



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

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## **Working Group on International Cooperation**

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**Use of the United Nations Convention against  
Transnational Organized Crime as a legal basis for  
international cooperation against all forms of  
transnational organized crime**

### **Use of the United Nations Convention against Transnational Organized Crime as a legal basis for international cooperation against all forms of transnational organized crime**

**Background paper prepared by the Secretariat**

#### **I. Introduction**

1. References to “new and emerging” forms of crime are frequently found in the criminological literature, as well as in the work of intergovernmental bodies and international organizations. Transformations attributed to the ongoing process of globalization, exponential growth in the volume of international trade and movement of goods and persons, and the explosion in global electronic connectivity, entail the transnational nature of many new criminal opportunities.
2. The complexity and cross-border nature of new criminal opportunities requires a certain degree of logistics and organization. As a result, many, if not all, new and emerging crimes are committed by groups meeting the definition of an organized criminal group contained in the United Nations Convention against Transnational Organized Crime.
3. A range of factors and pressures may result in the engagement of such groups in new criminal activities, and the resultant emergence of new forms and dimensions of transnational crime. These include: increased competition or enforcement in traditional criminal markets; the establishment of new links between groups engaged in previously separate criminal activities; the use of highly

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\* CTOC/COP/WG.3/2015/1.



sophisticated money-laundering schemes; the evolution of new technologies and the recruitment into organized crime of subject-area “specialists”; the increased infiltration of organized crime into private and State institutions through the use of corruption; and the establishment of specialized internal criminal “markets” for the rent or provision of criminal equipment.

4. Driven by such factors, many “new” forms of transnational crime may be genuinely inventive and previously unseen. In contrast, others may represent the re-emergence or adaptation of historic or traditional crime types. Overall, organized criminal groups may show shifting alliances, splintering, and engagement in a range of different illicit activities, as individuals are arrested and imprisoned, as power grows and wanes and as illicit markets, incentives and risks develop and subside.

5. The present paper has been prepared by the Secretariat with a view to providing background information related to the applicability of the Organized Crime Convention as a possible response to all forms of transnational organized crime, including new and emerging forms of such crime, as well as facilitating the deliberations of the Working Group on the relevant agenda item of its meeting.

## **II. Identifying the problem: the emergence of multiple forms of transnational organized crime and the need to address them effectively**

6. *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* (released in 2010)<sup>1</sup> represented the first attempt by the United Nations Office on Drugs and Crime (UNODC) to survey the broad terrain of transnational organized crime. It came nearly 10 years after the meeting in Palermo that gave birth to the Organized Crime Convention.

7. In that report, UNODC had analysed a range of key transnational crime threats, including human trafficking, migrant smuggling, the illicit heroin and cocaine trades, cybercrime, maritime piracy and trafficking in environmental resources, firearms and counterfeit goods. The report had also examined a number of cases where transnational organized crime and instability amplify each other to create vicious circles in which countries or even subregions may become locked. Thus, the report offered a striking view of the global dimensions of organized crime.

8. The report devoted a series of chapters on new and emerging forms of transnational organized crime such as smuggling of natural resources, illicit trade in counterfeit goods, maritime piracy and cybercrime. One of the main findings was that organized crime seemed to be less a matter of a group of individuals who are involved in a range of illicit activities, and more a matter of a group of illicit activities in which some individuals and groups are presently involved. If these individuals are arrested and incarcerated, the activities continue, because the illicit market, and the incentives it generates, remain.

9. Therefore it was not a coincidence that the report reiterated that, remarkably, the Convention contains no precise definition of “transnational organized crime”, nor does it contain a list of the kinds of crimes that might fall under this heading.

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<sup>1</sup> [www.unodc.org/documents/data-and-analysis/tocta/TOCTA\\_Report\\_2010\\_low\\_res.pdf](http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf).

That was because a very wide range of criminal activities can be conducted transnationally in an organized fashion, and new forms of crime emerge constantly as global and local conditions change over time. In order to accommodate this complexity, a precise definition was omitted.

10. A number of other UNODC threat assessments followed the aforementioned global report focusing on the impact of transnational organized crime in different regions such as: “Organized crime and Instability in Central Africa: A Threat Assessment” (2011);<sup>2</sup> “Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment” (2012);<sup>3</sup> the “Transnational Organized Crime in Eastern Africa: A Threat Assessment” (2013);<sup>4</sup> the “Transnational Organized Crime in East Asia and the Pacific: A Threat Assessment” (2013);<sup>5</sup> and the “Transnational Organized Crime in West Africa: A Threat Assessment” (2013).<sup>6</sup> The common denominator was similar: a diverse range of emerging forms of organized crime with transnational dimensions posed major challenges to law enforcement and criminal justice authorities in each region and the need for comprehensive strategies to tackle them was imperative.

