



Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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**Expert consultation on the use of the Convention for
combating emerging forms of crime**

Activities of the United Nations Office on Drugs and Crime to address emerging forms of crime

Note by the Secretariat

I. Background

1. At its fourth session, held from 8 to 17 October 2008, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime considered the issue of emerging forms of crime. Several speakers noted the links between organized crime and emerging forms of crime such as trafficking in cultural property and specific forms of environmental crime, such as trafficking in forest products, including timber, wildlife and other forest biological resources. Reference was also made to illegal, unreported and unregulated fishing, piracy and “illegal bunkering”, as well as to other forms of oil theft and piracy.

2. Also at its fourth session, the Conference adopted its decision 4/2, entitled “Implementation of the provisions on international cooperation of the United Nations Convention against Transnational Organized Crime”, in which it emphasized that the United Nations Convention against Transnational Organized Crime,¹ as a global instrument with wide adherence, offered the broadest scope of cooperation to address existing and emerging forms of transnational organized crime.

3. The need for thorough deliberations on environment-related crimes within the framework of the Convention was emphasized and the Conference decided to include in the draft provisional agenda for the fifth session of the Conference an item on expert consultation on the use of the Convention for combating emerging

* CTOC/COP/2010/1.

¹ United Nations, *Treaty Series*, vol. 2225, No. 39574.



forms of crime. In that regard, attention was drawn specifically to the Convention's provisions governing criminalization and international legal cooperation.

II. Application of the United Nations Convention against Transnational Organized Crime and activities of the United Nations Office on Drugs and Crime to address emerging forms of crime

4. In addition to criminalizing the specific offences of participation in an organized criminal group (article 5), laundering of proceeds of crime (article 6), corruption (article 8) and obstruction of justice (article 23), the Convention covers all "serious crime", defined in the Convention as conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty, where the offence is transnational in nature and involves an organized criminal group.

5. Pursuant to article 3 of the Convention, an offence is transnational in nature if:

- (a) It is committed in more than one State;
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State;
- (d) It is committed in one State but has substantial effects in another State.

6. The broad and flexible definition of the term "transnational" provided in the Convention is further broadened in article 16 (on extradition), pursuant to which the person who is the subject of the request for extradition is located in the territory of the requested State party, and in article 18 (on mutual legal assistance), pursuant to which victims, witnesses, proceeds, instrumentalities or evidence of offences are located in the requested State party.

7. In addition, in article 2 of the Convention "organized criminal group" is defined as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention, in order to obtain a financial or other material benefit.

8. The flexible definition of what makes an offence transnational and of what constitutes an organized criminal group, in conjunction with a broad definition of what constitutes serious crime, ensures that the scope of the Convention is wide enough to encompass traditional, emerging and future forms of crime and that international law enforcement and judicial cooperation efforts can be triggered in relevant investigations and prosecutions. In that context, it may be useful to recall some of the work carried out by the United Nations Office on Drugs and Crime (UNODC) with respect to a number of emerging forms of crime.

A. Cybercrime

9. The volume of work that UNODC has done on cybercrime has increased significantly over the past years, including as a result of the mandate contained in the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,² in which Member States invited the Commission on Crime Prevention and Criminal Justice to explore the feasibility of providing assistance in addressing computer-related crime under the aegis of the United Nations, in partnership with other similarly focused organizations. On 16 July, UNODC, jointly with the International Telecommunication Union and the United Nations Conference on Trade and Development, briefed the Economic and Social Council on cybersecurity, during the Council's general segment. Cybercrime was also addressed at the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, held in Salvador, Brazil, from 12 to 19 April 2010, under the agenda item entitled "Recent developments in the use of science and technology by offenders and by competent authorities in fighting crime, including the case of cybercrime". In addition, two ancillary meetings and a four-day training laboratory for investigators, run by Microsoft, were held during the Twelfth Congress. In its final report, the Congress recommended, inter alia, that UNODC should continue to cooperate with relevant organizations to provide technical assistance, in particular taking into account technical assistance programmes and legal instruments of other intergovernmental organizations, and that the development of an action plan for capacity-building at the international level should also be given careful consideration (A/CONF.213/18, para. 207).

10. In May 2010, the Commission on Crime Prevention and Criminal Justice recommended to the Economic and Social Council the approval, for adoption by the General Assembly, of the draft resolution entitled "Twelfth United Nations Congress on Crime Prevention and Criminal Justice".³ Should the Assembly adopt that draft resolution, it would request the Commission to establish an open-ended intergovernmental expert group, to be convened prior to the twentieth session of the Commission, to conduct a comprehensive study of the problem of cybercrime and responses to it by Member States, the international community and the private sector, including the exchange of information on national legislation, best practices, technical assistance and international cooperation, with a view to examining options to strengthen existing and to propose new national and international legal or other responses to cybercrime. The first meeting of such an expert group is scheduled to take place in Vienna from 17 to 21 January 2011.

