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International cooperation in combating transnational crime: fraud, the criminal misuse and falsification of identity and related crimes

Progress made by the Intergovernmental Expert Group to Prepare a Study on Fraud, the Criminal Misuse and Falsification of Identity

Report of the Secretary-General**

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* E/CN.15/2005/1.

** The footnote required in accordance with paragraph 8 of resolution 53/208 B, by which the General Assembly decided that, if a report was submitted late to the conference services, the reason for this should be included in a footnote to the document, was not included in the original submission.



I. Introduction

1. In its resolution 2004/26 of 21 July 2004, the Economic and Social Council requested the Secretary-General to convene, subject to the availability of extrabudgetary resources, an intergovernmental expert group, with representation based on the regional composition of the Commission on Crime Prevention and Criminal Justice, to prepare a study on fraud and the criminal misuse and falsification of identity; and requested the intergovernmental expert group to take into consideration the relevant work of the United Nations Commission on International Trade Law (UNCITRAL) and other bodies where relevant and appropriate.

2. With the support of the Government of Canada, a preliminary meeting of the Intergovernmental Expert Group to Prepare a Study on Fraud and the Criminal Misuse and Falsification of Identity was held in Vienna on 17 and 18 March 2005. To ensure that all regions were represented in accordance with resolution 2004/26, all Member States were invited to attend and the meeting was conducted as an open-ended intergovernmental expert group meeting.

3. The present report is submitted to the Commission on Crime Prevention and Criminal Justice in accordance with resolution 2004/26. It summarizes the deliberations and recommendations made by the meeting with respect to the nature, scope and methodology of the study and the information that should be sought from Member States and other relevant entities to form the basis for it.

II. Background

4. At its thirty-fifth session, in 2002, UNCITRAL had been informed that international fraudulent practices had produced a significant negative impact on world trade and the legitimate instruments of trade and finance and had agreed that it would be useful to prepare a study on commercial fraud.¹ A meeting of experts was convened and reported on its work to UNCITRAL at its thirty-sixth session, in 2003. The UNCITRAL study (A/CN.9/540) concluded that commercial fraud was a social and political phenomenon that had grown in recent years into a serious international problem. The study also concluded that it was difficult to quantify the problem or clearly establish trends as a result of factors such as discrepancies in definitions and the reporting and recording mechanisms in different countries, as well as the tendency of commercial entities to underreport occurrences because of concerns about commercial credibility and the desire to recover their losses directly where possible. It also noted that the emergence of a global economy powered by computers and telecommunication technologies had opened new and destructive possibilities, which had been exploited by fraudsters.

5. The study recommended that an international colloquium be held to address various aspects of the problem and to permit an exchange of views among Governments, intergovernmental organizations and others engaged in combating commercial fraud. It also noted that many forms of transnational commercial fraud would fall within the ambit of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I) and recommended that UNCITRAL draw to the attention of Member States the potential for applying

that Convention in such cases. At its thirty-sixth session, UNCITRAL had before it a note by the Secretariat containing the study mentioned above (A/CN.9/540). It considered the role that it could usefully play in combating fraud and noted that a key role for private law could be that of prevention. It also considered the difficulty of defining commercial fraud, but noted that the lack of a precise definition should not necessarily be an obstacle to taking effective action against it. It was informed that one of the major problems in addressing international and transnational commercial fraud effectively was the difficulty of bringing together the appropriate public and private bodies necessary to combat it. In that regard, it considered the usefulness of a study of commercial fraud from a public law perspective and appealed to the Commission for Crime Prevention and Criminal Justice for assistance in conducting such a study.

6. The Colloquium on International Commercial Fraud was held in Vienna from 14 to 16 April 2004 and its proceedings were reported in a note by the Secretariat to UNCITRAL at its thirty-seventh session (A/CN.9/555). The Colloquium examined international commercial fraud in the context of discrete subject areas, noting both general trends and the rising incidence of commercial fraud. It considered the importance of developing materials setting out common forms and elements of international commercial fraud for use in education and prevention and noted the need for dissemination of information about fraud through UNCITRAL so that delegates involved in its ongoing projects in other areas could focus more directly on the problem of fraud in their deliberations.