### **III. Normative framework: the added value of the Organized Crime Convention and its broad scope of application**

11. Already at the time of adoption of the Organized Crime Convention, the General Assembly referred to specific categories of offences when it strongly expressed the view, in the preamble to its resolution 55/25 of 15 November 2000, containing the adopted text of the Convention and of two of its Protocols, that the Convention would “constitute an effective tool and the necessary legal framework for international cooperation in combating, inter alia, such criminal activities as money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage and the growing links between transnational organized crime and terrorist crimes”.

12. The Convention adopts a flexible approach, which takes into account the seriousness of the acts it covers, rather than limiting itself to a predetermined and rigid list of offences. Its broad scope enables its application to offences established by it and its Protocols (article 37) and any other serious crime (as defined in article 2), where the offence is transnational in nature and involves an organized criminal group (article 3).

13. Pursuant to article 3, paragraph 2, an offence is transnational in nature if: it is committed in more than one State; it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; it is committed in one State but it involves an organized criminal group that engages in criminal activities in more than one State; or it is committed in one State but has substantial effects in another State.

<sup>2</sup> [www.unodc.org/documents/data-and-analysis/Studies/Central\\_Africa\\_Report\\_2011\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/Studies/Central_Africa_Report_2011_web.pdf).

<sup>3</sup> [www.unodc.org/documents/data-and-analysis/Studies/TOC\\_Central\\_America\\_and\\_the\\_Caribbean\\_english.pdf](http://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf).

<sup>4</sup> [www.unodc.org/documents/data-and-analysis/Studies/TOC\\_East\\_Africa\\_2013.pdf](http://www.unodc.org/documents/data-and-analysis/Studies/TOC_East_Africa_2013.pdf).

<sup>5</sup> [www.unodc.org/documents/data-and-analysis/Studies/TOCTA\\_EAP\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/Studies/TOCTA_EAP_web.pdf).

<sup>6</sup> [www.unodc.org/documents/data-and-analysis/tocta/West\\_Africa\\_TOCTA\\_2013\\_EN.pdf](http://www.unodc.org/documents/data-and-analysis/tocta/West_Africa_TOCTA_2013_EN.pdf).

14. The Convention also defines an “organized criminal group” as a structured group of at least three 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 (article 2).

15. Pursuant to article 2, paragraph (b), of the Convention, “serious crime” means conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

16. The definition of “serious crime” in article 2, paragraph (b), as “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”. The definition of serious crime, thus, does not contain any requirements in relation to the gravity, motivation or content of the offence, other than the criminal penalty (at least four years of imprisonment) associated with it. Consequently, the inclusion of the notion of “serious crime” in the Organized Crime Convention enables the application of the Convention to a broad range of offences in a flexible manner. Moreover, new forms and dimensions of transnational organized crime fall under the scope of the Convention, considerably enhancing its use, in particular for international cooperation.

17. The definition of “serious crime” is also a component of the definition of an organized criminal group and is, thus, an important element in establishing as an offence, pursuant to article 5, the participation in such a group.

18. The flexibility in the interpretation of what makes an offence transnational in nature and of what constitutes an organized criminal group, in conjunction with a broad definition of what constitutes serious crime, ensures that the widest range of traditional, emerging and future forms of criminal activities can be covered by the Convention and that international law enforcement and judicial cooperation efforts may be triggered in relevant investigations and prosecutions.

19. States may also find that new forms and dimensions of transnational organized crime pose more challenges to effective investigations and prosecutions, and to international cooperation, than more traditional ones. That is an additional reason for exploring methodologies to analyse, pursuant to article 28 of the Convention, trends in organized crime in their territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved, and sharing such analytical expertise with each other and through international and regional organizations.

#### **IV. The Organized Crime Convention as a legal basis for international cooperation to combat all forms of transnational organized crime.**

##### **A. The role of the Convention as enabling framework for fostering international cooperation**

20. The provisions of the Convention are aimed at playing a key role in harmonizing obligations and addressing legal gaps in the field of international cooperation in criminal matters. Focusing on the basic modalities of such

cooperation in particular, the Convention provides a basis for extradition and mutual legal assistance, in addition to obligations resulting from other bilateral or multilateral agreements related to international cooperation in criminal matters into which States parties have entered. Thus, the Convention offers both a way of filling possible legal gaps, where no bilateral or multilateral agreement exists between countries seeking to cooperate, and a means for the increased convergence of such bilateral and multilateral agreements.

21. A first criterion to substantiate that point stems from the specific circumstances that necessitated the existence of this instrument, as well as the timing of its negotiation and adoption, which, in turn, also provides an indication of the accumulated expertise and experience employed by Member States to negotiate and finalize the instrument prior to adoption by the General Assembly.