11. UNODC held an expert group meeting on international cooperation against transnational organized crime, with a specific focus on cybercrime, to discuss and assess the role of UNODC in the fight against such crime, in Vienna in October 2009. The meeting brought together experts from all over the world working in academia, at key international and regional institutions and in the private sector. Recognizing the significant expertise that already existed in the field of cybercrime, the participants in the meeting considered the initiatives and

² General Assembly resolution 60/177, annex.

³ *Official Records of the Economic and Social Council, 2010, Supplement No. 10 (E/2010/30)*, chap. I, sect. A, draft resolution IV.

programmes that had already been put in place by other organizations, institutions and national authorities, and looked at how UNODC could best collaborate with entities on those activities and programmes to promote a more coordinated and sustainable approach to combating cybercrime in developing countries (A/65/116, para. 63). The recommendations of the expert group meeting were integrated into the approach to cybercrime adopted by UNODC and a strategic guidance note on cybercrime for field offices was distributed in early 2010. An operational programme that is currently being revised in order to include the recommendations emanating from the Twelfth Congress and the nineteenth session of the Commission on Crime Prevention and Criminal Justice will also be circulated.

12. A “live data forensics” training course was hosted by UNODC in June 2009 under the European Commission-funded programme for the harmonization of cybercrime investigative training for law enforcement officials, of which UNODC is an active partner (A/65/116, para. 63).

13. At the annual conference of the International Scientific and Professional Advisory Council held in December 2009, UNODC and the Council focused on the theme “Protecting children from sexual offenders in the information technology era”. Concrete proposals were made for action that UNODC could take to build long-term, sustainable capacity in developing countries. The use of information and communications technologies in the online sexual abuse and exploitation of children was also the focus at one of the ancillary meetings at the Twelfth Congress (A/65/116, para. 64).

14. At both the above-mentioned meetings key experts from around the world were identified and efforts were made to facilitate networking and information exchange.

15. UNODC participated in the Child Online Protection initiative of the International Telecommunication Union by providing, in particular, substantive input and advice on UNODC mandates in this area. The use of information and communications technologies, including the Internet, in the sexual abuse and exploitation of children will be the topic of the thematic debate at the twentieth session of the Commission on Crime Prevention and Criminal Justice, in 2011 (A/65/116, para. 64).

16. UNODC, in partnership with the Economic and Financial Crimes Commission of Nigeria and Microsoft, are planning to hold a summit during the second half of 2010 that will focus on West Africa and bring together various international organizations and national authorities to raise political awareness about cybercrime, strengthen commitment to combat such crime (including types of fraud committed through the Internet and identity-related crime such as advance-fee fraud), build capacity for scalable and sustainable solutions and enhance cooperation, especially at the regional level.

17. Chapter 10 of *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, published by UNODC in June 2010, provides an overview of the different forms of cybercrime and their impact.

18. The objectives of UNODC in the field of cybercrime are to ensure cooperation and coordination by doing the following:

- (a) Focusing efforts on the developing world;

- (b) Ensuring that existing initiatives are not duplicated;
- (c) Looking to use, build on and adapt current initiatives and involve experts and institutions that have already developed tools and deliver training sessions aimed at combating cybercrime;
- (d) Strengthening partnerships with stakeholders such as the International Criminal Police Organization (INTERPOL), the European Police Office (Europol), the International Telecommunication Union, the European Commission, the Council of Europe and Member States, as well as representatives of the private sector, including software companies and Internet service providers.

19. In terms of technical assistance on cybercrime, UNODC is aiming to assist developing countries in their fight against cybercrime by:

- (a) Assisting Member States in drafting and adopting adequate legislation based on country-specific demands and applicable instruments;
- (b) Building the long-term and sustainable operational and institutional capacity of law enforcement and judicial bodies to investigate and adjudicate serious crimes, prosecute offenders of such crimes, provide training and improve international cooperation and information exchange between law enforcement authorities, including in the area of mutual legal assistance;
- (c) Strengthening international cooperation in cybercrime cases;
- (d) Developing broad-based policies and strategies, including with the involvement of Internet-based private-sector companies and civil society organizations;
- (e) Targeting the misuse of information and communications technologies in the sexual abuse and exploitation of children in developing countries;
- (f) Mobilizing and raising awareness among civil society.

