

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND ITS PROTOCOLS

The Commission on Crime Prevention and Criminal Justice was established by the Economic and Social Council (resolution 1992/1 of 6 February 1992) to replace the Committee on Crime Prevention and Control, and held its first session in April 1992 (E/1992/30 – E/CN.15/1992/7). The Council had determined that one of the priority themes that should guide the work of the Commission, as well as the United Nations Crime Prevention and Criminal Justice Programme, would include “national and transnational crime” and “organized crime”. On 16 December 1992, the General Assembly adopted resolution 47/87, in which it requested the Commission to organize the ongoing review and analysis of the incidence of transnational organized criminal activity.

At its second session, in April 1993 (Report of the Commission on Crime Prevention and Criminal Justice on its second session, E/1993/32-E/CN.15/1993/9), the Commission recommended to the Council the adoption of a draft resolution on the convening of a World Ministerial Conference on Organized Transnational Crime. The Council adopted this recommendation in resolution 1993/29 of 27 July 1993. The Council requested the Secretary-General to organize a World Ministerial Conference with the mandate, *inter alia*, to consider whether it would be feasible to elaborate international instruments, including conventions, against organized transnational crime. Consequently, the General Assembly, in its resolution 48/103 of 20 December 1993, expressed its support for the World Ministerial Conference and called upon Member States to be represented at the Conference at the highest possible level.

The World Ministerial Conference was convened in Naples, Italy, from 21 to 23 November 1994. The Conference unanimously adopted the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (Naples Declaration) (A/49/748).

At its forty-ninth session, in 1994, the General Assembly, in resolution 49/159 of 23 December, approved the Naples Declaration and requested the Secretary-General to transmit the Naples Declaration to the Commission on Crime Prevention and Criminal Justice for appropriate action, since the Commission was requested by the declaration to initiate the process of asking the Governments for their views on the impact of a convention or conventions against organized transnational crime and on the issues that could be covered therein. Furthermore, the Secretary-General was requested to report to the General Assembly at its fiftieth session on the implementation of the Naples Declaration.

From April 29 until May 8 1995, the Ninth United Nations Congress on Prevention of Crime and the Treatment of Offenders was held in Cairo, resulting, *inter alia*, in the adoption of resolution 3 on international instruments such as a convention or conventions against organized transnational crime (A/CONF.169/16.Rev.1). The Congress invited the Commission to give priority to the implementation of the Naples Declaration by requesting the views of Governments on the elaboration of a multinational instrument. The Congress also proposed elements to be included in such an instrument and requested the Commission to ask the Secretary-General, if required, for assistance in such a matter.

At its fourth session, in May 1995, the Commission addressed the conclusions of the Ninth United Nations Congress on Prevention of Crime and the Treatment of Offenders and the World Ministerial Conference on Organized Transnational Crime, and recommended follow-up measures (Report of the Commission on Crime Prevention and Criminal Justice on its fourth session, E/1995/30-E/CN.15/1995/13). Such recommendations were considered by the Economic and Social Council during its

session from 26 June to 28 July 1995, resulting in the adoption of resolution 1995/11 of 24 July 1995, which again asked the Secretary-General to initiate the process of requesting the views of Governments on the opportunity and impact of international instruments, such as a convention against transnational organized crime, and to collect and analyze data on this matter. Moreover, in its resolution 1995/27 of 24 July 1995, the Council also decided to establish, at its fifth session, in 1996, an open-ended, intergovernmental working group within the framework of the Commission to consider such provided information and propose any further action.

Pursuant to General Assembly resolution 49/159, the Secretary-General reported to the General Assembly on the desirability of and requirements to be met for a multinational instrument against organized crime on 18 September 1995 (A/50/433). The Secretary-General also noted a strong political will amongst States to achieve such a result.

In November 1995, the Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime was convened at Buenos Aires. The Workshop adopted by consensus the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime (E/CN.15/1996/2/Add.1, annex).

On 21 December 1995, the General Assembly adopted resolution 50/146, in which it took note of the Secretary-General's report (A/50/433). The Assembly requested, *inter alia*, the Secretary-General to continue strengthening the United Nations crime prevention and criminal justice programme by providing it with the resources necessary for the full implementation of its mandate, including follow-up action to the Naples Declaration.

A favourable climate towards an international convention was also described in the Secretary-General's report to the Commission on Crime Prevention and Criminal Justice in April 1996 (E/CN.15/1996/2 and Add.1), in which the views of 20 Governments on such a matter were reported. The need for reliable information was reiterated as doubts were expressed by some countries on the attainability of such an international convention. The Secretary-General recommended the establishment and maintenance of a central repository for information on legislation, regulatory measures and organizational structures, designed to prevent and control organized transnational crime, along with bilateral and multilateral cooperation arrangements.

