

B. International Cooperation

Introduction

International cooperation in crime prevention and criminal justice has been called for on many occasions. It has become increasingly evident that a collaborative action is required to prevent transnational criminality, especially organized crime and terrorism, which have become rampant world wide, taking advantage of modern means of transportation, developed technology and the internationalization of commerce and finance.

Continued United Nations efforts to promote international cooperation in these areas culminated at the Eighth Congress, 1/ which adopted international guidelines on organized crime and terrorism and recommended to the General Assembly the adoption of model treaties on international cooperation in criminal justice matters, such as extradition, mutual assistance and transfer of proceedings in criminal matters. The Congress also adopted a model treaty on the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property. 2/

The first two guidelines, on organized crime and on terrorism, were developed on the recommendation of the interregional preparatory meeting for the Eighth Congress on topic III 3/ and contain a series of recommendations on steps to be taken at the national and international levels to combat these especially grave forms of transnational criminality.

The Guidelines for the prevention and control of organized crime set out 24 recommendations for national action and international cooperation. Preventive strategies, broadened criminal legislation, coordinated criminal investigation and strengthened law enforcement are proposed at the national level. Measures recommended to improve international cooperation in this area include model legislation, the creation of an international data base and specific strategies to establish stronger barriers between legitimate financial markets and the market in illegally acquired capital.

The Measures against international terrorism call for international, regional and bilateral cooperation through law enforcement agencies, prosecutors and the judiciary. States are encouraged to have greater uniformity in their laws concerning criminal jurisdiction and to develop and facilitate international extradition treaties. They also call for effective mutual cooperation and assistance between

States in securing evidence for prosecution or extradition, and recommend a study on the development of a new international convention to protect particularly vulnerable targets, such as hydroelectric or nuclear facilities. Among other measures proposed to combat terrorism are control of weapons, ammunition and explosives, protection of the judiciary, criminal justice personnel, victims and witnesses, and treatment of offenders, as well as the establishment of an international criminal court.

The model treaties mentioned above have been formulated to assist Member States, enabling them to cope effectively with transnational crime. As far as possible, the model treaties avoid mandatory rules since the legal and administrative systems and penal philosophy of States belonging to different regions, as well as cultural and legal traditions, differ greatly. The majority of issues are regulated by optional rules and it is left to specific bilateral arrangements or multilateral conventions to transform them into mandatory ones, in accordance with the needs and possibilities of inter-State relations.

The Model Treaty on Extradition was adopted by the General Assembly in its resolution 45/116 of 14 December 1990. 1/ The Committee on Crime Prevention and Control as well as interregional and regional preparatory meetings for the Eighth Congress had elaborated the model treaty, 4/ in pursuance of resolution 1 of the Seventh Congress.

The Model Treaty provides States with a mechanism to enable them to request the extradition of wanted persons from any other State Party, if they present the requisite documents on an extraditable offence, and if the requested State cannot invoke a valid reason for refusal.

Under the general principle of the obligation to extradite, the Model Treaty deals, inter alia, with the question of extraditable offences; mandatory and optional grounds for refusal to extradite; provisional arrest; simplified extradition procedure; postponed or conditional surrender of the person and of property; and the rule of speciality. In addition to utilizing existing treaties, new trends in extradition guided the elaboration of the Model Treaty. They include a wider basis for extradition arrangements, disregarding the requirement to establish a prima facie case, abolition of the list-of specific offences approach in favour of referring to offences with a minimum penalty and permitting a State to prosecute its own citizens for offences committed in another country where extradition is not possible.

In particular, the Model Treaty seeks to impose limits on the mandatory political offence exception by excluding from the exception crimes recognized by the international community in multilateral treaties as being especially serious. Finally, the Treaty identifies the channels of communication and the documents requires as well as certification and authentication methods.

The elaboration of the Model Treaty on Mutual Assistance in Criminal Matters, adopted by the General Assembly in its resolution 45/117 of 14 December 1990, was also initiated by resolution 1 of the Seventh Congress and developed by the Committee on Crime Prevention and Control as well as interregional and regional preparatory meetings for the Eighth Congress. 5/ Special consideration was given to the following issues: scope of application; refusal of assistance; contents and execution of a request; protection of confidentiality; obtaining of evidence; availability of persons in custody and other persons to give evidence of assist in investigations; safe conduct; provision of documents; and search and seizure.

The Model Treaty seeks to enhance mutual assistance in criminal matters between Member States in order to cope with serious transnational criminality. The assistance may involve arrangements, subject to appropriate safeguards, for prisoners and other persons to travel from a State to a foreign country, at that country's request, and vice versa, to give evidence in criminal proceedings or to assist in a criminal investigation.

The Model Treaty also sets forth which authorities can request assistance and how they should deal with such requests. It lays down procedures and specifies which types of requests are acceptable and which can be refused. Assistance may be refused, inter alia, if the requested State is of the opinion that the assistance would prejudice its sovereignty, security, public order or other essential public interest; if the assistance would be incompatible with the requested State's law; and if the act would be an offence only under military law.

Further, the Treaty provides guarantees for the safe conduct of persons required to give information or evidence and specifies that all publicly available records and documents should be provided.

An Optional Protocol to the Model Treaty provides that States could also develop mutual assistance in connection with the seizure of the proceeds of crime, foreign forfeiture registration,

pecuniary penalties and restraining orders; warrants in relation to goods and property that are the proceeds of crime; applications for interim restraining orders pending registration of corresponding foreign orders; and application for monitoring and production orders in relation to accounts in financial institutions and documents relevant to the money trail. The Protocol also provides for requested States to ascertain whether any proceeds of alleged crimes are located within its jurisdiction. To this effect, the State should endeavour to trace assets, investigate financial dealings and obtain other evidence that may help to secure the recovery of the proceeds of crime. The results of inquiries should be passed back to the requesting State. That State should, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds.

The Model Treaty on the Transfer of Proceedings in Criminal Matters, adopted by the General Assembly in its resolution 45/118 of 14 December 1990, outlines a framework for States to process criminal cases more effectively. Following resolution 12 of the Seventh Congress, the Model Treaty was elaborated by the Committee on Crime Prevention and Control, the interregional and regional preparatory meetings for the Eighth Congress and the International Expert Meeting on the United Nations and Law Enforcement, held at Baden, Austria. 6/ Primary importance is accorded to the interests of the States involved, while the interests of both the suspected offenders and the victims are also taken into consideration. The most frequent field of application for such a treaty would be when the accused has returned to his or her State of nationality and an extradition request would be futile since that State refuses to extradite nationals.

The Model Treaty specifies that proceedings can only be transferred when the act in question is a crime in both States concerned (principle of dual criminality). It stipulates that the requested State may refuse acceptance of a request for proceedings if the suspected person is not a national of, or ordinarily resident in, the requested State; if the act is an offence only under military law; if the offence is connected with taxes, duties, customs or exchange regulations; or for an act the requested State considers a political offence.

The Model Treaty states that the suspected person or his legal representative or close relatives may express their interest in the transfer. The rights of the victim should also be respected, in particular his right to restitution or compensation. If such

claims would not have been completed before the proceedings are transferred, they could also be moved. States that request a transfer are required to stop prosecution within their own jurisdictions. The requested State may, upon receipt of the request, initiate provisional measures such as detention and seizure.

The Model Treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property is intended to assist Member States in the development of similar bilateral or multilateral agreements in this area.

The Economic and Social Council, in its resolution 1989/62 of 24 May 1989, decided that the topics of transnational crimes against the cultural patrimony countries should be considered by the Eighth Congress in order to explore the possibilities of formulating comprehensive policies of international cooperation for the prevention of such offences, including the imposition of sanctions. The Model Treaty was elaborated in cooperation between the United Nations, United Nations Educational, Scientific and Cultural Organization, the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders as well as other organizations and experts from different regions. The draft, informally considered by the Committee on Crime Prevention and Control at its eleventh session, was further revised in an expert group meeting held at Chicago in 1990 ^{7/} and adopted by the Eighth Congress with some modification.

States parties to such a Treaty are expected to prohibit the import of stolen cultural property or property that is illicitly exported from the other State party. Each State party would legislate to prevent persons and institutions within its territory from entering into international conspiracies with respect to movable cultural property. A State party would also introduce a system to legally export cultural property through the issuance of a certificate of export; and undertake to recover and return, at the request of the other State party, any movable cultural property that had been illegally acquired.

Sanctions would be imposed on persons or institutions responsible for the illicit import or export of cultural property, those who knowingly acquire or deal in stolen or illicitly imported cultural property, and on those that enter into international conspiracies to obtain, export, or import movable cultural property by illicit means.

Requests for recovery should be made through diplomatic channels. All expenses incidental to the return and delivery of the property are to be borne by the requesting party, and no one would be entitled to claim any compensation from the returning State. While the requesting State may pay fair compensation to anyone who acquired the property in good faith, it would not be required to compensate anyone who may have participated in an illegal export of the property.