20. UNODC has the comparative advantage of being the only global intergovernmental body working in crime prevention and criminal justice that is mandated to implement the Organized Crime Convention. In addition, UNODC has specialized technical know-how, operational capacity and long-term expertise in crime prevention, criminal justice and the rule of law. UNODC is in a unique position to promote international cooperation, including in the developing world, in part thanks to its extensive network of field offices.

B. Piracy

21. Maritime piracy off the coast of Somalia has become a problem of growing global concern in recent years. Piracy disrupts critical humanitarian aid deliveries to Somalia, increases shipping insurance premiums to near-prohibitive levels along one of the world's most travelled routes, damages coastal economies by forcing the diversion of vessels and places crew, passengers, vessels and cargo in grave danger. The pervasiveness of piracy is a symptom of a wider lack of security and a weak rule of law in Somalia, a country that has been without a central Government for over 20 years and lacks the ability to police its coastline and territorial waters. The

Somali economy is plagued with high levels of unemployment and few opportunities for legitimate economic gain.

22. The United Nations Convention on the Law of the Sea⁴ establishes the legal framework for combating piracy and stipulates that on the high seas every State may seize a pirate ship, arrest the persons and seize the property on board (art. 105). In its resolutions 1816 (2008), 1838 (2008), 1846 (2008) and 1851 (2008), the Security Council determined that the incidents of piracy against vessels off the coast of Somalia exacerbated the situation in Somalia, which continued to constitute a threat to international peace and security in the region. The Security Council called upon States to take part actively in the fight against piracy off the coast of Somalia in accordance with international law and urged those States with the capacity to do so to cooperate with the Transitional Federal Government of Somalia (for example, in resolution 1838 (2008)). The Security Council also called upon all States, in particular, flag, port and coastal States, to cooperate in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia and to render assistance with regard to operations conducted under that resolution (for example, in resolution 1846 (2008)). Notably, while the United Nations Convention on the Law of the Sea does not provide for investigatory or prosecutorial procedures or guidelines for international cooperation in these undertakings, piracy can be defined as a serious crime under the Organized Crime Convention, providing access to the practical tools available under that Convention.⁵

23. Both the Security Council, in its resolutions 1851 (2008) and 1897 (2009), and the General Assembly, in its resolution 64/179, have acknowledged the role of UNODC in providing technical assistance to States for the fight against piracy, specifically for the development of the necessary legal frameworks and judicial and law enforcement capacities to enable the prosecution and incarceration of suspected and convicted pirates.

24. The Contact Group on Piracy off the Coast of Somalia was established in January 2009 pursuant to Security Council resolution 1851 (2008) as an international cooperation mechanism to act as a common point of contact between and among States and regional and international organizations on all aspects of combating piracy and armed robbery at sea off the coast of Somalia. The Contact Group comprises four thematic working groups that assess issues related to piracy.⁶ UNODC acts as secretariat to the working group on judicial issues, to which it has provided various forms of support including an analysis of the legal challenges involved in prosecuting suspected pirates and the collection of information on relevant national legal systems, including those of coastal States. UNODC has been appointed the administrator of the Contact Group's newly established International Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia. The Fund is intended to help defray the expenses associated with

⁴ United Nations, *Treaty Series*, vol. 1833, No. 31363.

⁵ UNODC briefed the working group on judicial issues of the Contact Group on Piracy off the Coast of Somalia on the use of the mutual legal assistance provision in the Organized Crime Convention.

⁶ The working groups have facilitated military operations off the coast of Somalia, developed best management practices for industry to protect itself and established the Djibouti Code Trust Fund of the International Maritime Organization.

prosecuting suspected pirates and carrying out other activities aimed at achieving the Contact Group's objectives, including work carried out through the counter-piracy programme of UNODC.

25. In May 2009, UNODC established its counter-piracy programme in its Regional Office for East Africa to provide targeted technical and capacity-building assistance in the criminal justice systems of requesting States to promote an effective, efficient and humane law enforcement response to marine piracy.⁷

26. The strategy adopted through the programme is threefold. In the short term, the aim is to build the capacity of the criminal justice systems of States in East Africa that are willing to accept suspected pirates for prosecution and to ensure that those tried are afforded fair and efficient trials and, if convicted or detained while awaiting trial, humane imprisonment. In the medium term, the aim is to improve prison conditions in Somalia to a level that meets minimum international standards by ensuring secure and humane imprisonment for those sentenced in Somali courts and opening the possibility for convicted Somali pirates to be repatriated to Somalia to serve periods of imprisonment. Recognizing the central role Somalia must play in any sustainable solution to piracy, the long-term aim is to strengthen Somalia's ability to deliver fair trials in order to bring to justice those involved in piracy. In that regard, the position of UNODC is that any initiative undertaken should benefit the entire national criminal justice system through access to training, improving practices and investing in the infrastructure of the national jurisdiction.