22. Based on the precedent of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the negotiation and adoption of the Organized Crime Convention and the Protocols thereto took place in an era when States parties were signalling their intention to establish lasting rules and institutions based on mutual solidarity and shared responsibilities to combat transnational organized crime, including through enhanced mechanisms of international cooperation. That was particularly illustrated through the inclusion of comprehensive and focused provisions on international cooperation in criminal matters in the final text of the Organized Crime Convention.<sup>7</sup>

23. As a result, a corpus of international cooperation provisions emerged, calling for more concerted action by States parties in that field. In the Organized Crime Convention, the promotion of cooperation to combat transnational organized crime is specifically mentioned as a statement of purpose (article 1 of the Convention). The consequent effect is both the inclusion of ad hoc provisions on international cooperation and their interrelationship with other provisions of the instrument on issues such as the establishment of criminal jurisdiction, the criminalization of offences (in view of the need to fulfil the dual criminality requirement), the confiscation and seizure of proceeds of crime, the liability of legal persons and the protection of witnesses.

24. Apart from identifying the promotion of cooperation to combat transnational organized crime as a “treaty purpose”, the Convention provides in detail for a wide array of international cooperation modalities, from formal judicial cooperation, such as extradition and mutual legal assistance, to more informal law enforcement modalities or other types of cooperation, such as joint investigations and special investigative techniques.

25. The comprehensiveness of some of the international cooperation provisions of the Convention provides further added value. Article 18 of the Convention on mutual legal assistance is a typical example of what may be called a “mini mutual legal assistance treaty”. In addition, article 16 of the Convention sets a basic minimum standard for enhancing the efficiency of extradition mechanisms in relation to the offences established by the Convention.

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<sup>7</sup> For more information, see the *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5).

26. The actual use of the Organized Crime Convention as a legal basis for international cooperation is linked to a number of provisions of the Convention. For example, article 16, paragraph 4, of the Convention provides that if a State party makes extradition conditional on the existence of a treaty, the Convention may be considered as legal basis for extradition in respect of an extradition request concerning an offence covered by the Convention received from another State party with which the requested State has no extradition treaty.

27. Similarly, the role of article 18 of the Convention in providing a framework for mutual legal assistance is specifically addressed in paragraph 7, which obliges States parties to directly apply the “mini-treaty” contained in paragraphs 9 to 29 of article 18 when no bilateral treaty binds the parties, and the States parties are encouraged to apply those provisions in a manner that complements existing mutual legal assistance treaties.

28. Similarly broad provisions, allowing for flexible international cooperation, are contained in the Convention with regard to international cooperation for purposes of confiscation (article 13), disposal of confiscated proceeds of crime or property (article 14), transfer of sentenced persons (article 17), joint investigations (article 19), cooperation to use special investigative techniques (article 20), transfer of criminal proceedings (article 21) and law enforcement cooperation (article 27).

## **B. The broad scope of application of the international cooperation provisions of the Convention**

29. Another advantage of the Convention is the extended scope of application of its international cooperation provisions. More specifically, articles 16 and 18 of the Convention, on extradition and mutual legal assistance respectively, extend the scope of their application. Article 16 also applies to serious crime involving an organized criminal group, where “the person who is the subject of the request for extradition is located in the territory of the requested State party”. Therefore, the condition of transnationality of the offence, as described in article 3, paragraph 2, is not strictly necessary for the application of article 16.

30. Moreover, if the request for extradition includes separate serious crimes, some of which are not covered by article 16, paragraph 2 of article 16 allows States parties to apply the extradition article to offences other than those set forth in article 16, paragraph 1.<sup>8</sup> Although States parties are not under obligation to extradite for these separate serious offences, they are encouraged to do so.<sup>9</sup>

31. Furthermore, under article 18, States parties are required to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention,

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<sup>8</sup> See the *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, p. 205, para. 438.

<sup>9</sup> An interpretative note indicates that the purpose of article 16, paragraph 2, is to serve as an instrument for States parties wishing to avail themselves of the facility it provides and that it is not intended to broaden the scope of the article unduly (see *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5, p. 162).

including serious crimes, where the requesting State party has reasonable grounds to suspect that the offence is transnational in nature and that it involves an organized criminal group. That allows for assistance to be provided in the early phases of investigations, when the evidentiary basis of the commission of an offence covered by the Convention and its Protocols may still be weak, and it also provides for an enlarged notion of transnationality of the offence.

## **V. Policymaking framework**

### **A. United Nations Congress on Crime Prevention and Criminal Justice**

32. During the deliberations under the relevant agenda item of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, held in Doha in April 2015, many speakers expressed support for the international cooperation framework under the United Nations conventions on crime prevention and criminal justice and favoured the further use of those conventions, including the Organized Crime Convention, as a legal basis for such cooperation, including for combating new and emerging forms of crime, such as cybercrime and trafficking in cultural property or wildlife.