The Model Treaty also provides that each State party should provide information concerning its stolen movable cultural property to an international data base agreed upon between the States parties. It may be recalled, in this connection, that the Eighth Congress adopted a resolution entitled "Use of automated information exchange to combat crimes against movable cultural property" in which it requested the Secretary-General to make arrangements, in cooperation with Member States, intergovernmental and non-governmental and other organizations, for the establishment of national and international data bases that would be used for the purposes of preventing and combating crime against cultural heritage. ^{1/}

NOTES

- ^{1/} Report of the Eighth Congress (A/CONF.144/28).
- ^{2/} For Model Treaties, see Clark, "Crime: The UN agenda on international cooperation in the criminal process", 15 Nova Law review 475 (1991).
- ^{3/} A/CONF.144/IPM.2.
- ^{4/} The first draft of the model treaty was submitted by Prof. Cherif Bassiouni to the Interregional Preparatory Meeting. (See A/CONF.144/IPM.1.)
- ^{5/} The first draft of the model treaty was submitted by the Australian Government to the Interregional Preparatory Meeting (See footnote 4 above.)
- ^{6/} Report of the International Expert Meeting on the 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.

7/ A/CONF.144/L.2.

Council, in its resolutions 1986/10 and 1987/53 of 21 May 1986 and 28

202/ Seventh United Nations Congress ..., chap. I, sect. A.

203/ Ibid., sect. E.

May 1987, respectively, urged Member States to accord priority, inter alia, to the implementation of the recommendations contained in the Milan Plan of Action,

[6] **Prevention and control of organized crime**

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

Recognizing that the growing threat of organized crime, with its highly destabilizing and corrupting influence on fundamental social, economic and political institutions, represents a challenge demanding accrued and more effective international co-operation,

Recalling that the Milan Plan of Action, 202/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, recommended that it was imperative to launch a major effort to control and eventually eradicate the destructive phenomena of illicit drug traffic and abuse and of organized crime,

Recalling also that the Seventh Congress, in its resolution 1,203/ recommended that the Committee on Crime Prevention and Control should be requested to develop a comprehensive framework of guidelines and standards that would assist Governments in the development of measures to deal with organized crime at the national, regional and international levels,

Recalling further that the General Assembly, in its resolution 40/32 of 29 November 1985, approved the Milan Plan of Action as a useful and effective means of strengthening international co-operation in the field of crime prevention and criminal justice, and endorsed the other resolutions adopted unanimously by the Seventh Congress,

Noting that the General Assembly, in its resolutions 41/107, 42/59 and 43/99, of 4 December 1986, 30 November 1987 and 8 December 1988, respectively, as well as the Economic and Social

Recalling the provisions set forth in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 204 adopted in 1988,

Recognizing that illicit trafficking in narcotic drugs and psychotropic substances is a criminal activity and that its suppression requires a high priority and concerted action at the national, regional and international levels by all States, including rapid ratification of, and accession to, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,

Noting also that the Economic and Social Council, in its resolution 1989/70 of 24 May 1989, called upon Governments, international and interested non-governmental organizations to co-operate with the Committee on Crime Prevention and Control in giving special attention to promoting international co-operation in combating organized crime,

Noting further that the General Assembly, in its resolution 44/72 of 8 December 1989, reaffirmed the continued validity of the Milan Plan of Action and requested the Eighth Congress, inter alia, to propose viable control measures aimed at eradicating the activities of organized crime,

1. Adopts the Guidelines contained in the annex to the present resolution as valuable recommendations for national and international action against organized crime;
2. Urges Member States to give favourable consideration to their implementation at both national and international levels, as appropriate;
3. Invites Member States, on request, to make available to the Secretary-General the provisions of their legislation relating to money laundering, to

tracing, monitoring and forfeiture of the proceeds of crime, the monitoring of

204/ E/CONF.82/15 and Corr.2.

large-scale cash transactions and other measures enabling these to be made available to such Member States desiring to enact or further develop legislation in these fields.

ANNEX

Guidelines for the prevention and control of organized crime_

A. National Measures

Preventive strategies

1. 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 changing community attitudes and in enlisting public support. Measures of this kind can help to counter public revenue fraud and can be further developed and utilized on a systematic basis by targeting areas of special social and economic harm to the community and by enlisting the co-operation of the mass media in playing a positive role.

2. Research into the structure of organized crime and the evaluation of the effectiveness of existing countermeasures should be encouraged, since it 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.

3. Possible devices to prevent or minimize the impact of organized crime should be continuously explored. While the whole question of crime prevention is an underdeveloped area in many countries, specific measures in a number of spheres have been effective. Detailed programmes that are designed to place obstacles in the way of a potential offender, reduce opportunities for crime and make its commission more conspicuous should be encouraged. Fraud control programmes represent a significant and positive step in this direction. Other

measures include risk analysis to assess vulnerability to fraud, Control strategies in relation to such areas as systems and procedures, management and the supervision of staff, physical security, information and intelligence, computers, investigative strategies and training programmes. The creation of anti-corruption agencies or similar mechanisms should also be pursued. Crime impact studies and the identification of criminogenic factors of new development programmes would provide opportunities for the adoption of remedial and preventive measures at the planning stage.

4. Improvements in the efficiency of law enforcement and criminal justice are important preventive strategies based on more efficient and fair processes that act as a deterrent to crime and strengthen guarantees of human rights. 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, 205/ will also serve as a deterrent to crime.

5. 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.

6. 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 should also increase their efforts to achieve a radical reduction in illicit drug demand and consumption within their national borders.

Criminal legislation

7. Legislation should be encouraged that defines new offences with respect to money laundering and organized fraud and the offence of opening and operating accounts under a false

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name. Computer crime is another area that requires consideration. In addition, there is a need for reform in civil, fiscal and regulatory legislation that relates consideration. In addition, there is a need for reform in civil, fiscal and regulatory legislation that relates to the control of organized crime. Information on significant innovations that have occurred in recent years should be widely shared through the United Nations, with a view to facilitating the development of a solid basis for the harmonization of criminal law dealing with organized crime.

8. Forfeiture of the proceeds of crime represents one of the most significant recent developments. Measures which States could consider in this context might include 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 penalties representing a court assessment of the monetary value of the benefit derived by the offender from the commission of the offence. Viable remedies that have been developed in several countries on those matters should be brought, in a systematic way, to the attention of other interested countries, with a view to their more widespread utilization. The final disposition of property forfeited by one country, at the request of another, may be made subject to bilateral arrangements.

Criminal investigation

9. Attention should be focused on new methods of criminal investigation and the techniques developed in various countries of "following the money trail". Important in this context are the following: orders requiring financial institutions to provide all the information necessary to follow the money trail, including details of accounts belonging to a particular person, and orders requesting them to report suspect of unusual cash transactions to the appropriate authorities. Banks and other financial institutions should not resort to the principle of secrecy once there exists a judicial order issued by the competent judicial authority.

10. The interception of telecommunications and the use of electronic surveillance are also a relevant and effective procedure, subject to human rights considerations.

11. 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. These procedures include the provision of ways of shielding the identity of witnesses from the accused and his lawyer, protected accommodation and physical protection, relocation and monetary support.

Law enforcement and criminal justice administration

12. Law enforcement plays 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 establishing a specialized interdisciplinary agency to deal specifically with organized crime.

13. Major emphasis should also be placed on the application of technical and organizational measures designed to increase the effectiveness of the investigative and sentencing authorities, including prosecutors and the judiciary. Furthermore, courses on professional ethics should be incorporated into the curricula of law enforcement and judicial training institutions. Some of the instruments developed by the United Nations could be used for this purpose, such as the Basic Principles on the Independence of the Judiciary 206/ and the Code of Conduct for Law Enforcement Officials. 207/

B. International co-operation

14. The transnational dimensions of organized crime require the urgent development of new and effective co-operative arrangements on a more comprehensive basis. The exchange of information between relevant agencies of Member States is also an important activity that needs to be strengthened and developed further.

206/ Ibid., sect. D.

207/ General Assembly resolution 34/169, annex.

15. Governments should vigorously support all useful initiatives by countries and international institutions to combat illicit drug-trafficking, and

should warn others of the imminent danger represented by it. All countries must be involved in combating organized crime on the basis of shared concern. In this respect, consistent and continuous global efforts, combining the exchange of the necessary data and operational resources, should be encouraged and undertaken.

16. Model legislation for the forfeiture of the proceeds of crime should be developed and implemented.

17. Specific strategies and methods should be developed for erecting stronger barriers between legitimate financial markets and the market in illegally acquired capital.

18. 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. International, regional and subregional conferences bringing together members of the law enforcement, prosecution and judicial authorities should be encouraged.

19. Modern technological advances should be used in the area of passport and travel controls, and efforts should be encouraged to monitor and identify cars, boats and aircraft used in transnational theft or transfer, or for illicit trans-shipments.

20. Data bases containing law enforcement, financial and offenders' records should be established or expanded with due regard for the protection of privacy.

21. Mutual assistance, the transfer of criminal proceedings and the enforcement of criminal judgments, including confiscation and forfeiture of illegal assets, as well as extradition procedures, should receive priority attention.

22. 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.

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

24. 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 addressed to the prevention and control of organized crime.

[7] **Terrorist criminal activities**

The Eighth United Nations Congress on the prevention of Crime and the Treatment of offenders

Aware of the grave menace that national and international terrorist criminal activities pose to social and political stability and to the lives of countless human beings,

Concerned by the rapid internationalization of these criminal operations,

Convinced that the trend towards the internationalization of terrorist activities makes imperative an appropriate internationally co-ordinate response of global dimensions,

Recalling that in the Milan Plan of Action 208/ the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders affirmed that priority must be given to combating terrorism in all its forms, including, when appropriate, co-ordinate and concerted action by the international community,

Recalling also that the Seventh Congress, in its resolution 23, 209/ requested that the Committee on Crime Prevention and Control should consider the development of

208/ Seventh United Nations Congress ..., chap. I, sect. A.