27. To date, the capacity-building initiatives of UNODC have focused on Kenya and Seychelles, the first States in the region willing to prosecute suspected pirates apprehended by foreign navies. UNODC has reviewed legislation on piracy and supported amendments where necessary; supported prosecutors through training in piracy provisions and the law of the sea, infrastructure improvements and, in Seychelles, the secondment of additional prosecutors; facilitated the participation of civilian witnesses in trials; ensured the legal representation of suspected pirates; provided training in police practices and evidence handling techniques; substantially improved prison conditions where suspected and convicted pirates are detained; strengthened the capacity of prison staff; provided police and prison mentors as needed; and reduced overcrowding through a programme of judicial review of the cases of remand prisoners.

28. Since May 2009, approximately \$1.5 million in assistance has been delivered through the programme to support the prosecution of 113 suspects in 13 trials in Kenya.⁸ Two of those trials have been completed, as a result of which 10 pirates transferred by the United States in 2006 have been sentenced to eight years of imprisonment each and eight pirates transferred by the United Kingdom of Great Britain and Northern Ireland have been sentenced to 20 years of imprisonment each. In Seychelles, approximately \$500,000 in assistance has been delivered through the

⁷ Initially, the programme was targeted at Kenya, with funding from the European Commission. The counter-piracy programme has since received contributions from the Governments of Australia, Canada, France, Germany, the Netherlands and the United States of America, as well as from the European Commission and the International Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia, in the amount of \$10,276,651.

⁸ In addition, in 2006, 10 suspected pirates were transferred to Kenya and tried before the Programme was established.

programme to support three trials since January 2010, one of which involves suspects transferred by the European Union and two of which involve suspects arrested by Seychelles. Judicial proceedings have commenced in all of those cases.

29. Despite these initial successes in Kenya and Seychelles, a sustainable regional effort requires States to share responsibility for the prosecution of people involved or suspected of being involved in piracy. UNODC, therefore, continues to engage with other States in the region that are considering undertaking piracy-related prosecutions. The United Republic of Tanzania has announced that it will accept the transfer of suspected pirates from patrolling naval States and has requested UNODC to conduct a mission to the country to assess what support may be needed. In addition, UNODC has assessed the preparedness of Mauritius to prosecute people involved in cases of piracy and armed robbery at sea, at the request of their Governments. Mauritius is considering what assistance it may give to the regional effort against piracy in the future. UNODC has also conducted a mission to Maldives, where a number of people suspected of being involved in piracy were arrested close to the Maldivian coast and the Government is contemplating entering into transfer agreements. Efforts to design a training plan and assist in drafting a law on piracy are already under way.

30. UNODC has begun to implement a programme to build capacity in Somalia and is currently providing critical technical assistance in the areas of prison reform, legal reform and capacity-building in relation to prosecutions. UNODC considers this work critical since Somalia, in Somaliland and Puntland, has prosecuted and imprisoned more of those responsible for acts of piracy and armed robbery at sea than all other States combined. This work is currently supported by the provision of approximately \$1.2 million from the International Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia.

31. UNODC has assisted legal experts from the three regions of Somalia in their efforts to draft new anti-piracy legislation that is expected to be adopted soon. Legal reform efforts will also address a number of other issues relating to piracy and other serious crimes. The programme to build prosecutorial capacity will complement assistance being given by the United Nations Development Programme for the police, the judiciary and defence counsel. The prosecutorial training programme of UNODC will address piracy-related prosecutions but also the capacity to carry out prosecutions in Somalia more generally.

32. In carrying out its work, UNODC, through the counter-piracy programme, maintains close ties with the navies that carry out the law enforcement operations, the donor community and the criminal justice authorities in States participating in the fight against piracy. UNODC also continues to work in coordination with the International Maritime Organization, INTERPOL and others to ensure an efficient and coordinated response.

33. Despite the commitment the international community has shown in the fight against piracy, acts of piracy continue to be carried out, in increasingly sophisticated ways and over a larger geographical area, which means that more needs to be done. In the short term, a greater number of States must criminalize the act of piracy and contribute to the prosecution of suspected pirates. Only when they are supported by accessible and effective forums for prosecution will the efforts of international navies patrolling coastlines and detaining suspects come to fruition. In the long

term, efforts to increase Somalia's capacity to fairly prosecute and humanely detain suspected and convicted pirates must remain a priority. A sustainable solution to piracy will only be achieved when those suspected of committing piracy can be brought to justice within the borders of their own country.