33. Reporting that the Organized Crime Convention had been used approximately 250 times as a legal basis in extradition and mutual legal assistance cases involving his country, one speaker argued in support of the great potential that the wide scope of application of that Convention could have in addressing a broader range of crimes, taking into account the definition of “serious crime” contained in its article 2, paragraph (b).<sup>10</sup>

34. Under the workshop topic on strengthening crime prevention and criminal justice responses to evolving forms of crime, such as cybercrime and trafficking in cultural property, including lessons learned and international cooperation, many speakers emphasized the essential role of, inter alia, the Convention in tackling new and emerging forms of crime. It was widely acknowledged that national laws and legislation, in particular criminalization provisions and criminal procedures, needed to be updated and enforced in order to effectively respond to new and emerging forms of crime and engage in effective international cooperation. Speakers noted that the Convention was applicable when dealing with many new and emerging forms of crime. It was also emphasized that an approach based on proportionality was needed to address the varying dimensions of new and emerging forms of crime.<sup>11</sup>

35. In the Doha Declaration on “integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation”, adopted by the Thirteenth Congress, Member States undertook to strive “to develop and implement comprehensive crime prevention and criminal

<sup>10</sup> Report of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice (Doha, 12-19 April 2015) (A/CONF.222/17), para. 96.

<sup>11</sup> Ibid., para. 113.

justice responses, including strengthening of the capacities of our judiciary and law enforcement institutions, and to adopt, when necessary, legislative and administrative measures to effectively prevent and counter new, emerging and evolving forms of crime at the national, regional and international levels, taking into account the scope of application of the United Nations Convention against Transnational Organized Crime with regard to “serious crimes”, in accordance with national legislation”.<sup>12</sup>

## **B. Commission on Crime Prevention and Criminal Justice**

36. At the thematic discussion on “International cooperation in criminal matters, bearing in mind paragraph 21 of the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World”, held at its twenty-third session in May 2014, the Commission on Crime Prevention and Criminal Justice focused its attention on ways and means to strengthen international cooperation to combat crime in all its forms and manifestations.

37. It was noted during the thematic discussion that existing treaties and mechanisms should be used, that the international cooperation provisions of the Organized Crime Convention provided a well-balanced and stable multilateral basis for international judicial cooperation, and that its application should be further strengthened. The need to improve the implementation of the Convention at the national level was also highlighted.<sup>13</sup>

## **C. Conference of the Parties to the United Nations Convention against Transnational Organized Crime**

38. While the Conference of the Parties had constantly emphasized the broad and flexible scope for cooperation that the Convention offers with regard to various forms of crime, it was not until 2008, that the Conference introduced, through its resolution 4/2, the term “emerging crimes”. A concept that encapsulates a variety of new crimes, that in essence are different from those “specifically proscribed in it or the Protocols thereto”, including “serious crimes that might emerge in the future”.

39. By making a distinction between (or addressing separately) existing and emerging crimes, resolution 4/2 sows the seeds for subsequent focused discussions and decisions in the area of new forms and dimensions of transnational crime.

40. In this regard, the Conference decided to include in the draft provisional agenda for the fifth session of the Conference an item on an expert consultation on emerging forms of transnational organized crime, which led to the identification of a number of emerging crimes of concern around which the Conference has centred its attention. Namely, cybercrime, identity-related crimes, trafficking in cultural property, environmental crime, piracy, organ trafficking, and fraudulent medicine as new and emerging crimes of concern.

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<sup>12</sup> Para. 9 (a) of the Declaration.

<sup>13</sup> See the report on the twenty-third session of the Commission on Crime Prevention and Criminal Justice (E/2014/30, para. 29).



41. Subsequently, in 2010, the Conference decided to introduce the agenda item entitled “Other serious crimes as defined in the Convention, including new forms and dimensions of transnational organized crime”, providing a consistent framework for deliberations work.

42. Similarly, pursuant to General Assembly resolution 64/179, a high-level segment was held during the fifth session of the Conference, to discuss new and emerging forms of crime and ways and means of enhancing the implementation of the Convention and the Protocols thereto.

43. During the deliberations that took place in the high-level segment, participants underlined the importance of the Convention and its Protocols as the principal international instruments for combating organized crime in all its forms and manifestations, acknowledging the great adaptability of the Convention, which provided a broad definition of serious crime. The Convention therefore constituted an invaluable and effective instrument in tackling new and emerging forms of crime.<sup>14</sup>

44. Most speakers underscored the importance of international cooperation as a key component of the Convention. They evoked the unique and comprehensive framework provided by the Convention, which established common mechanisms for extradition and mutual legal assistance and which would deny safe havens to criminals. Similarly, the ability to effectively carry out seizures and confiscations would ensure that criminal organizations were deprived of their illicit assets and deny them undue influence. Participants also mentioned that greater and effective international cooperation and actions were required with regard to crimes such as trafficking in firearms and trafficking in cultural property.

45. At both the fourth and fifth sessions of the Conference, delegates referred to a broad range of offences as new forms and dimensions of organized crime. This included the illicit trafficking in cultural property, environmental crimes (such as illegal logging, illegal fishing, illegal mining and illicit trafficking in wildlife), cybercrime, identity theft, piracy, trafficking in fraudulent medicines and trafficking in human organs. It should be noted that those references during deliberations are not an indication of consensus on the status of those offences.