209/ Ibid., sect. E.

recommendations for international action to strengthen law enforcement measures, including extradition procedures and other arrangements for legal assistance and co-operation, with respect to offences of a terrorist nature.

Noting that the General Assembly, in its resolution 40/32 of 29 November 1985, approved the Milan Plan of Action as a useful and effective

means of strengthening international co-operation in the field of crime prevention and criminal justice, and endorsed the other resolutions adopted unanimously by the Seventh Congress,

Noting further that the General Assembly, in its resolutions 41/107, 42/59 and 43/99 of 4 December 1986, 30 November 1987 and 8 December 1988, respectively, as well as the Economic and Social Council, in its resolutions 1986/10 and 1987/53 of 21 May 1986 and 28 May 1987, respectively, urged Member States to accord priority, inter alia, to the implementation of the recommendations contained in the Milan Plan of Action,

Aware that the General Assembly, in its resolution 44/72 of 8 December 1989, reaffirmed the continued validity of the Milan Plan of Action and requested the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, inter alia, to propose viable control measures for combating terrorist criminal activities,

Recalling the concern about, and condemnation of, terrorism expressed by the General Assembly in its resolutions 3034 (XXVII), 31/102, 32/147, 34/145, 36/109, 38/130, 40/61, 42/59 and 44/29 of 18 September 1972, 15 December 1976, 16 December 1977, 17 December 1979, 10 December 1981, 19 December 1983, 9 December 1985, 30 November 1987 and 4 December 1989, respectively,

Recalling also General Assembly resolution 42/159 of 7 December 1987, in which the Assembly, inter alia, recognized that the effectiveness of the struggle against terrorism could be enhanced by the establishment of a generally agreed definition of international terrorism,

1. Agrees that the text of the following annex represents valuable guidance for appropriate, co-ordinate and concerted action against international terrorism at both the national and the international level;

2. Urges Member States to give favourable consideration to following this guidance at both the national and the international level.

ANNEX

Measures against international terrorism

A. Definition

1. Since the first study 210/ of international terrorism was conducted 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.

2. Without Prejudice to the discussion of the subject in the General Assembly of the United Nations and until such time as a universally acceptable definition of international terrorism is agreed, it would be useful to work with a view to identifying behaviour that the international community regards as unacceptable and that requires the application of effective preventive and repressive measures that are consistent with the recognized principles of international law.

210/ 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: Study prepared by the Secretariat in accordance with the decision taken by the Sixth Committee at its 1314th meeting, on 27 September 1972 (A/C.6/418).

3. Furthermore, the international community should understand better the underlying causes that bring about such conduct in order to develop measures for its prevention and control.

B. Identification of the problems

4. Existing international norms may not in certain areas be sufficient to control all forms and manifestations of terrorist violence. Among the issues of concern are: 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 regarding the failure 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 of aut dedere aut iudicare; and the shortcomings of international co-operation in the effective and uniform prevention and control of all forms and manifestations of terrorist violence.

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

5. 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 crime 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; and 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.

D. Jurisdiction

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

7. Jurisdictional priorities should be established giving territoriality the first priority.

E. Extradition

8. States should endeavour to develop and implement effectively international extradition treaties, be they part of multilateral conventions,

regional conventions or bilateral agreements.

9. The political offence exception should not be a bar to extradition for crimes of terrorist violence under existing international conventions, except in cases when the requested State undertakes to submit the case to its competent authorities for the purpose of prosecution or transfers the proceedings to another State to conduct the prosecution.

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

11. Member States are encouraged to extend their bilateral extradition relationships using as a basis for negotiations the Model Treaty on Extradition elaborated by the United Nations and adopted by the Eighth Congress on the Prevention of Crime and the Treatment of Offenders. In addition, Member States could also consider elaborating multilateral conventions on extradition to remove gaps and loopholes in existing treaties and current extradition procedures.

12. Voluntary return subject to appropriate judicial guarantees, should be encouraged.

F. Mutual assistance and co-operation

13. 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.

14. 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 provisions of multilateral treaties and specific regional and bilateral agreements. To achieve this end, the model treaty on mutual assistance in criminal matters constitutes a basis for strengthened international co-operation.

G. Non-applicability of defence

15. Defence based on obedience to superior orders, or acts of State, or immunities granted for the commission of the crime should not apply with respect to persons who have violated international conventions prohibiting acts of terrorist violence.

H. Conduct of States

16. Resort to practices of terrorist violence supported, carried out or acquiesced in by States should be more effectively curbed by the international community, and the United Nations should develop mechanisms for the control of such conduct, particularly through the strengthening of United Nations machinery for the preservation of peace and security and the protection of human rights.

17. Measures by the international community to curb terrorism that is supported, carried out or acquiesced in by States should be encouraged.

I. Targets of high vulnerability

18. A study concerning the feasibility of the development of an international convention that would enhance the protection of targets that are particularly vulnerable, the destruction of which would cause great harm to populations or cause severe damage to society, such as hydroelectricity or nuclear facilities, should be taken.

19. The United Nations should assist any country that suffers from terrorism or from the presence of terrorist organizations on its territory to put an end to that phenomenon.

J. Control of weapons, ammunition and explosives

20. 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.

21. 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.

K. Protection of the judiciary and of criminal justice personnel

22. States should adopt measures and policies aimed at the effective protection of the judiciary and of criminal justice personnel, including jurors and lawyers involved in trials of terrorism cases, and should also co-operate between themselves in the

implementation of such measures.

L. Protection of victims

23. States should establish appropriate mechanisms for the protection, and introduce relevant legislation as well as allocate sufficient resources for the assistance and relief, of victims of terrorism, in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. 211/

24. International exchange of experiences concerning the subject referred to in the previous paragraph should be encouraged.

211/ Seventh United Nations Congress chap. I, sect. C.

M. Protection of witnesses

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

26. States with experience in the field of witness protection programmes should consider lending assistance to other States contemplating similar programmes.

N. Treatment of offenders

27. States should endeavour to diminish existing disparities of sentencing in the field of terrorist offences.

28. Persons charged with, or convicted of, terrorist offences, must be treated without discrimination and in accordance with internationally recognized human rights standards and norms, such as enunciated in the Universal Declaration of Human Rights, 212/ the International Covenant on Civil and Political Rights, 213/ the Slavery Convention, 214/ the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 215/ the Abolition of Forced Labour Convention, 215/ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 216/ and the Standard Minimum Rules for the Treatment of Prisoners. 217/

- 212/ General Assembly resolution 217 A (III).
- 213/ General Assembly resolution 2200 A (XXI), annex.
- 214/ General Assembly resolution 794 (VIII).
- 215/ See Human Rights: A Compilation of International instruments (United Nations publication, Sales No.E.88.XIV.1), sect. F.
- 216/ General Assembly resolution 39/46, annex.
- 217/ Human Rights: A Compilation..., sect. G.

O. Role of the mass media

29. 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; disseminating strategic information on potential targets; and disseminating 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. These guidelines are in no way 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.

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

30. The work of the International Law Commission on codification of aspects of international criminal law should be encouraged. The committee on Crime Prevention and Control should have an opportunity to present its views.

31. The International Law Commission should be encouraged to continue to explore the possibility of establishing an international criminal court or some other international mechanism to have jurisdiction over persons who have committed offences (including offences connected with terrorism or with illicit trafficking in narcotic drugs or psychotropic substances), in accordance with General Assembly resolution 44/39 of 4 December 1989. Similarly, and in the light of the report that the International Law Commission will submit on

this particular subject to the General Assembly at its forty-fifth session, the possibility might be considered of establishing an international criminal court or appropriate mechanism with each and all of the procedural and substantive arrangements that might guarantee both its effective operation and absolute respect for the sovereignty and the territorial and political integrity of States and the self-determination of peoples. States could also explore the possibility of establishing separate international criminal courts of regional or sub-regional jurisdiction in which grave international crimes, and particularly terrorism, could be brought to trial and the incorporation of such courts within the United Nations system.

Q. Enhancing the effectiveness of international co-operation

32. 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 periodic 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.

33. States that are signatories 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.

34. 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.

35. 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, which was convened by the International Civil Aviation Organization at Montreal, from 9 to 24 February 1988.

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

37. The central role of the United Nations, and in particular of the Crime Prevention and Criminal Justice Branch, Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna, as well as the relevant specialized agencies, 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 fight against crime under the rule of law.

[8] 45/116. Model Treaty on Extradition

The General Assembly,

Bearing in mind the Milan Plan of Action, 1/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

Bearing in mind also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ principle 37 of which stipulates that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling resolution 1 of the Seventh Congress, 3/ on organized crime, in which Member States were urged, inter alia, to increase their activity at the international level in order to combat organized crime, including, as appropriate, entering into bilateral treaties on extradition and mutual legal assistance,

Recalling also resolution 23 of the Seventh Congress,3/ on criminal acts of a

1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat

(United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. B.

3/ Ibid., sect. E.

terrorist character, in which all States were called upon to take steps to strengthen co-operation, inter alia, in the area of extradition,

Calling attention to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,4/

Acknowledging the valuable contributions of Government, non-governmental organizations and individual experts, in particular the Government of Australia and the International Association of Penal Law,

Gravely concerned by the escalation of crime, both national and transnational,

Convinced that the establishment of bilateral and multilateral arrangements for extradition will greatly contribute to the development of more effective international co-operation for the control of crime,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights 5/ and the International Covenant on Civil and Political Rights, 6/

Conscious that in many cases existing bilateral extradition arrangements are outdated and should be replaced by modern arrangements which take into account recent developments in international criminal law,

Recognizing the importance of a model treaty on extradition as an effective way of dealing with the complex aspects and serious consequences of crime, especially in its new forms and dimensions,

1. Adopts the Model Treaty on Extradition contained in the annex to the present resolution as a useful framework that could be of assistance

4/ E/CONF.82/15 and Corr.2.