34. At its nineteenth session, the Commission on Crime Prevention and Criminal Justice adopted its resolution 19/6 entitled "Countering maritime piracy off the coast of Somalia", in which it requested UNODC to brief Member States on technical assistance provided to Member States concerned and on the administration of the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia and encouraged Member States and other donors to provide extrabudgetary resources to support the work of UNODC of assisting Member States in countering maritime piracy off the coast of Somalia, including through its relevant regional programme, the Trust Fund and bilateral technical assistance.⁹

C. Environmental crime

35. Environmental crime has become an increasing challenge in both developed and developing countries. The impact of illegal activities broadly covered by the term "environmental crime" goes beyond the adverse effects on the environment and biodiversity. The demand for commodities derived from environmental crime has been increasing and providing a growing financial incentive for criminal involvement. In *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, UNODC noted that, while there is no precise figure on revenues generated from environmental crime in general, the available statistical data indicate that, for example, the East Asian ivory market appears to be worth about \$62 million per year, the rhino horn market about \$8 million and the market for tiger parts about \$5 million. The impact of the crimes, however, cannot be measured by a dollar figure as the crimes involve traffickers (individuals and small, amateur groups but also large, organized criminal groups) who operate transnationally and are often involved in other forms of trafficking for high profit. Where such groups become well established, trafficking in natural resources or hazardous waste poses a threat not only to the environment and to the health and economic growth of local communities, but also to the security and stability of countries. In many conflict and post-conflict countries, exploitation of and trafficking in natural resources have rapidly become key activities for criminal and armed groups.

36. International environmental crimes can be defined as including a range of offences and can be divided into two broad categories: (a) trafficking in natural resources, including wildlife and timber (this includes illegal logging); illegal, unregulated and unreported fishing; and the illegal exploitation of and trafficking in minerals and precious stones; and (b) trafficking in ozone-depleting substances and dumping, illegally transporting and trafficking in hazardous waste. The transnational nature of environmental crime, the established involvement of organized criminal groups and the governance failures that often sustain related forms of criminality make such crime highly relevant in terms of the UNODC mandates.

⁹ *Official Records of the Economic and Social Council, 2010, Supplement No. 10 (E/2010/30)*, chap. I, sect. D, resolution 19/6.

37. Much work remains to be done against organized criminal groups engaged in environmental crime, in particular in terms of criminalizing such activities. To date, Governments have tended to approach this issue solely from the perspective of natural resource management and conservation. Greater attention needs to be paid to law enforcement and to linking sporadic wildlife enforcement efforts to mainstream law enforcement and criminal justice processes. By providing technical support to Member States, UNODC is offering assistance as part of a comprehensive and multidisciplinary response.

38. At the global level, UNODC has focused on understanding and mapping trafficking activities. Mapping is done through threat assessments and studies on the direct and indirect impacts of transnational organized crime on the environment. More research in this area is needed and has been planned, subject to the availability of dedicated resources. As with other forms of transnational trafficking, efforts to understand environmental crime should not be focused only on direct enforcement at borders and should be guided by criminal intelligence-led investigations. The “follow-the-money” approach is also important and the expertise that UNODC has gained in providing anti-money-laundering technical assistance can also be beneficial in that regard.

39. At the regional level, UNODC has focused on facilitating regional cross-border activities among national law enforcement and judicial agencies. The application of mechanisms that Governments already use to combat other types of transnational organized crime, such as border liaison offices (originally developed and successfully used to counter drug trafficking), is likely to bring immediate results in addressing environmental crime, in particular wildlife crime. UNODC is promoting the application of such mechanisms at the regional level, especially in South-East Asia. In addition, supporting the establishment of regional networks of relevant domestic agencies (for example, law enforcement agencies, border control and customs authorities, forestry departments and forest management authorities, and judicial authorities) may also be beneficial in some regions.

40. At the national level, UNODC assists requesting Member States in enhancing their capacity to address environmental crime. Capitalizing on its unique mix of mandates and expertise, UNODC is developing innovative technical assistance activities, for example in Indonesia, where the linkage between natural resource exploitation (illegal logging) and corruption is being addressed. UNODC is strengthening the capacity of Indonesian law enforcement agencies and criminal justice officials through special training, establishing performance standards and coordinating networks to investigate, prosecute and adjudicate forest crimes and corruption cases. UNODC is also collaborating closely with civil society organizations to support “barefoot investigators” (people who report forest crimes in their local communities). To date, such assistance has been limited to stand-alone projects targeting a specific issue. However, other ongoing UNODC initiatives (e.g. the Container Control Programme, the programme on sustainable livelihoods and alternative development etc.) are directly relevant and applicable to addressing environmental crime and enhance the ability of UNODC to provide integrated support.