46. At the sixth session of the Conference, several speakers highlighted the challenge presented by new forms and dimensions of transnational organized crime and noted that the Organized Crime Convention represented an appropriate framework for addressing such crime, in particular through the notion of “serious crime”. That standard enabled the Convention to cover not only currently emerging forms of crime, but also serious crime that might emerge in the future. Speakers noted that it was important to strengthen efforts to prevent and combat new forms and dimensions of organized crime, including cybercrime, environmental crime, maritime piracy and trafficking in fauna and flora, fraudulent medicines and cultural property. Many forms of organized crime, including cigarette smuggling, had been recognized for a number of years. Despite the information available, progress in combating some of those forms of crime had been relatively limited.<sup>15</sup>

<sup>14</sup> CTOC/COP/2010/17, para. 25.

<sup>15</sup> CTOC/COP/2012/15, para. 89.

47. At the seventh session of the Conference, many speakers noted the grave economic, social, national security and public health impact and the possible links to terrorism financing of some new forms and dimensions of crime, such as trafficking in organs, fraudulent medicine, illegal mining, environmental crime and trafficking in cultural property. Some speakers highlighted the negative impact on development and governance caused by illicit financial flows in general, and by piracy in particular. In that regard, several speakers mentioned the links between money-laundering and new forms and dimensions of crime, and emphasized that the international community should take further steps to combat illicit financial flows.

48. At the same session, many speakers made reference to cybercrime as a global threat, particularly regarding acts committed by transnational organized criminal groups. It was noted that, as technology became more sophisticated, there was a significant rise in cybercrime and computer-related crime, such as technology-facilitated fraud and trafficking in persons or drugs. Speakers highlighted that, in order to effectively counter cybercrime, strengthening regional and international cooperation mechanisms, including through the application of existing legal instruments such as the Convention, remained of great importance.

49. Since its fourth session, the Conference has adopted a number of resolutions that shed light on the use of the Convention as a legal basis for new and emerging crimes. More specifically, in its resolution 5/1, entitled “Ensuring effective implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”, the Conference noted with concern the emergence, in the previous decade, of new forms and dimensions of transnational organized crime, as it had already noted in its decision 4/2, in which it had been emphasized that the Convention, as a global instrument with wide adherence, offered the broadest scope of cooperation to address existing and emerging forms of transnational organized crime. In that resolution, the Conference also decided to continue to exchange information on experience and practices on the application of the Convention to new forms and dimensions of transnational organized crime.

50. Interestingly, the relevant resolutions of the Conference were adopted as a result of deliberations under diverse agenda items, demonstrating the cross-cutting nature of the topic in question. On the one hand, the Conference has addressed this matter under the agenda item entitled “Ensuring effective implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.” In this regard, resolution 5/1, as well as resolution 6/1, set up a number of areas of actions and mandates with regard to the use of the Convention for cooperation to address existing and emerging forms of crime. For instance, these resolutions underlined: (a) the need for accurate information on global crime trends and patterns, including on new and emerging forms of organized crime, (b) the need to improve the quality, scope and completeness of data relating to organized crime and (c) to continue to exchange information on experiences and practices with regard to the application of the Convention to existing and new forms and dimensions of transnational organized crime within the scope of the Convention and to the raising of cross-cutting legal issues that are of common concern to States parties.<sup>16</sup> Both resolutions 5/1 and 6/1 underlined the importance of technical

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<sup>16</sup> To that end, the Conference decided to request the Working Group on International Cooperation to exchange information on experiences and practices in this field.

assistance to ensuring the effective implementation of the Convention to new forms and dimensions of transnational organized crime.

51. On the other hand, a number of other resolutions adopted by the Conference of the Parties, under agenda items related to specific emerging crimes, have provided guidance on the use of the Convention as a legal basis. In this regard, resolution 5/7 on combating transnational organized crime against cultural property reaffirmed that the Convention “constitutes an effective tool for international cooperation in combating criminal offences against cultural property.”

52. Similarly, under the agenda item entitled “Implementation of the international cooperation provisions of the United Nations Convention against Transnational Organized Crime”, the Conference noted with concern at its seventh session that transnational organized crime has diversified globally, and that new and emerging forms require effective responses that depend upon strengthened international cooperation in criminal matters, including through the development of channels for timely cooperation.<sup>17</sup>