The recommendation was considered by the Economic and Social Council, which requested the Secretary-General to establish such a repository in its resolution 1996/27 of 24 July 1996. The Council requested that the Secretary-General make a thorough analysis of the views of Governments on the possibility of elaborating a convention or conventions against organized transnational crime, taking into account, *inter alia*, the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime (E/CN.15/1996/2/Add.1). In addition, the Secretary-General was requested to make proposals on the action that would be appropriate and for the undertaking of practical activities by States to implement the Naples Declaration. The Council also decided that the Commission should establish an in-session working group at its sixth session for the purpose of considering the report and the proposals of the Secretary-General.

On 24 September 1996, the Polish Government submitted a draft framework convention against organized crime (A/C.3/51/7), to be circulated in the General Assembly. Consequently, in its resolution 51/120 of 12 December 1996, the General Assembly requested the Secretary-General to invite all States to submit their comments on the proposed draft. The Assembly also requested the Commission on Crime Prevention and Criminal Justice to consider, as a matter of priority, the question of the elaboration of an international convention against organized transnational crime, with a view to finalizing its work on the question as soon as possible, and to report, through the

Economic and Social Council, to the Assembly at its fifty-second session on the result of its work.

The Secretary-General submitted a further report to the Economic and Social Council on 26 February 1997 (E/CN.15/1997/7 and Add.1) containing analyses, as well as views and proposals provided by States on the subject. Furthermore, an informal meeting on the topic was organized by the Fondazione Giovanni e Francesca Falcone, in cooperation with the Crime Prevention and Criminal Justice Division of the Secretariat, which was held in Palermo, Italy, from 6 to 8 April 1997 (E/CN.15/1997/Add.2).

At its sixth session, in 1997, the Commission of Crime Prevention and Criminal Justice adopted draft resolution I on the follow-up to the Naples Political Declaration and Global Action Plan against organized transnational crime and recommended to the Economic and Social Council the approval of a draft resolution for adoption by the General Assembly (Report of the Commission on Crime Prevention and Criminal Justice on its sixth session, E/1997/30 – E/CN.15/1997/21). Following the recommendation of the Economic and Social Council (E/1997/22), the General Assembly, in its resolution 52/85 of 12 December 1997, took note of the informal meeting in April 1997 in Palermo and established an inter-sessional open-ended intergovernmental group of experts for the purpose of elaborating a preliminary draft of an international comprehensive convention.

The first meeting of the inter-sessional open-ended intergovernmental group was held in Warsaw, from 2 to 6 February 1998. The group submitted a report containing an outline of options for the contents of the international convention against organized transnational crime. The specific elements of the convention that were discussed include: scope and application; domestic obligations; jurisdictional matters; judicial cooperation; protection of victims and witnesses; law enforcement cooperation and exchange of information; training and technical assistance; prevention; the role of the United Nations and other relevant organizations; and safeguards (E/CN.15/1998/5).

On 23 March 1998, the Secretary-General submitted a report to the Commission on the implementation of the Naples Political Declaration, summarizing the results of the work carried out by the Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention (E/CN.15/1998/6). The report included information received from 17 States and the United Nations Development Programme. The report also set out future action to be taken by the Centre in response to the needs and requests of Member States to strengthen their efforts in preventing and controlling organized transnational crime. The Secretary-General subsequently submitted two addendum reports on: (i) the African Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held at Dakar, in July 1997; and (ii) the Asian Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held at Manila, in March 1998. Additional support and suggestions for the draft convention came from the results of the three aforementioned Ministerial Workshops; namely the Declarations of Buenos Aires (E/CN.15/1996/2/Add.1), Dakar (E/CN.15/1998/6/Add.1) and Manila (E/CN.15/1998/6/Add.2), respectively.

On the recommendation of the Commission on Crime Prevention and Criminal Justice at its seventh session, in 1998 (E/1998/30-E/CN.15/1998/11), and of the Economic and Social Council in its resolution 1998/14 of 28 July 1998, the General Assembly adopted resolution 53/111 of 9 December 1998. The General Assembly established an open-ended intergovernmental *ad hoc* committee for the purpose of, *inter alia*, elaborating a comprehensive international convention against transnational organized crime (Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, hereinafter “the Ad Hoc Committee”). On 9 December 1998, the General Assembly also adopted resolution 53/114, in which it called upon the Ad Hoc Committee to devote attention to the drafting of the main text of the convention.

The Ad Hoc Committee had previously held an informal preparatory meeting in Buenos Aires from 31 August to 4 September 1998. During this meeting, the Ad Hoc Committee completed the first reading of the outline of options for contents of the convention by reviewing articles 14 to 30, resulting in a new, consolidated draft of the convention (A/AC.254/1 and A/AC.254/4). This draft formed the basis of the Ad Hoc Committee's further work, alongside proposals and comments made by Governments during the preparatory meeting (A/AC.254/5 and Add.2).