41. UNODC is stepping up partnerships with external entities to leverage expertise and resources. In particular, UNODC, the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora,¹⁰ INTERPOL, the World Customs Organization and the World Bank have formed the International Consortium on Combating Wildlife Crime, focused on supporting wildlife law enforcement. In that context and in response to requests from several Member States, UNODC has taken the lead in the development of a wildlife and forest crimes assessment toolkit, which will aid Governments in identifying challenges and strengthen criminal justice responses to combat wildlife and forest crime. As a result of the expertise pooled for the preparation of the toolkit, UNODC contributed to a workshop held in Jakarta in June 2010, at which the Government of Indonesia asked UNODC and its partners for support in developing an effective national response to environmental crime. In addition, UNODC is providing substantive expertise and contributing to tiger conservation efforts led by 13 “tiger range countries” and the World Bank; these efforts will culminate in a summit to be held in the near future in St. Petersburg, Russian Federation.

42. The Commission on Crime Prevention and Criminal Justice and the Economic and Social Council have adopted a number of resolutions in order to support and encourage Member States to cooperate to prevent, combat and eradicate these forms of environmental crime (see Commission resolution 16/1 and Council resolutions 2001/12 and 2003/27). Furthermore, at its nineteenth session, the Commission recommended to the Council the adoption of a draft resolution pursuant to which the Council would decide that the prominent theme of the thematic discussion at the twenty-second session of the Commission would be “Challenges posed by emerging forms of crime that have a significant impact on the environment and ways to deal with it effectively”.

D. Protection against trafficking in cultural property

43. In its resolutions 2004/34 and 2008/23, entitled “Protection against trafficking in cultural property”, the Economic and Social Council emphasized the importance for States of protecting and preserving their cultural heritage in accordance with relevant international instruments.¹¹

44. In its resolution 2008/23, the Economic and Social Council reaffirmed the necessity of international cooperation in preventing and combating all aspects of trafficking in cultural property and urged Member States and relevant institutions to strengthen mechanisms to strengthen international cooperation, including mutual legal assistance, and facilitate the recovery, return or restitution of cultural property. Alarmed at the growing involvement of organized criminal groups in all aspects of trafficking in cultural property, it stressed the importance of fostering international

¹⁰ United Nations, *Treaty Series*, vol. 993, No. 14537.

¹¹ Such as the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (United Nations, *Treaty Series*, vol. 823, No. 11806), the Convention on Stolen or Illegally Exported Cultural Objects (available from www.unidroit.org) and the Convention for the Protection of Cultural Property in the Event of Armed Conflict and the two Protocols thereto (United Nations, *Treaty Series*, vol. 249, No. 3511).

law enforcement cooperation and the need to increase the exchange of information and experiences in order for competent authorities to operate in a more effective manner. It also stressed that the entry into force of the Organized Crime Convention had created a new impetus in international cooperation in countering transnational organized crime, which would lead to innovative and broader approaches to dealing with the various manifestations of such crime, including trafficking in cultural property.

45. In that same resolution, the Economic and Social Council requested UNODC to develop its relations with the cooperative network established among the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Council of Museums, INTERPOL, the International Institute for the Unification of Private Law and the World Customs Organization in the areas of trafficking in cultural property and its return and restitution. In addition, the Council reiterated its request that UNODC, in close cooperation with UNESCO, convene an open-ended intergovernmental expert group meeting to submit to the Commission on Crime Prevention and Criminal Justice relevant recommendations on protection against trafficking in cultural property. A meeting of the expert group on protection against trafficking in cultural property was held in Vienna from 24 to 26 November 2009 and a report on the meeting was submitted to the Commission on Crime Prevention and Criminal Justice at its nineteenth session (UNODC/CCPCJ/EG.1/2009/2).

46. In its resolution 2010/19, entitled “Crime prevention and criminal justice responses to protect cultural property, especially with regard to its trafficking”, the Economic and Social Council expressed alarm at the growing involvement of organized criminal groups in all aspects of trafficking in cultural property and underscored the potential utility of the Organized Crime Convention in reinforcing international cooperation in the fight against trafficking in cultural property. The Council recalled the need for continued technical cooperation between UNODC and UNESCO and invited Member States to provide adequate follow-up to the recommendations of the expert group on protection against trafficking in cultural property. It also invited States to consider ratifying and implementing the relevant international instruments, including the Organized Crime Convention, and to consider trafficking in cultural property a serious crime. It urged Member States to continue to strengthen cooperation and mutual legal assistance for the prevention, prosecution and punishment of crimes against cultural property. The Council considered that the Organized Crime Convention and the Convention against Corruption should be fully used for the purpose of strengthening the fight against trafficking in cultural property, including by exploring other possible normative developments, when appropriate. It requested UNODC to convene at least one additional open-ended intergovernmental expert group meeting to submit to the Commission, at its twenty-second session, practical proposals for implementing the recommendations of the expert group on protection against trafficking in cultural property, giving due attention to aspects of criminalization, international cooperation and mutual legal assistance. It also requested UNODC to explore the development of specific guidelines for crime prevention with respect to trafficking in cultural property.