#### **D. Mandates from United Nations resolutions**

53. In its resolution 66/180 of 19 December 2011, the General Assembly established a direct relationship between the implementation of the Organized Crime Convention and the “strengthening of crime prevention and criminal justice responses to protect cultural property, especially with regard to its trafficking, for the purpose of providing the widest possible international cooperation to address such crimes, including for extradition, mutual legal assistance and the confiscation and return of stolen cultural property to its rightful owner”. More specifically, in paragraph 6 of that resolution, the General Assembly urged “Member States to consider, among other effective measures within the framework of their national legislation, criminalizing activities related to all forms and aspects of trafficking in cultural property and related offences by using a broad definition that can be applied to all stolen, looted, unlawfully excavated and illicitly exported or imported cultural property.” The Assembly also invited States “to make trafficking in cultural property, including stealing and looting at archaeological and other cultural sites, a serious crime, as defined in article 2 of the United Nations Convention against Transnational Organized Crime, with a view to fully utilizing that Convention for the purpose of extensive international cooperation in fighting all forms and aspects of trafficking in cultural property and related offences”. In that resolution, the General Assembly also welcomed resolution 5/7 adopted by the Conference, as well as resolution 2010/19 of 22 July 2010 of the Economic and Social Council, which contained similar language and reaffirmed previous resolutions of the Council.

54. In its resolution 2013/38 on “Combating transnational organized crime and its possible links to illicit trafficking in precious metals”, the Economic and Social Council invited Member States to consider utilizing the Convention in combating transnational organized crime and its possible links to illicit trafficking in precious metals.

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<sup>17</sup> Resolution 7/4.

55. On 26 July 2012, the Economic and Social Council adopted resolution 2012/19 entitled “Strengthening international cooperation in combating transnational organized crime in all its forms and manifestations”. In that resolution, Member States were invited “within the framework of their domestic legal systems and international obligations, to consider reviewing their legal and regulatory arrangements in order to provide for the criminalization of the production and distribution of falsified and fraudulent products linked to organized crime”. In paragraph 8, Member States were urged “to consider, among other effective measures, within the framework of their national legal systems, criminalizing activities related to all forms and aspects of trafficking in cultural property and related offences by using a broad definition [...] and to apply the relevant provisions of the United Nations Convention against Transnational Organized Crime”. In paragraph 10 of that resolution, Member States were urged “to consider, among other effective measures, in accordance with their national legal systems, addressing different forms and manifestations of transnational organized crime that have a significant impact on the environment, including illicit trafficking in endangered species of wild fauna and flora”.

56. The Economic and Social Council, in its resolution 2011/36 of 28 July 2011, invited “Member States to consider making illicit trafficking in endangered species of wild fauna and flora a serious crime, in accordance with their national legislation and article 2, paragraph (b), of the United Nations Convention against Transnational Organized Crime, especially when organized criminal groups are involved”. In its resolution 2013/40, the Council requested Member States to fully utilize the Organized Crime Convention to prevent and combat illicit trafficking in protected species of wild fauna and flora, and in that regard reiterated its encouragement to Member States to make illicit trafficking in protected species of wild fauna and flora involving organized criminal groups a serious crime under the Convention in order to ensure that adequate and effective means of international cooperation can be afforded under the Convention in the investigation and prosecution of those engaged in illicit trafficking in protected species of wild fauna and flora.

57. In its resolution 2009/22 of 30 July 2009, the Council mentioned the importance of the Convention and its Protocols in preventing and combating economic fraud and identity-related crime. In resolution 2007/20 of 26 July 2007, the Council encouraged Member States to take into account the use of terms and scope of application set out in articles 2 and 3 of the Convention in establishing or updating, as appropriate, offences relating to the criminal misuse and falsification of identity. It should be noted that in its resolution 2004/26 of 21 July 2004, the Council had encouraged Member States to cooperate with one another in efforts to prevent and combat fraud and the criminal misuse and falsification of identity, including through the Organized Crime Convention and other appropriate international instruments, and to consider the review of domestic laws on fraud and the criminal misuse and falsification of identity, where necessary and appropriate, to facilitate such cooperation.

58. In resolution 2009/24 of 30 July 2009, the Council further referred to the utility of certain conventions, including the Organized Crime Convention, as a vital tool for assisting States in the administration of justice, particularly in the prosecution of kidnapping cases. The General Assembly, in resolution 61/179 of 20 December 2006, declared itself convinced “that the United Nations Convention

against Transnational Organized Crime provides a legal framework when necessary for international cooperation with a view to preventing, combating and eradicating kidnapping". In its resolution 2003/28 of 22 July 2003, the Council invited "Member States that [had] not yet done so to adopt the legislative or other measures necessary to establish kidnapping as a serious crime in their domestic legislation, in accordance with the definition of 'serious crime' in the United Nations Convention against Transnational Organized Crime". This provision reinforced similar language contained in paragraph 2 of resolution 2002/16 of 24 July 2002 of the Council.

59. In its resolution 22/6, the Commission on Crime Prevention and Criminal Justice, welcoming also the support provided by the United Nations Office on Drugs and Crime to States parties, including relevant technical assistance in the application of the Convention to new forms and dimensions of transnational organized crime committed at sea, urged States that have not yet done so to consider becoming parties to the Convention and the Protocols thereto, and to take appropriate measures to ensure their effective implementation.

