention and its Protocols will promote an integration of strategies, policies, and mechanisms, with their effective and transparent management, as the challenging answer to the growing danger posed by transnational organized crime.