7. At its thirty-seventh session, in 2004, UNCITRAL agreed on two aspects of ongoing work in the area. Firstly, it was thought that it would be useful if international commercial fraud were to be discussed and emphasized in the context of particular projects on which it was working. Secondly, in order to assist in the education and training aspects necessary for protection against fraudulent practices, the UNCITRAL secretariat was requested, in conjunction with experts, to consider the preparation of lists of common features and indicators of fraudulent schemes and to disseminate such information to national and international organizations.

8. The Commission on Crime Prevention and Criminal Justice considered the problem of fraud at its thirteenth session, in 2004, taking into account the earlier work of the UNCITRAL bodies. It considered the problem from a criminal and public law perspective and in a broader context, including commercial and other types of fraud. It also considered the problem of the criminal misuse and falsification of identity to be a related matter and decided to call for a combined study of both phenomena, to include the relationships between fraud, the criminal misuse and falsification of identity and other crimes, as well as the prevention and control of those problems using both commercial and criminal law, and how criminal law, commercial law and other means of prevention and control could be made compatible. Following its deliberations, the Commission decided to recommend for adoption by the Economic and Social Council a resolution calling, *inter alia*, for a study to be conducted of fraud and the criminal misuse and falsification of identity.

III. Recommendations

9. Bearing in mind paragraph 4 of Economic and Social Council resolution 2004/26, which contains directions with respect to elements of the study, the Intergovernmental Expert Group recommended that the study encompass the full range of fraud offences, as well as the full range of offences involving the criminal misuse and falsification of identity and other related offences. The meeting agreed that the available time and resources would not permit a detailed examination of every type of such activity and that it would be necessary for the experts to identify priorities and select specific types for detailed analysis. The meeting considered that the criteria set out in the annotated agenda and the technical paper submitted to the Group by the delegation of Canada provided a good basis for selecting general and specific topics for the study, taking into consideration the views expressed and modifications proposed during the meeting.

10. The meeting also agreed that all available sources of information should be included, to the extent possible within the available time and resource limits. These included information and materials provided by the experts participating in the study, data available from governmental sources and, where relevant and feasible, information from commercial and other intergovernmental or non-governmental sources.

11. The meeting agreed that a questionnaire should be prepared and disseminated by the Secretariat seeking information on fraud and the criminal misuse and falsification of identity, based on the outlines contained in the technical paper submitted by the delegation of Canada and taking into consideration resolution 2004/26, the annotated agenda of the meeting and the views expressed during the meeting. The Secretariat would prepare a draft of the questionnaire and submit it to the Commission on Crime Prevention and Criminal Justice at its fourteenth session for comments from Member States prior to its finalization and dissemination. It was also agreed that correspondence or other appropriate methods could be employed to seek relevant information from specific sources, where appropriate. It was also noted that, for greater efficiency and to avoid duplication, existing sources of information, including the UNCITRAL secretariat and the International Civil Aviation Organization (ICAO), would be employed where possible.

12. The meeting agreed that, for reasons of convenience, the term “identity fraud” would be used to refer to the problem described in resolution 2004/26 as “the criminal misuse and falsification of identity” and that this would be done on the understanding that such reference would be without prejudice to further discussions on the activities involved, the problems posed by those activities, the relationships of those activities to other crimes, in particular to cybercrime and money-laundering, and related issues. The use of the term would also be without prejudice to the selection of an appropriate label or description at the conclusion of the study.