47. In the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development

in a Changing World,¹² Member States welcomed the decision of the Commission to engage in a thematic debate on protection against trafficking in cultural property, which the Commission did during its nineteenth session, and the recommendations made by the expert group on protection against trafficking in cultural property in November 2009, and invited the Commission to conduct appropriate follow-up, including by exploring the need for guidelines for crime prevention with respect to trafficking in cultural property. In addition, they urged States that had not yet done so to develop effective legislation to prevent, prosecute and punish this crime and to strengthen international cooperation and technical assistance in that area, including the recovery and return of cultural property, bearing in mind the existing relevant international instruments, including the Organized Crime Convention, where appropriate.

48. At its meeting held in November 2009, the expert group on protection against trafficking in cultural property discussed preventive measures; criminalization; international cooperation; awareness-raising, capacity-building and technical assistance; and the use of new technologies. Most speakers at the meeting recognized the complementarity of bilateral, regional and multilateral cooperation in this field. The expert group recommended that the Conference of the Parties be invited to explore ways of using the provisions of the Organized Crime Convention as a legal basis for international cooperation to combat trafficking in cultural property (UNODC/CCPCJ/EG.1/2009/2).

49. The expert group adopted detailed recommendations on the above-mentioned areas, several of which are of direct relevance to the Conference of the Parties (E/CN.15/2010/5):

(a) States were encouraged to consider ratifying the conventions related to protection against trafficking in cultural property, including the Organized Crime Convention, and UNODC, UNESCO and Unidroit should jointly explore linkages and synergies between those conventions and other relevant instruments;

(b) UNODC should explore the development of specific guidelines for crime prevention with respect to trafficking in cultural property including, inter alia, the criteria of due diligence when acquiring a cultural object, and the Conference of the Parties should be invited to consider using the Convention to protect against trafficking in cultural property;

(c) States should have legislation that is appropriate for criminalizing trafficking in cultural property; consider making such trafficking a serious crime in accordance with their national legislation and article 2 of the Organized Crime Convention; consider allowing cultural property to be seized when those in possession of the property cannot prove the licit provenance of the objects or that they have a reasonable belief in the licit provenance of the objects; consider confiscating the proceeds of crime; and endeavour to use the relevant existing instruments, including the Organized Crime Convention, for the purpose of providing each other with the widest possible mutual legal assistance in the protection against trafficking in cultural property;

¹² A/CONF.213/18, chap. I, resolution 1.

(d) The Conference of the Parties was invited to explore ways of using the provisions of the Organized Crime Convention as a legal basis for international cooperation; UNESCO, UNODC, the International Council of Museums, INTERPOL, Unidroit, the World Customs Organization and other relevant organizations should continue to jointly promote and organize seminars, workshops and similar events to raise awareness about the importance of protecting cultural property and to build capacity and raise awareness about the drafting of relevant criminal legislation; and UNODC should identify technical assistance requirements for the implementation of applicable crime prevention provisions;

(e) UNODC was encouraged to collect and disseminate best practices in countering trafficking in cultural property via the Internet.

50. Early in 2010, UNODC joined the cooperative network described in paragraph 45 of the present report and contributed, within its mandate, to strengthening the criminal justice response to trafficking in cultural property. Members of the network were invited to attend the workshop and the thematic debate held during the nineteenth session of the Commission. In addition, UNODC has participated in several events organized by other members of the cooperative network and in workshops organized by States and relevant organizations.¹³

E. Trafficking in organs

51. Organ trafficking is a complex global phenomenon that is not yet well understood. In a number of regions around the world (predominantly in developing countries), increasing numbers of vulnerable people are being targeted for the sale of their organs or trafficked for the purpose of organ removal. Organ trafficking encompasses different but related activities, such as trafficking in persons for the removal of organs, the illegal trade in organs and “transplant tourism”. “Trafficking in persons for the removal of organs”, a term that refers to the trafficking in people specifically for the purpose of removing organs, has been identified as an offence under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.¹⁴ The term “illegal organ trade” refers to situations where organs, tissues and cells are trafficked for financial or economic gain, and “transplant tourism” describes the practice of travelling to a foreign country to buy an organ and have that organ transplanted in exchange for money, usually because it is often illegal to do so in the country of origin.