60. In its resolution 21/2, the Commission on Crime Prevention and Criminal Justice called upon Member States to criminalize maritime piracy and armed robbery at sea under their domestic law, and it "encouraged Member States to continue cooperating with each other, using relevant and applicable bilateral or multilateral instruments for law enforcement cooperation, mutual legal assistance and extradition, inter alia, the United Nations Convention against Transnational Organized Crime and its Protocols".

61. In its resolution 20/6, the Commission further underscored "the potential utility of the United Nations Convention against Transnational Organized Crime in reinforcing international cooperation in the fight against trafficking in fraudulent medicines, including their illicit production and distribution".

## **VI. Exploring the applicability of the Organized Crime Convention as a response to new and emerging forms of transnational organized crime: an indicative overview of certain examples and the contribution of existing tools of the United Nations Office on Drugs and Crime**

### **A. Cybercrime**

62. At the high-level segment on new and emerging forms of crime held at the fifth session of the Conference, cybercrime was recognized as one of the forms of emerging crimes into which criminal groups had expanded their activities. Many acts of cybercrime may fall within the scope of application of the Convention, while others may be committed by individuals acting alone or by groups of persons that do not fall within the definitions of "organized criminal group" or "structured group" found in article 2 of the Convention. Nonetheless, the involvement of transnational organized criminal groups is increasingly evident in a range of forms of cybercrime, including the operation of global botnets, which are designed to fraudulently obtain credit card and banking information, and the production and distribution of child pornography over the Internet.

63. The fact that many forms of cybercrime have a transnational element, combined with the fact that electronic evidence, central to a cybercrime investigation, may exist only for a matter of days or even hours, necessitates the establishment of channels of communication between competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information on offences, as referred to in article 27 of the Convention.

64. In the UNODC Cybercrime Study it was noted that cooperation mechanisms contained within international and regional cybercrime instruments must also be placed in the wider international cooperation context. While a number of the instruments can be relied upon as a legal basis for specific cooperation acts, States parties to the instruments are also parties to broader networks of multilateral and bilateral agreements relating to cooperation in criminal matters, including treaties such as the Organized Crime Convention. Depending upon the nature of the act under investigation, it is possible that cooperation needs can fall within a range of legal mechanisms. Some of the cybercrime instruments recognize this point. The Council of Europe Cybercrime Convention, for example, provides that parties shall cooperate with each other, not only “in accordance with the provisions of this chapter”, but also “through the application of relevant international instruments on international cooperation in criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation, and domestic laws”.<sup>18</sup>

## **B. Trafficking in cultural property**

65. In its resolution 69/196, the General Assembly adopted the International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences, which resulted from the work of an expert group on protection against trafficking in cultural property convened by UNODC.

66. Chapter III of the Guidelines addresses international cooperation in cases of crimes against cultural property and related offences. According to guideline 33, States that have not yet done so should consider becoming parties to existing international law instruments, in particular the Organized Crime Convention, and use them as a basis for international cooperation in criminal matters in respect of trafficking in cultural property and related offences.

67. In its resolution 68/186, the General Assembly invited Member States that have not yet done so to consider designating contact points to facilitate international cooperation within the application of the Convention, for the purpose of preventing and combating trafficking in cultural property, and to report such information to the United Nations Office on Drugs and Crime for inclusion in the directory of competent national authorities. In 2015, the directory was extended, pursuant to this mandate of the General Assembly, to include the focal points relating to trafficking in cultural property.

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<sup>18</sup> UNODC, *Comprehensive Study on Cybercrime: Draft — February 2013*, prepared by UNODC for the consideration of the open-ended expert group to conduct a comprehensive study of the problem of cybercrime ([www.unodc.org/documents/organized-crime/cybercrime/CYBERCRIME\\_STUDY\\_210213.pdf](http://www.unodc.org/documents/organized-crime/cybercrime/CYBERCRIME_STUDY_210213.pdf)), chap. 7, p. 200.

## C. Environmental crime

68. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is the principal international instrument to control and regulate international trade in protected species and to suppress any illegal dealings in wild fauna and flora.

69. While it remains the most prominent instrument in this field, CITES does not, however, specifically provide a framework for the criminalization, investigation and prosecution of the spectrum of wildlife and forest offences. Serious and organized forms of wildlife and forest offences, such as trafficking in tiger products, ivory, exotic birds, caviar, inter alia, may fall within the scope of the Organized Crime Convention, which since its inception, has become an important tool in preventing and combating organized illegal trade in wild fauna, flora, and their parts and derivatives.

70. The Wildlife and Forest Crime Analytic Toolkit,<sup>19</sup> developed and released by UNODC in 2012, in partnership with other members of the International Consortium on Combating Wildlife Crime (ICWC), placed particular emphasis on the Organized Crime Convention as legal framework of use and relevance to combat wildlife and forest offences that transcend national borders and involve organized criminal groups.<sup>20</sup> The significance of the Organized Crime Convention was highlighted in relation to both international judicial cooperation and law enforcement cooperation to combat wildlife and forest offences.