5/ Resolution 217 A (III).

6/ See resolution 2200 A (XXI). annex.

ANNEX

Model Treaty on Extradition

to States interested in negotiating and concluding bilateral agreements aimed at improving co-operation in matters of crime prevention and criminal justice;

2. Invites Member States, if they have not yet established treaty relations with other States in the area of extradition, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Treaty on Extradition;

3. Urges all States to strengthen further international co-operation in criminal justice;

4. Requests the Secretary-General to bring the present resolution, with the Model Treaty, to the attention of Member States;

5. Urges Member States to inform the Secretary-General periodically of efforts undertaken to establish extradition arrangements;

6. Requests the Committee on Crime Prevention and Control to review periodically the progress attained in this field;

7. Also requests the Committee on Crime Prevention and Control, where requested, to provide guidance and assistance to Member States in the development of legislation that would enable giving effect to the obligations in such treaties as are to be negotiated on the basis of the Model Treaty on Extradition;

8. Invites Member States, on request, to make available to the Secretary-General the provisions of their extradition legislation so that these may be made available to those Member States desiring to enact or further develop legislation in this field.

**68th plenary meeting
14 December 1990**

The _____ and
the _____

Desirous of making more effective the co-operation of the two countries in the control of crime by concluding a treaty on extradition,

Have agreed as follows:

Article 1

Obligation to extradite

Each Party agrees to extradite to the other, upon request and subject to the provisions of the present Treaty, any person who is wanted in the requesting States for prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence. 7/

Article 2

Extraditable offences

1. For the purposes of the present Treaty, extraditable offences are offences that are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a maximum period of at least [one/two] year(s), or by a more severe penalty. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least [four/six] months of such sentence remains to be served.

2. In determining whether an offence is an offence punishable under the laws of both Parties, it shall not matter whether:

(a) The laws of the Parties place the acts or omissions constituting the offence within the same category of offence or denominate the

7/ Reference to the imposition of a sentence may not be necessary for all countries. offence by the same terminology;

(b) Under the laws of the Parties the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting State shall be taken into account.

3. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control or other revenue matters, extradition may not be refused on the ground that the law of the requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty or exchange regulation of the same kind as the law of the requesting State. 8/

4. If the request for extradition includes several separate offences each of which is punishable under the laws of both Parties, but some of which do not fulfil the other conditions set out in paragraph 1 of the present article, the requested Party may grant extradition for the latter offences provided that the person is to be extradited for at least on extraditable offence.

Article 3

Mandatory grounds for refusal

Extradition shall not be granted in any of the following circumstances:

(a) If the offence for which extradition is requested is regarded by the requested State as an offence of a political nature; 9/

8/ Some countries may wish to omit this paragraph or provide an optional ground for refusal under article 4.

9/ Some countries may wish to add the following text: "Reference to an offence of a political nature shall not include any offence in respect of which the Parties have assumed an obligation, pursuant to any multilateral convention, to take prosecutorial action where they do not extradite, or any other offence that the Parties have agreed is not an offence of a political character for the purposes of extradition."

(b) If the requested State has substantial grounds for believing that the request for extradition

has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic, origin, political opinions, sex or status, or that person's position may be prejudiced for any of those reasons;

(c) If the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law;

(d) If there has been a final judgment rendered against the person in the requested State in respect of the offence for which the person's extradition is requested;

(e) If the person whose extradition is requested has, under the law of either party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty; 10/

(f) If the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and political Rights, article 14; 6/

(g) If the judgment of the requesting State has been rendered in absentia, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and he has not had or will not have the opportunity to have the case retried in his or her presence. 11/

10/ Some countries may wish to make this an optional ground for refusal under article 4.

11/ Some countries may wish to add to article 3 the following ground for refusal: "If there is insufficient proof, according to the evidentiary standards of the requested State, that the person whose extradition is requested is a party to the offence".(See also footnote 14.)

Article 4

Optional grounds for refusal

Extradition may be refused in any of the following circumstances;

(a) If the person whose extradition is requested is a national of the requested State. Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person in respect of the offence for which extradition had been requested;

(b) If the competent authorities of the requested State have decided either not to institute or to terminate proceedings against the person for the offence in respect of which extradition is requested;

(c) If a prosecution in respect of the offence for which extradition is requested is pending in the requested State against the person whose extradition is requested;

(d) If the offence for which extradition is requested carries the death penalty under the law of the requesting State, unless that State gives such assurance as the requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out;^{12/}

(e) If the offence for which extradition is requested has been committed outside the territory of either Party and the law of the requested State does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances;

(f) If the offence for which extradition is requested is regarded under the law of the requested State as having been committed in

^{12/} Some countries may wish to apply the same restriction to the imposition of a life, or indeterminate, sentence.

whole or in part within that State. ^{13/} Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested;

(g) If the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting State by an

extraordinary or ad hoc court or tribunal;

(h) If the requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

Article 5

Channels of communication and required documents

1. A request for extradition shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through the diplomatic channel, directly between the ministries of justice or any other authorities designated by the Parties.

2. A request for extradition shall be accompanied by the following;

(a) In all cases,

(i) As accurate a description as possible of the person sought, together with any other information that may help to establish that person's identity, nationality and location;

^{13/} Some countries may wish to make specific reference to a vessel under its flag or an aircraft registered under its laws at the time of the commission of the offence.

(ii) The text of the relevant provision of the law creating the offence or, where necessary, a statement of the law relevant to the offence and a statement of the penalty that can be imposed for the offence;

(b) If the person is accused of an offence, by a warrant issued by a court or other competent judicial authority for the arrest of the person or a certified copy of that warrant, a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the alleged offence, including an indication of the time and place of its commission; ^{14/}

(c) If the person has been convicted of an offence, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by the original or certified copy of the judgment or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the extent to which the sentence remains to be served;

(d) If the person has been convicted of an offence in his or her absence, in addition to the documents set out in paragraph 2 (c) of the present article, by a statement as to the legal means available to the person to prepare his or her defence or to have the case retried in his or her presence;

(e) If the person has been convicted of an offence but no sentence has been imposed, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by a document setting out the conviction and a statement affirming that there is an intention to impose a sentence.

14/ Countries that require a judicial assessment of the sufficiency of evidence may wish to add the following clause: "and sufficient proof in a form acceptable under the law of the requested State, establishing, according to the evidentiary standards of that State, that the person is a party to the offence". (See also footnote 11.)

3. The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the requested State or in another language acceptable to the State.

Article 6

Simplified extradition procedure

The requested State, if not precluded by its law, may grant extradition after receipt of request for provisional arrest, provided that the person sought explicitly consents before a competent authority.

Article 7

Certification and authentication

Except as provided by the present Treaty, a request for extradition and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication. 15/

Article 8

Additional information

If the requested State considers that the information provided in support of a request for extradition is not sufficient, it may request that additional information be furnished within such reasonable time as it specifies.

Article 9

Provisional arrest

1. In case of urgency the requesting State may apply for the provisional arrest of the person

15/ The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

sought pending the presentation of the request for extradition. The application shall be transmitted by means of the facilities of the International Criminal Police Organization, by post or telegraph or by any other means affording a record in writing.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested, a statement of the existence of one of the documents mentioned in paragraph 2 of article 5 of the present Treaty, authorizing the apprehension of the person, a statement of the punishment that can be or has been imposed for the offence, including the time left to be served and a concise statement of the facts of the case, and a statement of the location, where known, of the person.

3. The requested State shall decide on the application in accordance with its law and communicate its decision to the requesting State without delay.

4. The person arrested upon such an

application shall be set at liberty upon the expiration of [40] days from the date of arrest if a request for extradition, supported by the relevant documents specified in paragraph 2 of article 5 of the present Treaty, has not been received. The present paragraph does not preclude the possibility of conditional release of the person prior to the expiration of the [40] days.

5. The release of the person pursuant to paragraph 4 of the present article shall not prevent rearrest and institution of proceedings with a view to extraditing the person sought if the request and supporting documents are subsequently received.

Article 10

Decision on the request

1. The requested State shall deal with the request for extradition pursuant to procedures provided by its own law, and shall promptly communicate its decision to the requesting State.

2. Reasons shall be given for any complete or partial refusal of the request.

Article 11

Surrender of the person

1. Upon being informed that extradition has been granted, the Parties shall, without undue delay, arrange for the surrender of the person sought and the requested State shall inform the requesting State of the length of time for which the person sought was detained with a view to surrender.

2. The person shall be removed from the territory of the requested State within such reasonable period as the requested State specifies and, if the person is not removed within that period, the requested State may release the person and may refuse to extradite that person for the same offence.

3. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party. The two parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 2 of the present article shall apply.

Article 12

Postponed or conditional surrender

1. The requested State may, after making its decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person, or, if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such a case the requested State shall advise the requesting State accordingly.

2. The requested State may, instead of postponing surrender, temporarily surrender the person sought to the requesting State in accordance with conditions to be determined between the Parties.

Article 13

Surrender of property

1. To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all property found in the requested State that has been acquired as a result of the offence or that may be required as evidence shall, if the requesting State so requests, be surrendered if extradition is granted.