52. A key challenge in the fight against organ trafficking is the fact that the intrusion by criminals into legitimate transplant operations is not always immediately evident. The legal dimension is often blurred by the fact that well-

¹³ For example, UNODC participated in the 7th meeting of the INTERPOL Expert Group on Stolen Cultural Property, held in Lyon, France, on 23 and 24 February 2010, and in the Sixth International Conference on the Illicit Traffic in Cultural Property Stolen in Central and Eastern Europe, held in Vienna from 8 to 10 June 2010; it will participate in the sixteenth session of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, to be held in Paris from 21 to 23 September 2010.

¹⁴ United Nations, *Treaty Series*, vol. 2237, No. 39574.

organized individuals, including health-care practitioners, hospital workers, smugglers, brokers, sellers and buyers, are involved in the illegal procurement of organs. In addition, the lack of information on the scope of the problem worldwide, confusion about the associated concepts and legal basis for combating the crime, as well as the limited capacity of the criminal justice sector to investigate and prosecute organ traffickers are other challenges that have yet to be addressed.

53. Through the mandates emanating from the Organized Crime Convention and the Trafficking in Persons Protocol, UNODC is raising awareness about the need to act now to combat organ trafficking. UNODC is encouraging States to initiate an effective criminal justice response, supported by an appropriate legislative framework and in partnership with the health sector, both at the international and national levels. Aware of the need to develop guidance tools that can advise criminal justice practitioners in investigating these newly emerging offences and prosecuting those involved, UNODC will organize an expert group to develop an assessment tool to assist and sensitize law enforcement officers and prosecutors in detecting and investigating illegal activities related to organ donation and transplant. The resulting assessment tool will be the basis for a pilot initiative to gather data on trends, patterns and modus operandi in organ trafficking cases.

F. Trafficking in counterfeit medicines

54. The production of and trafficking in counterfeit and substandard medicines is a growing global problem that adversely affects developing countries in particular. Trafficking in counterfeit medicines is both a public-health concern and a violation of intellectual property rights, and is fast becoming a source of illegal enrichment linked to transnational organized crime. Trafficking in counterfeit drugs is estimated to generate profits as high as \$75 billion per year (roughly the same as for cocaine trafficking). However, it is difficult to determine the exact extent and magnitude of such counterfeiting and the criminal organizations involved in it. Fake medicines are relatively easy and cheap to produce, hard to detect and do not involve harsh penalties. Even in the most affected countries, the regulatory framework is weak and inadequate, a situation that is compounded by a lack of knowledge and resources for enforcement.

55. Apart from the detrimental consequences to health, including death, of using counterfeit medicines, the trafficking in such medicines results in severe economic loss due to the illegitimate manufacture, distribution and sale of such medicines. Governments also bear a significant share of the economic burden of such trafficking.

56. There is a clear need to strengthen and expand the capacity of national criminal justice systems to respond effectively to this dangerous and illegal trade. UNODC, in partnership with other relevant United Nations entities and Member States, is developing initiatives to curb the trade in counterfeit medicines. One such initiative involves building the capacity of national laboratories to identify, quantify and, most importantly, assess the suitability of a wide range of chemical substances marketed as medicines. The UNODC Laboratory and Scientific Section will work with interested stakeholders, such as the United States Pharmacopeia Drug Quality and Information Program and the private sector, utilizing complementary strengths

and mandates, to identify and address gaps in the enforcement of laws related to counterfeit medicines. In addition, UNODC will support the establishment of a database of spectral, visual and chemical profiles of counterfeit products encountered around the world that will assist law enforcement in obtaining the evidence needed to link seizures, making it possible to trace the source or sources and routes of the products.

III. Recommendations

57. The Conference of the Parties may wish to do the following:

(a) Discuss the application of the Organized Crime Convention in preventing and combating emerging forms of crime, including international cooperation using the Convention as a legal basis;

(b) Urge States parties to strengthen their legal frameworks to prevent and combat emerging forms of crime in a manner consistent with international instruments, such as the Convention, and consider making those offences serious crimes under domestic law;

(c) Encourage States parties to support UNODC, together with relevant organizations and partners, in developing an action plan for technical assistance and sustainable capacity-building at the international level to counter cybercrime;

(d) Urge States parties to participate in and support national, regional and international efforts to prosecute crimes of piracy;

(e) Request States and the secretariat to consider appropriate follow-up measures to implement the recommendations of the expert group on protection against trafficking in cultural property, in particular those directly related to the use and application of the Convention;

(f) Encourage States parties to take action against environmental crime by increasing the capacity of mainstream law enforcement and the criminal justice process to target the organized criminal groups engaged in such illicit activities;

(g) Welcome the efforts of UNODC to develop a guidance tool on trafficking in organs and encourage States parties to support the work of UNODC in this area.