## D. Identity-related crime

71. The increasing use of digital information has opened new possibilities for offenders to access identity-related information. The transformation from industrialized countries to information societies has had a large impact on the spread of identity-related crimes. The volatility of data pertaining to identity abuses in the digital environment requires rapid responses and expedited means of communication and cooperation.<sup>21</sup>

72. A number of resolutions adopted by the Economic and Social Council have addressed the issue of international cooperation in the prevention, investigation, prosecution and punishment of economic fraud and identity-related crime.

73. Through these resolutions, the Council has reaffirmed the importance of the Organized Crime Convention in terms of preventing and combating economic fraud and identity-related crime, while expressing concern about the role often played by organized criminal groups in economic fraud and the use of the substantial proceeds of fraud to finance organized crime.

<sup>19</sup> [www.unodc.org/documents/Wildlife/Toolkit\\_e.pdf](http://www.unodc.org/documents/Wildlife/Toolkit_e.pdf).

<sup>20</sup> See also the discussion guide prepared by the Secretariat for the thematic discussion on the challenge posed by emerging forms of crime that have a significant impact on the environment and ways to deal with it effectively, submitted to the Commission on Crime Prevention and Criminal Justice at its twenty-second session, in 2013 (E/CN.15/2013/2, para. 17).

<sup>21</sup> Discussion guide for the thematic discussion on international cooperation in criminal matters (E/CN.15/2014/12).

74. The practical guide to international cooperation to combat identity-related crime contained in the Handbook on Identity-related Crime,<sup>22</sup> provides an overview of aspects pertaining to the transnational dimension of identity-related crime and focuses on basic information and guidelines on how to best deal with international cooperation requests in that field, including through relevant case examples. An analysis of the conditions for the use of the Convention as legal tool for international cooperation is also offered.

## **E. Match-fixing and illegal/irregular betting**

75. Existing data demonstrate an increase in the number of cases of match-fixing and illegal and irregular betting over the last few years, as a result of, inter alia, the increase in the availability of online gambling, which has in turn increased the number of people with a direct economic interest in sporting competitions, and partly by the fact that gambling on sport events over the Internet can permeate national boundaries, which also limits the risk of perpetrators being arrested.

76. While problems linked to betting are not new, it appears that illegal betting in sport has reached new levels of sophistication, with those involved being located in several countries and continents and new offshore betting companies being established. Such sophistication indicates the involvement of organized crime patterns and corrupt practices with transnational dimensions.

77. The Study on “Criminalization Approaches to Combat Match-Fixing and Illegal/Irregular Betting: A Global Perspective”, published jointly by UNODC and the International Olympic Committee (IOC) in 2013,<sup>23</sup> contains an assessment of, among others, the applicability of existing multilateral conventions to the crimes in question, with a main focus on the Organized Crime Convention and the United Nations Convention against Corruption.

## **VII. Conclusions and recommendations**

78. The Organized Crime Convention has the potential to be used as a legal tool for the enhancement of criminal justice and international cooperation responses to new and emerging forms of transnational organized crime. The Convention could be applicable to a wider range of offences through the instrumental notion of “serious crime”, which enables its application of the Convention to a wide variety of offences in different countries, in addition to the offences specifically regulated by the Convention and its Protocols. The additional conditions that the offence be transnational and involve an organized criminal group, ensure that the scope of the Convention remains in the sphere of transnational organized crime.

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<sup>22</sup> [www.unodc.org/documents/treaties/UNCAC/Publications/Handbook\\_on\\_ID\\_Crime/10-57802\\_ebooke.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Handbook_on_ID_Crime/10-57802_ebooke.pdf).

<sup>23</sup> [www.unodc.org/documents/corruption/Publications/2013/Criminalization\\_approaches\\_to\\_combat\\_match-fixing.pdf](http://www.unodc.org/documents/corruption/Publications/2013/Criminalization_approaches_to_combat_match-fixing.pdf).



79. The Conference may wish to consider the following issues for further discussion and/or follow-up action:

(a) The need for reviewing and discussing national experience gained in the application of the Organized Crime Convention, including international cooperation using the Convention as a legal basis, with regard to preventing and combating emerging forms of crime, and with a view to identifying good practices in that respect;

(b) The feasibility of a study aimed at gathering relevant legislation from States parties from different geographical regions and legal traditions in order to identify the main approaches and trends with regard to serious crime and the types of offences, which are broadly covered by the definition of serious crime in the Convention;

(c) The examination of ways and means of optimizing existing forms of international legal cooperation for the investigation and prosecution of emerging forms of crime and, where appropriate, developing new forms of such cooperation, including through making full use of relevant international legal instruments such as the Convention;

(d) The support of further research, analysis, as well as delivery of technical assistance and capacity-building activities undertaken by UNODC concerning the application of provisions of the Convention to new and emerging forms of crime, including in respect of cross-cutting issues such as mutual legal assistance, special investigative techniques and the protection of victims and witnesses.

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