2. The said property may, if the requesting State so requests, be surrendered to the requesting State even if the extradition agreed to cannot be carried out.

3. When the said property is liable to seizure or confiscation in the requested State, it may retain it or temporarily hand it over.

4. Where the law of the requested State or the protection of the rights of third parties so require, any property so surrendered shall be returned to the requested State free of charge after the completion of the proceedings, if that State so requests.

Article 14

Rule of speciality

1. A person extradited under the present Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State, or subjected to any other restriction of personal liberty in the territory of the requesting State for any offence committed before surrender other than:

(a) An offence for which extradition was granted;

(b) Any other offence in respect of which the requested State consents. 16/ Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance which the present Treaty. 17/

16/ Some countries may wish to add, as a third case, explicit consent of the person.

17/ Some countries may not wish to assume that obligation and may wish to include other grounds in determining whether or not to grant consent.

2. A request for the consent of the requested State under the present article shall be accompanied by the documents mentioned in paragraph 2 of article 5 of the present treaty and a legal record of any statement made by the extradited person with respect to the offence.

3. Paragraph 1 of the present article shall not apply if the person has had an opportunity to leave the requesting State and has not done so within [30/45] days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the requesting State after leaving it.

Article 15

Transit

1. Where a person is to be extradited to a Party from a third State through the territory of the other Party, the Party to which the person is to be extradited shall request the other Party to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other Party is scheduled.

2. Upon receipt of such a request, which shall contain relevant information, the requested State shall deal with this request pursuant to procedures provided by its own law. The requested State shall grant the request expeditiously unless its essential interests would be prejudiced thereby. 18/

3. The State of transit shall ensure that legal provision exist that would enable detained the person in custody during transit.

4. In the event of an unscheduled landing, the Party to be requested to permit transit may, at the request of the escorting officer, hold the

18/ Some countries may wish to agree on other grounds for refusal, which may also warrant refusal for extradition, such as those related to the nature of the offence (e.g. political, fiscal, military) or to the status of the person (e.g. their own nationals).

person in custody for [48] hours, pending receipt of the transit request to be made in accordance with paragraph 1 of the present article.

Article 16

Concurrent request

If a Party receives requests for extradition for the same person from both the other Party and a third State it shall, at its discretion, determine to which of those States the person is to be extradited.

Article 17

Costs

1. The requested State shall meet the cost of any proceedings in the jurisdiction arising out of a request for extradition.

2. The requested State shall also bear the costs incurred in its territory in connection with the seizure and handling over of property, or the arrest and detention of the person whose extradition is sought. 19/

3. The requesting State shall bear the costs incurred in conveying the person from the territory of the requested State, including transit costs.

Article 18

Final provisions

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the

19/ Some countries may wish to consider reimbursement of costs incurred as a result of withdrawal of a request for extradition or provisional arrest.

instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other party. Such denunciation shall take effect six months following the date on which such notice is received by the other Party.

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

-

-

DONE a _____
on _____ in
the _____ and
_____ languages, [both/all]
texts being equally authentic.

[9] 45/117. Model Treaty on Mutual Assistance in Criminal Matters

The General Assembly,

Bearing in mind the Milan Plan of Action, 1/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

Bearing in Mind also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ principle

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

2/ Ibid., sect. B.

37 of which stipulates that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling resolution 1 of the Seventh Congress, 3/ on organised crime, in which Member States were urged, inter alia, to increase their activity at the international level in order to combat organized crime, including, as appropriate, entering into bilateral treaties on extradition and mutual legal assistance,

Recalling also resolution 23 of the Seventh Congress, 3/ on criminal acts of a terrorist character, in which all States were called upon to take steps to strengthen co-operation particularly, inter alia, in the area of mutual legal assistance.

Recalling further the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance, 4/

Acknowledging the valuable contributions to the development of a model treaty on mutual assistance in criminal matters that Governments, non-governmental organization and individual experts have made, in particular the Government of Australia and the International Association of Penal Law,

Gravely concerned about the escalation of crime, both national and transnational,

Convinced that the establishment of bilateral and multilateral arrangements for mutual assistance in criminal matters will greatly contribute to the development of more effective international co-operation for the control of criminality,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings,

3/ Ibid., sect. E.

4/ E/CONF.82/15 and Corr.2.

as embodied in the Universal Declaration of Human Rights 5/ and the International Covenant on Civil and Political Rights, 6/

Recognizing the importance of a model treaty on mutual assistance in criminal matters as an effective way of dealing with the complex aspects and serious consequences of crime, especially in its new forms and dimensions,

1. Adopts the Model Treaty on Mutual Assistance in Criminal Matters together with the Optional Protocol thereto, contained in the annex to the present resolution, as a useful framework that would be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving co-operation in matters of crime prevention and criminal justice;

2. Invites Members States, if they have not yet established treaty relations with other States in the matters of Mutual Assistance in criminal matters, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Treaty;

3. Urges all States to strengthen further international co-operation and mutual assistance in criminal justice;

4. Requests the Secretary-General to bring the present resolution, with the Model Treaty and the Optional Protocol thereto, to the attention of Governments;

5. Urges Member States to inform the Secretary -General periodically of efforts undertaken to establish mutual assistance arrangements in criminal matters;

6. Requests the Committee on Crime Prevention and Control to review periodically the progress attained in this field;

7. Also requests the Committee on Crime Prevention and Control, where requested, to provide guidance and assistance to Member States in the development of legislation which would enable giving effect to obligations which

5/ Resolution 217 A (III).

6/ See resolution 2200 A (XXI), annex,

will be contained in such treaties as are to be negotiated on the basis of the Model Treaty;

8. Invites Member States, on request, to make available to the Secretary-General the provisions of their legislation on mutual assistance in criminal matters so that these may be made available to those Member States desiring to enact or further develop legislation in this field

**68th plenary meeting
14 December 1990**

ANNEX

Model treaty on Mutual Assistance in Criminal Matters

The _____
and the _____

Desirous of extending to each other the widest measure of co-operation to combat crime,

Have agreed as follows:

Article 1

Scope of application 7/

1. The Parties shall, in accordance with the present Treaty, afford to each other the widest possible measure of mutual assistance in investigation or court proceedings in respect of offences the punishment of which at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State.

2. Mutual assistance to be afforded in accordance with the present Treaty may include:

7/ Additions to the scope of assistance to be provided, such as provisions covering information on sentences passed on nationals of the Parties, can be considered bilaterally. Obviously, such assistance must be compatible with the law of the requested State.

- (a) Taking evidence or statements from persons;
- (b) Assisting in the availability of detained persons or others to give evidence or assist in investigations;
- (c) Effecting service of judicial documents;
- (d) Executing searches and seizures;
- (e) Examining objects and sites;
- (f) Providing information and evidentiary items;
- (g) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

3. The present Treaty does not apply to:

- (a) The arrest or detention of any person with a view to the extradition of that person;
- (b) The enforcement in the requested State of criminal judgments imposed in the requesting State except to the extent permitted by the law of the requested State and the Optional protocol to the present Treaty;
- (c) The transfer of persons in custody to serve sentences;
- (d) The transfer of proceedings in criminal matters.

Article 2 8/

Other arrangements

Unless the Parties decide otherwise, the present Treaty shall not affect obligations subsisting between them whether pursuant to other treaties or arrangements or otherwise.

8/ Article 2 recognizes the continuing role of informal assistance between law enforcement agencies and associated agencies in different countries.

Article 3

Designation of competent authorities

Each party shall designate and indicate to the other Party an authority or authorities by or through which requests for the purpose of the present Treaty should be made or received.

Article 4 9/

Refusal of assistance

1. Assistance may be refused if :10/

(a) The requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, public order (order public) or other essential public interests;

(b) The offence is regarded by the requested State as being of a political nature;

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

9/ Article 4 provides an illustrative list of the grounds for refusal.

10/ Some countries may wish to delete or modify some of the provisions or include other grounds for refusal, such as those related to the nature of the offence (e.g. fiscal), the nature of the applicable penalty (e.g. capital punishment), requirements of shared concepts (e.g. double jurisdiction, no lapse of time) of specific kinds of assistance (e.g. interception of telecommunications, performing deoxyribonucleic-acid (DNA) tests). In particular, some countries may wish to include as grounds for refusal the fact that the act on which the request is based would not be an offence if committed in the territory of the requested State (dual criminality).

(d) The request relates to an offence that is subject to investigation or prosecution in the requested State or the prosecution of which in the requesting State would be incompatible with the requested State's law on double jeopardy (ne bis in

idem);

(e) The assistance requested requires the requested State to carry out compulsory measures that would be inconsistent with its law and practice had the offence been the subject of investigation or prosecution under its own jurisdiction;

(f) The act is an offence under military law, which is not also an offence under ordinary criminal law.

2. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions.

3. The requested State may postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the requested State.

4. Before refusing a request or postponing its execution, the requested State shall consider whether assistance may be granted subject to certain conditions. If the requesting State accepts assistance subject to these conditions, it shall comply with them.

5. Reasons shall be given for any refusal or postponement of mutual assistance.

Article 5

Contents of requests

1. Requests for assistance shall include: 11/

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

11/ This list can be reduced or expanded in bilateral negotiations.