The Ad Hoc Committee held thirteen sessions, meeting for a total of two hundred and forty-nine times. In 1999, the Ad Hoc Committee held its first six sessions at Vienna, from 19 to 29 January (A/AC.254/9); 8 to 12 March (A/AC.254/11); 28 April to 3 May (A/AC.254/14); 28 June to 9 July (A/AC.254/17); 4 to 15 October (A/AC.254/19 and Add.1) and 6 to 17 December (A/AC.254/23), respectively. The discussions as to the relation of the Convention, as a free-standing and self-sufficient instrument, with the additional instruments dealing with specific issues, shaped the final outcome of the convention. Those additional instruments, dealing, respectively, with the trafficking of women and children, the illicit manufacturing and trafficking in firearms, and the smuggling of migrants, were viewed in principle as optional protocols to the convention. A draft protocol to prevent, suppress and punish the trafficking of women and children was submitted by the United States and Argentina (A/AC.254/4/Add.3/Rev.1); Canada submitted a draft protocol against the illicit manufacturing of and trafficking in firearms, ammunition and other related materials (A/AC.254/4/Add.2); and based on a proposal by Austria and Italy, a draft protocol against illegal trafficking and transport of migrants was also submitted (A/AC.254/4/Add.1 and A/AC.254/4/Add.1/Rev.1).

On the recommendation of the Commission on Crime Prevention and Criminal Justice at its eighth session (E/1999/30-E/CN.15/1999/12), and of the Economic and Social Council (resolutions 1999/20, 1999/21 and 1999/22), the General Assembly, at its fifty-fourth session, adopted four resolutions on 17 December 1999. In resolution 54/126, the Assembly requested the Ad Hoc Committee to intensify its work and set a deadline for the completion of its work in 2000. By its resolution 54/127, the Assembly requested the Secretary-General to convene an expert group of no more than 20 members, with equitable geographical representation, to prepare a study on the illicit manufacturing of and trafficking of explosives by criminals and their use for criminal purposes. In resolution 54/128, the Ad Hoc Committee was also directed by the Assembly to incorporate into the draft convention measures against corruption linked to organized crime. Additionally, the Assembly, by its resolution 54/129, decided to convene a High-Level Political Signing Conference in Palermo Italy, to finalize and adopt the Convention and its Protocols in 2000.

In 2000, the Ad Hoc Committee held five sessions in Vienna: 17 to 28 January (A/AC.254/25); 21 February to 3 March (A/AC.254/28); 5 to 16 June (A/AC.254/31); 17 to 28 July (A/AC.254/34); and 2 to 29 October (A/AC.254/38), respectively. On 28 July 2000, at its hundred and seventy-seventh meeting, the Ad Hoc Committee approved the draft "United Nations Convention against Transnational Organized Crime" and decided to submit it to the General Assembly at its fifty-fifth session for consideration and action (A/AC.254/34). Additionally, the draft "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children" and the draft "Protocol against the Smuggling of Migrants by Land, Sea and Air", were also approved during the eleventh session of the Ad Hoc Committee on 23 and 24 October 2000, respectively (A/AC.254/38).

In its resolution 55/25, the General Assembly adopted the United Nations Conventions against Transnational Organized Crime and two supplementary protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, on 15 November 2000 and opened them for signature at the High-Level Political Signing Conference held in Palermo, from 12 to 15 December 2000 (A/CONF.195/2

and Corr.1), in accordance with the Assembly resolution 54/129 of 12 December 1999 (A/55/PV.62).

During the twelfth session of the Ad Hoc Committee in February 2001 (A/55/383/Add.2), the draft protocol on firearms was completed (A/55/383/Add.2/Rev.6). At its two hundred and thirty-ninth meeting on 2 March 2001, the Ad Hoc Committee approved the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition. The Protocol was adopted by General Assembly resolution 55/255 of 31 May 2001.

The Convention was signed by all the participants and entered into force on 29 September 2003, on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, in accordance with its article 38. With each protocol requiring the same number of parties for entry into force, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, entered into force on 25 of December 2003; the Protocol against the Smuggling of Migrants by Land, Sea and Air, entered into force on 28 January 2004; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, entered into force on 3 July 2005.

In February 2004, in accordance with General Assembly resolution 55/25, the Ad Hoc Committee held its thirteenth and final session. The Committee approved the draft rules of procedure and decided to submit them to the Conference of the Parties of the United Nations Convention against Transnational Organized Crime for its consideration and action at its first session in June 2004 (A/AC.254/42). During its first session from 28 June to 8 July 2004, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, by its decision 1/1, adopted the rules of procedures, which had been recommended for consideration by the Ad Hoc Committee, without amendment (A/AC.254/43).