(b) The purpose of the request and a brief description of the assistance sought;

(c) A description of the facts alleged to constitute the offence and a statement or text of the relevant laws, except in cases of a request for service of documents;

(d) The name and address of the person to be

served, where necessary;

(e) The reasons for and details of any particular procedure or requirement that the requesting State wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required;

(f) Specification of any time-limit within compliance with the request is desired;

(g) Such other information as is necessary for the proper execution of the request.

2. Requests, supporting documents and other communications made pursuant to the present Treaty shall be accompanied by a translation into the language of the request State or another language acceptable to that State.

3. If the requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

Article 6

Execution of requests 12/

Subject to article 19 of the present Treaty, requests for assistance shall be carried out

12/ More detailed provisions may be included concerning the provision of information on the time and place of execution of the request and requiring the requested State to inform promptly the requesting State in cases where significant delay is likely to occur or where a decision is made not to comply with the request and the reasons for refusal.

promptly, in the manner provided for by the law and practice of the requested State. To the extent consistent with its law and practice, the requested State shall carry out the request in the manner specified by the requesting State.

Article 7

Return of material to the requested State

Any property, as well as original records or documents, handed over to the requesting State under the present Treaty shall be returned to the requested State as soon as possible unless the latter waives its right of return thereof.

Article 8 13/

Limitation on use

The requesting State shall not, without the consent of the requested State, use or transfer information or evidence provided by the requested State for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under the present Treaty.

Article 9

Protection of confidentiality 14/

Upon request:

(a) The requested State shall use its best endeavours to keep confidential the request for assistance, its contents and its supporting

13/ Some countries may wish to omit article 8 or modify it, e.g. restrict it to fiscal offences.

14/ Provisions relating to confidentiality will be important for many countries but may present problems to others. The nature of the provisions in individual treaties can be determined in bilateral negotiations.

documents as well as the fact of granting of such assistance. If the request cannot be executed without breaching confidentiality, the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed;

(b) The requesting State 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 proceedings described in the request.

Article 10

Service of documents 15/

1. The requested State shall effect service of documents that are transmitted to it for this purpose by the requesting State.

2. A request to effect service of summonses shall be made to a requested State not less than [...] 16/ days before the date on which the

15/ More detailed provisions relating to the service of documents, such as writs and judicial verdicts, can be determined bilaterally. Provisions may be desired for the service of documents by mail or other manner and for the forwarding of proof of service of the documents. For example, proof of service could be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested State that service has been effected, with an indication of the form and date of such service. One or other of these documents could be sent promptly to the requesting State. The requested State could, if the requesting State so requests, state whether service has been effected in accordance with the law of the requested State. If service could not be effected, the reasons could be communicated promptly by the requested State to the requesting State.

16/ Depending on travel distance and related arrangements.

appearance of a person is required. In urgent cases, the requested State may waive the time requirement.

Article 11 17/

Obtaining of evidence

1. The requested State shall, in conformity with its law and upon request, take the sworn or affirmed testimony, or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the requesting State.

2. Upon the request of the requesting State, the parties to the relevant proceedings in the requesting State, their legal representatives and representatives of the requesting State may, subject

to the laws and procedures of the requested State, be present at the proceedings.

Article 12

Right or obligation to decline to give evidence

1. A person who is required to give evidence in the requested or requesting State may decline to give evidence where either:

(a) The law of the requested State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requested State; or

(b) The law of the requesting State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requesting State.

2. If a person claims that there is a right or obligation to decline to give evidence under the law of the other State, the State where that person is present shall, with respect thereto, rely on a certificate of the competent authority of the other State as evidence of the existence or non-existence of the right or obligation.

17/ Article 11 is concerned with the obtaining of evidence in judicial proceedings, the taking of a person's statement by a less formal process and the production of items of evidence.

Article 13

Availability of persons in custody to give evidence or to assist in investigations 18/

1. Upon the request of the requesting State, and if the requested State agrees and its law so permits, a person in custody in the latter State may, subject to his or her consent, be temporarily transferred to the requesting State to give evidence or to assist in the investigations.

2. While the person transferred is required to be held in custody under the law of the requested State, the requesting State shall hold that person in custody and shall return that person in custody to the requested State at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer

required.

3. Where the requested State advises the requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in article 14 of the present Treaty.

Article 14

Availability of other persons to give evidence or assist in investigations 19/

1. The requesting State may request the assistance of the requested State in inviting a person:

18/ In bilateral negotiations, provisions may also be introduced to deal with such matters as the modalities and time of restitution of evidence and the setting of a time-limit for the presence of the person in custody in the requesting State.

19/ Provisions relating to the payment of the expenses of the person providing assistance are contained in paragraph 3 of article 14. Additional details, such as provision for the payment of costs in advance, can be the subject of bilateral negotiations.

(a) To appear in proceedings in relation to a criminal matter in requesting State unless that person is the person charged; or

(b) To assist in the investigations in relation to a criminal matter in the requesting State.

2. The requested State shall invite the person to appear as a witness or expert in proceedings or to assist in the investigations. Where appropriate, the requested State shall satisfy itself that satisfactory arrangements have been made for the person's safety.

3. The request or the summons shall indicate the approximate allowances and the travel and subsistence expenses payable by the requesting State.

4. Upon request, the requested State may grant the person an advance, which shall be refunded by the requesting State.

Article 15 20/

Safe conduct

1. Subject to paragraph 2 of the present article, where a person is in the requesting State pursuant to a request made under article 13 or 14 of the present Treaty:

(a) That person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the requesting State in respect of any acts or omissions or convictions that preceded the person's departure from the requested State;

(b) That person shall not, without that person's consent, be required to give evidence in any proceeding or to assist in any investigation

20/ The provisions in article 15 may be required as the only way of securing important evidence in proceedings involving serious national and transnational crime. However, as they may raise difficulties for some countries, the precise content of the article, including any additions or modifications, can be determined in bilateral negotiations.

other than the proceeding or investigation to which the request relates.

2. Paragraph 1 of the present article shall cease to apply if that person, being free to leave, has not left the requesting State within a period of [15] consecutive days, or any longer period otherwise agreed on by the Parties, after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to article 13 or accept an invitation pursuant to article 14 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.

Article 16

Provision of publicly available documents and other records 21/

1. The requested State shall provide copies of documents and records in so far as they are open to public access as part of a public register or otherwise, or in so far as they are available for purchase or inspection by the public.

2. The requested State may provide copies of any other documents or record under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

Article 17

Search and seizure 22/

The requested State shall, in so far as its

21/ The question may arise as to whether this should be discretionary. This provision can be the subject of bilateral negotiations.

22/ Bilateral arrangements may cover the provision of information on the results of search and seizure and the observance of conditions imposed in relation to the delivery of seized property.

law permits, carry out requests for search and seizure and delivery of any material to the requesting State for evidentiary purposes, provided that the rights of bona fide third parties are protected.

Article 18

Certification and authentication 23/

A request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

Article 19

Costs 24/

The ordinary costs of executing a request shall be borne by the requested State, unless otherwise determined by the Parties. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the

23/ The laws of some countries require

authentication before documents transmitted from other countries can be admitted in their courts, and, therefore, would require a clause setting out the authentication required.

24/ More detailed provisions may be included, for example, the requested State would meet the ordinary cost of fulfilling the request for assistance except that the requesting State would bear (a) the exceptional or extraordinary expenses required to fulfil the request, where required by the requested State and subject to previous consultations; (b) 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 while in the requesting State pursuant to a request under article 11, 13 or 14; (c) the expenses associated with conveying custodial or escorting officers; and (d) the expenses involved in obtaining reports of experts.

Parties shall consult in advance to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne.

Article 20

Consultation

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

Article 21

Final provisions

1. The present Treaty is subject to (ratification, acceptance or approval). The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests

made after its entry into force, even if the relevant acts or omissions occurred prior to the date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

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

DONE at _____ on _____ in the _____ and _____ languages, [both/all] texts being equally authentic.

Optional Protocol to the Model Treaty on Mutual Assistance in Criminal Matters concerning the proceeds of crime 25/

1. In the present Protocol "Proceeds of Crime" means any property suspected, or found by a court, to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence.

2. The requested State shall, upon request, endeavour to ascertain whether any proceeds of the alleged crime 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 within its jurisdiction.

25/ The present Optional Protocol is included on the ground that questions of forfeiture are conceptually different from, although closely related to, matters generally accepted as falling within the description of mutual assistance. However, States may wish to include these provisions in the text because of their importance in dealing with organized crime. Moreover, assistance in forfeiting the proceeds of crime has now emerged as a new

instrument in international co-operation. Provisions similar to those outlined in the present Protocol appear in many bilateral assistance treaties. Further details can be provided in bilateral arrangements. One matter that could be considered is the need for other provisions dealing with issues related to bank secrecy. An addition could, for example, be made to paragraph 4 of the present Protocol providing that the requested State shall, upon request, take such measures as are permitted by its law to require compliance with monitoring orders by financial institutions. Provision could be made for the sharing of the proceeds of crime between the Contracting States or for consideration of the disposal of the proceeds on a case-by-case basis.

3. In pursuance of a request made under paragraph 2 of the present Protocol, the requested State shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds of crime.

4. Where, pursuant to paragraph 2 of the present Protocol, suspected proceeds of crime are found, the requested State shall upon request 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.

5. The requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds of crime made by a court of the requesting State or take other appropriate action to secure the proceeds following a request by the requesting State. 26/

6. The Parties shall ensure that the rights of bona fide third parties shall be respected in the application of the present Protocol.

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

DONE at _____ on _____ in the

_____ and _____ languages, [both/all] texts being equally authentic.

26/ The Parties might consider widening the scope of the present protocol by the inclusion of references to victims' restitution and the recovery of fines imposed as a sentence in a criminal prosecution.

[10] 45/118. Model Treaty on the Transfer of Proceedings in Criminal Matters

The General Assembly

Recalling the Milan Plan of Action, 1/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

Recalling also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ principle 37 of which stipulates that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling further resolution 12 of the Seventh Congress, 3/ on the transfer of proceedings in criminal matters, in which the Committee on Crime Prevention and Control was requested to study the question and to consider the possibility of formulating a model agreement in this area,

Acknowledging the valuable contributions made by Governments, non-governmental organizations and individual experts to the drafting of a model treaty on the transfer of proceedings in criminal matters, in particular the International Expert Meeting on the United Nations and Law Enforcement, held under the auspices of the United Nations at Baden, Austria, from 16 to 19 November 1987, the Interregional Preparatory Meeting for the

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

Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic V, "United Nations norms and guidelines in crime prevention and criminal justice: implementation and priorities for further standard setting" 4/ and the regional preparatory meetings for the Eighth Congress,

Convinced that the establishment of bilateral and multilateral arrangements for the transfer of proceedings in criminal matters will greatly contribute to the development of more effective international co-operation aimed at controlling crime,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights 5/ and the International Covenant on Civil and Political Rights, 6/

Recognizing the importance of a model treaty on the transfer of proceedings in criminal matters as an effective way of dealing with the complex aspects, consequences and modern evolution of transnational crime,

1. Adopts the Model Treaty on the Transfer of Proceedings in Criminal Matters, contained in the annex to the present resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral or multilateral treaties aimed at improving co-operation in matters of crime prevention and criminal justice;
2. Invites Member States, if they have not yet established treaty relations with other States in regard to transfer of proceedings in criminal matters, or if they wish to revise existing treaty relations, to take the Model Treaty into account whenever doing so;

3. Urges Member States to strengthen international co-operation in criminal justice;

- 4/ See A/CONF.144/IPM.5 and Corr.1.
—
- 5/ Resolution 217 A (III)
- 6/ See resolution 2200 A (XXI), annex.

4. Also urges Member States to inform the Secretary-General periodically of efforts undertaken to establish arrangements for the transfer of proceedings in criminal matters;

5. Requests the Committee on Crime Prevention and Control to conduct periodic reviews of the progress attained in this field;

6. Requests the Secretary-General to assist Member States, at their request, in the development of treaties on the transfer of proceedings in criminal matters and to report regularly thereon to the Committee.

**68th plenary meeting
14 December 1990**

ANNEX

**Model Treaty on Transfer of Proceedings
in Criminal Matters**

The _____ and the

Desirous of further strengthening international co-operation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

Believing that such co-operation should further the ends of justice, the social resettlement of offenders and the interests of the victims of crime,

Bearing in mind that the transfer of proceedings in criminal matters contributes to effective administration of justice and to reducing conflicts of competence,

Aware that the transfer of proceedings in

criminal matters can help to avoid pre-trial detention and thus reduce the prison population,

Convinced, therefore, that the transfer of proceedings in criminal matters should be promoted,

Have agreed as follows:

Article 1

Scope of application

1. When a person is suspected of having committed an offence under the law of a State which is a Contracting Party, that State may, if the interests of the proper administration of justice so require, request another State which is a Contracting Party to take proceedings in respect of this offence.

2. For the purpose of applying the present Treaty, the Contracting Parties shall take the necessary legislative measures to ensure that a request of the requesting State to take proceedings shall allow the requested State to exercise the necessary jurisdiction.

Article 2

Channels of communications

A request to take proceedings shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

Article 3

Required documents

1. The request to take proceedings shall contain or be accompanied by the following information:

- (a) The authority presenting the request;
- (b) A description of the act for which transfer of proceedings is being requested, including the specific time and place of the offence;
- (c) A statement on the results of investigations which substantiate the suspicion of an offence;

(d) The legal provisions of the requesting State on the basis of which the act is considered to be an offence;

(e) A reasonable exact statement on the identity, nationality and residence of the suspected person.

2. The documents submitted in support of a request to take proceedings shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

Article 4

Certifications and authentication

Subject to national law and unless the Parties decide otherwise, a request to take proceedings and the documents in support thereof, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication.^{7/}

Article 5

Decision on the request

The competent authorities of the requested State shall examine what action to take on the request to take proceedings in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the requesting State.

Article 6

Dual criminality

A request to take proceedings can be complied with only if the act on which the request is based would be an offence if committed in the territory of the requested State.

^{7/} The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

The rights of the victim

Article 7

Grounds for refusal

If the requested State refuses acceptance of a request for transfer of proceedings, it shall communicate the reasons for refusal to the requesting State. Acceptance may be refused if:

- (a) The suspected person is not a national of or ordinary resident in the requested State;
- (b) The act is an offence under military law, which is not also an offence under ordinary criminal law;
- (c) The offence is in connection with taxes, duties, customs or exchange;
- (d) The offence is regarded by the requested State as being of a political nature.

Article 8

The position of the suspected person

1 The suspected person may express to either State his or her interest in the transfer of the proceedings. Similarly, such interest may be expressed by the legal representative or close relatives of the suspected person.

2 Before a request for transfer of proceedings is made, the requesting State shall, if practicable, allow the suspected person to present his or her views on the alleged offence and the intended transfer, unless that person has absconded or otherwise obstructed the course of justice.

8/ When negotiating on the basis of the present Model Treaty, States may wish to add other grounds for refusal or conditions to this list, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights, or to considerations of public order.

Article 9

The requesting and requested States shall ensure in the transfer of proceedings that the rights of the victim of the offence, in particular his or her right to restitution or compensation, shall not be affected as a result of the transfer. If a settlement of the claim of the victim has not been reached before the transfer, the requested State shall permit the representation of the claim in the transferred proceedings, if its law provides for such a possibility. In the event of the death of the victim, these provisions shall apply to his or her dependants accordingly.

Article 10

Effects of the transfer of proceedings on the requesting State

(ne bis in idem)

Upon acceptance by the requested State of the request to take proceedings against the suspected person, the requesting State shall provisionally discontinue prosecution, except necessary investigation, including judicial assistance to the requested State, until the requested State informs the requesting State that the case has been finally disposed of. From that date on, the requesting State shall definitely refrain from further prosecution of the same offence.

Article 11

Effects of the transfer of proceedings on the requested State

1 The proceedings transferred upon agreement shall be governed by the law of the requested State. When charging the suspected person under its law, the requested State shall make the necessary adjustment with respect to particular elements in the legal description of the offence. Where the competence of the requested State is based on the provision set forth in paragraph 2 of article 1 of the present Treaty, the sanction pronounced in that State shall not be more severe than that provided by the law of the requesting State.

2 As far as compatible with the law of the requested State, any act with a view to proceedings or procedural requirements performed in the requesting State in accordance with its law shall

have the same validity in the requested State as if the act had been performed in or by the authorities of that State.

3 The requested State shall inform the requesting State of the decision taken as a result of the proceedings. To this end a copy of any final decision shall be transmitted to the requesting State upon request.

Article 12

Provisional measures

When the requesting State announces its intention to transmit a request for transfer of proceedings, the requested State may, upon a specific request made for this purpose by the requesting State, apply all such provisional measures, including provisional detention and seizure, as could be applied under its own law if the offence in respect of which transfer of proceedings is requested had been committed in its territory.

Article 13

The plurality of criminal proceedings

When criminal proceedings are pending in two or more States against the same suspected person in respect of the same offence, the States concerned shall conduct consultations to decide which of them alone should continue the proceedings. An agreement reached thereupon shall have the consequences of a request for transfer of proceedings.

Article 14

Costs

Any costs incurred by a Contracting Party because of a transfer of proceedings shall not be refunded, unless otherwise agreed by both the requesting and requested States.

Article 15

Final provisions

1. The present Treaty is subject to [ratification, acceptance or approval]. The

instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other party.

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

DONE at _____ on _____ in the _____ and _____ languages, [both/all] texts being equally authentic.

[11] **Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property**

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

Recalling the Milan Plan of Action 110/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in resolution 40/32 of 29 November 1985

Bearing in mind the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 111/ among which principle 37 requires that the United Nations should prepare model instruments suitable for use as international and regional agreements and as guides for national implementing legislation.

Recalling also resolution 1 of the Seventh Congress, 112/ in which Member States were urged to increase their activity at the international level, in order to combat organized crime and entering into bilateral assistance treaties,

Noting that the Economic and Social Council, in its resolution 1989/62 of 24 May 1989, decided that the topic of transnational crimes against the cultural patrimony of countries should be included under item 3 of the provisional agenda of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in order to explore the possibilities for formulating comprehensive policies of international co-operation for the prevention of such offences,

110/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No.E.86.IV.1), chap. I, sect. A.

111 /Ibid., sect. B.

112 /Ibid., sect. E.

Desirous of promoting co-operation to prevent unlawful acts that encroach on the historical and cultural legacy of peoples,

Bearing in mind that the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 113/ adopted by the United Nations Educational, Scientific and Cultural Organization, which entered into force on 24 April 1972, establishes in its declarative section the duty of every State to protect the heritage represented by

the cultural property located on its territory against the dangers of robbery, clandestine excavation and illicit export, as well as a commitment to combat these practices by every available means, particularly with respect to stopping them while in progress, eliminating their causes and providing the assistance required to secure the return of the property in question,

Mindful of the declarations and legal instruments that provide, as an essential undertaking, for the adoption, both nationally and internationally, of the most effective possible measures for adequately protecting, defending and recovering cultural property and for combating such acts as may damage or diminish those riches of an archaeological, historical and artistic nature that represent the expression of the national character of their respective peoples,

Convinced that the best way of achieving these objectives is through the co-operation and mutual help that must exist in order to succeed in preventing crimes against cultural heritage and in returning the property in question to the countries from which it has been illicitly removed,

Conscious of the need to respect human dignity and recalling the principles set forth in the Universal Declaration of Human Rights 114/ and the International Covenant on Economic, Social and Cultural Rights, as well as in the

113/ United Nations Educational, Scientific and Cultural organization, Records of the General Conference, Sixteenth Session, vol. I, Resolutions, pp.135-141

114/ General Assembly resolution 217 A(III).

International Covenant on Civil and Political Rights, 115/

Recognizing the importance of the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property as a means of preventing crimes of this type and securing the return of property that has been illicitly removed,

1. Recommends that Member States consider the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property, contained in the annex to the present resolution, as a framework that may be

of assistance to interested States in negotiating and drawing up bilateral agreements designed to improve co-operation in the area of crime prevention and criminal justice;

2. Invites those Member States that have not yet established treaty relations with other States for the prevention of crimes that infringe on the cultural heritage of peoples, or that wish to modify these relations if they already exist, to bear in mind, when so doing, the draft model treaty;

3. Urges all Member States to continue to strengthen international co-operation and mutual assistance in resolving these problems;

4. Calls upon Member States to inform the Secretary-General periodically of the efforts made to conclude agreements for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property;

Requests the Committee on Crime Prevention and Control to examine periodically the progress achieved in this area.

ANNEX

Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property 116/

The _____ and _____

115/ General Assembly resolution 2200 A(XXI), annex.

Conscious of the need to co-operate in the field of criminal justice,

Wishing to add to the effectiveness of the co-operation between their two countries in combating criminal activities which involve movable cultural property through the introduction of measures for impeding illicit transnational trafficking in movable cultural property whether or not it has been stolen, the imposition of appropriate and effective administrative and penal sanctions and the provision of a means for restitution,

Have agreed as follows:

Article 1

Scope of application and definition 117/

1. For the purposes of this treaty, movable cultural property 118/ shall be understood as referring to property which, on religious or secular grounds, is specifically designated by a State Party as being subject to export control by

116/ An alternative title could be "Model treaty concerning crimes relating to the restitution of movable cultural property".

117/ Suggested alternatives to article 1, paragraph 1, are: (i) "This treaty covers all items of movable cultural property specifically designated as such by a State Party, and subject to export control by that State Party."; or (ii) "This treaty covers those items of movable cultural property specifically agreed to between the States Parties as being subject to export control."

118/ The categories follow closely the list contained in article 1 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, of 1970. However, this list may not be exhaustive, and States Parties may wish to add other categories.

reason of its importance for archaeology, prehistory, history, literature, art or science, and as belonging to one or more of the following categories:

(a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;

(b) Property relating to history, including the history of science and technology, military history, and the history of societies and religions, as well as to the lives of leaders, thinkers, scientists and artists and other national figures, and to events of national importance;

(c) Products of archaeological excavations or discoveries, including clandestine excavations or discoveries, whether on land or under water;

(d) Elements of artistic or historical monuments or archaeological sites which have been dismantled;

- (e) Antiquities, including tools, ceramics, ornaments, musical instruments, pottery, inscriptions of all kinds, coins, engraved seals, jewels, weapons and funerary remains of any description;
- (f) Materials of anthropological, historical or ethnological interest;
- (g) Property of artistic interest, such as:
 - (i) Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
 - (ii) Original works of statuary art and sculpture in any material;
 - (iii) Original engravings, prints, lithographs and art photographs;
 - (iv) Original artistic assemblages and montages in any material;
- (h) Rare manuscripts and incunabula, old books, documents and publications of special historical, artistic, scientific, literary or other interest, singly or in collections;

- (i) Postage, revenue and similar stamps, either singly or in collections;
- (j) Archives, including phonographic, photographic and cinematographic archives;
- (k) Articles of furniture, furnishings and musical instruments of more than 100 years of age.

2. This treaty applies to movable cultural property stolen in or illicitly party exported from the other State after the coming into force of the treaty. 119/

Article 2

General principles

1. Each State Party undertakes:

- (a) To take the necessary measures to prohibit the import and export of movable cultural property
 - (i) which has been stolen in the other State Party or
 - (ii) which has been illicitly exported from the other

State Party;

- (b) To take the necessary measures to prohibit the acquisition of, and dealing within its territory with, movable cultural property which has been imported contrary to the prohibitions resulting from the implementation of subparagraph (a) above;
- (c) To legislate in order to prevent persons and institutions within its territory from entering into international conspiracies with respect to movable cultural property;
- (d) To provide information concerning its stolen movable cultural property to an

119/ States Parties may wish to consider providing for a period of limitation after which the right to request recovery of stolen or illicitly exported movable cultural property will be extinguished.

international data base agreed upon between the States Parties; 120/

- (e) To take the measures necessary to ensure that the purchaser of stolen movable cultural property which is listed on the international data base is not considered to be a purchaser who has acquired such property in good faith; 121/

- (f) To introduce a system whereby the export of movable cultural property is authorized by the issue of an export certificate; 122/

- (g) To take the measures necessary to ensure that a purchaser of imported movable cultural property which is not accompanied by an export certificate issued by the other State Party and who did not acquire the movable cultural property prior to the entry into force of this treaty shall not be considered to be a person who has acquired the movable cultural property in good faith; 123/

120/ Further developments in this field will provide the international community, particularly potential States Parties, with

an opportunity to implement this method of crime prevention. (See also resolution 6 below.) The United Nations Congresses on the Prevention of Crime and the Treatment of Offenders may wish to develop initiatives in this direction.

121/ This provision is intended to supplement, and not be in substitution for, the normal rules relating to good faith acquisition.

122/ This procedure is consistent with the validation procedure described in article 6 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

123/ States Parties may wish to consider adding certain types of offences against movable cultural property to the list of extraditable offences covered by an extradition treaty. (See also sect. A, draft resolution 10 above.)

(h) To use all the means at its disposal, including the fostering of public awareness, to combat the illicit import and export, theft, illicit excavation and illicit dealing in movable cultural property.

2. Each State Party undertakes to take the necessary measures to recover and return, at the request of the other State Party, any movable cultural property which is covered by subparagraph (a) above.

Article 3

Sanctions 123/

Each State Party undertakes to impose sanctions 124/ upon:

(a) Persons or institutions responsible for the illicit import or export of movable cultural property;

(b) Persons or institutions that knowingly acquire or deal in stolen or illicitly imported movable cultural property;

(c) Persons or institutions that enter into international conspiracies to obtain, export or import movable cultural property by illicit means.

Article 4

Procedures

1. Requests for recovery and return shall be made through diplomatic channels. The requesting State Party shall furnish, at its expense, the documentation and other evidence, including the date of export, necessary to establish its claim for recovery and return.

2. All expenses incidental to the return and delivery of the movable cultural property shall be

124/ States Parties may wish to consider establishing minimum penalties for certain offences.

borne by the requesting State Party, 125/ and no person or institution shall be entitled to claim any form of compensation from the State Party returning the property claimed. Neither shall the requesting State Party be required to compensate in any way such persons or institutions as may have participated in illegally sending abroad the property in question, although it must pay fair compensation 125/ to any person or institution that in good faith acquired or was in legal possession of the property. 126/

3. Both parties agree not to levy any customs or other duties on such movable property as may be discovered and returned in accordance with the present treaty.

4. The States Parties agree to make available to each other such information as will assist in combating crimes against movable cultural property. 127/

5. Each State Party shall provide information concerning laws which protect its

125/ States Parties may wish to consider whether the expenses and/or the expense of providing compensation should be shared between them.

126/ Some States Parties may wish to consider the position of a blameless possessor who has inherited or otherwise gratuitously acquired a cultural object which had been previously dealt with in bad faith.

127/ Some States Parties may wish to preface article 4, paragraph 3, by the following: "Subject to domestic laws, particularly those concerning access to information and the protection of privacy,..."

movable cultural property to an international data base agreed upon between the States Parties. 128/

Article 5

Final provisions 129/

1. This treaty is subject to (ratification, acceptance or approval). The instruments of (ratification, acceptance or approval) shall be exchanged as soon as possible, through diplomatic channels.

2. This treaty shall come into force on the thirtieth day after the day on which the instruments of (ratification, acceptance or approval) are exchanged.

3. Either State Party may denounce this treaty by giving notice in writing to the other State Party. Such denunciation shall take effect six months after the date on which such notice is received by the other State Party.

4. This treaty is intended to be complementary to, and does not in any way exclude, participation in other international arrangements.

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

128/ It should be noted that General Assembly resolution 44/18 of 6 November 1989 and

quite a number of resolutions of the General Conference of UNESCO have invited member States to establish, with the assistance of UNESCO, national inventories of cultural property. At the date of the drafting of this treaty, national legislative texts on the protection of cultural movable property from 76 countries have been collected, published and disseminated by UNESCO.

129/ States Parties may wish to consider providing for a process for the resolution of disputes concerning the treaty.

Done at _____ on _____ in the _____ and _____ languages, both texts being equally authentic.