13. The meeting agreed that the work of the study should be carried out by volunteer experts from Member States and invited States not represented at the meeting to consider designating experts to participate in and contribute to the work. It was noted that the results of the study would be reviewed by a further meeting of the Intergovernmental Expert Group, subject to the availability of extrabudgetary

resources. Should another meeting not prove feasible, the results of the study would be circulated to Member States in a timely manner to comply with the requirements of paragraph 12 of resolution 2004/26 prior to submission to the Commission on Crime Prevention and Criminal Justice. The meeting called on Member States to consider making further voluntary contributions to permit conclusion of the work of the Intergovernmental Expert Group as effectively and expeditiously as possible.

IV. Organization of the meeting

A. Opening of the meeting

14. The preliminary meeting of the Intergovernmental Expert Group to Prepare a Study on Fraud, the Criminal Misuse and Falsification of Identity was convened in Vienna on 17 and 18 March 2005. The Group held three meetings.

15. The meeting was opened by the Director of the Division for Treaty Affairs of the United Nations Office on Drugs and Crime (UNODC). In his opening remarks, the Director welcomed the participants and noted the importance of the subject matter of the meeting and the growing seriousness of the problems of fraud and the criminal misuse and falsification of identity. He also noted the previous work of UNCITRAL on commercial fraud and the concerns expressed by that body about the seriousness of the problem and the need for further study, including an examination of the issues from a criminal perspective. He further noted the growing concern about economic crime in general and the consideration of economic crime by the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, to be held in Bangkok from 18 to 25 April 2005. He also expressed appreciation to Canada for its generous contribution of funds and assistance, which had allowed the holding of the meeting and the preparation of relevant documentation.

16. The delegation of Canada presented the meeting with a summary of the technical paper it had submitted and invited further comments and suggestions on the issues raised. A representative of the secretariat of UNCITRAL gave an overview of the recent work of the Commission in the area of commercial fraud, highlighting the need for integration of private commercial law and public criminal law elements in the study and drawing attention to relevant information that had already been gathered by the UNCITRAL secretariat from private commercial and other sources, which could be used in the study.

B. Attendance

17. The meeting was attended by representatives of the following countries: Algeria, Angola, Argentina, Azerbaijan, Bulgaria, Canada, China, Colombia, Croatia, France, Germany, India, Iran (Islamic Republic of), Japan, Jordan, Lebanon, Luxembourg, Mexico, Morocco, Netherlands, Nigeria, Republic of Korea, Romania, Serbia and Montenegro, Slovakia, South Africa, Spain, Thailand, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland and United States of America.

18. Also attending the meeting were observers for the secretariat of UNCITRAL and the International Monetary Fund (IMF).

C. Election of officers

19. The meeting elected the following officers by acclamation:

Chairman: Pedro David (Argentina)

Vice-Chairmen: Emmanuel Akomaye (Nigeria)
Chatchom Akapin (Thailand)
Gennadiy Goncharuk (Ukraine)

Rapporteur: Christopher Ram (Canada)

D. Adoption of the agenda

20. At its first meeting, held on 17 March 2005, the Intergovernmental Expert Group adopted the following agenda:

1. Opening of the meeting.
2. Election of officers.
3. Adoption of the agenda and organization of work.
4. Presentations by experts of the current status and national and transnational concerns relating to fraud and identity issues and discussion.
5. Scope of the study and identification of priority areas.
6. Methodology of the study, including allocation of contributions by experts.
7. Preparation of a questionnaire.
8. Adoption of the report of the Intergovernmental Expert Group.

E. Documentation

21. The meeting had before it Economic and Social Council resolution 2004/26, relevant documents and reports of the Commission for Crime Prevention and Criminal Justice and the Commission on International Trade Law, as well as the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I). The meeting also had before it a discussion paper submitted by Canada, setting out issues for discussion, possible options for the methodology of the study and suggestions for a questionnaire seeking information from Member States and other appropriate entities.

V. Summary of the discussion

22. Most delegates indicated that fraud was a serious concern for their Governments and many echoed the concerns raised in the course of the work of UNCITRAL to the effect that the problem was rapidly expanding, as regards both the range of frauds being committed and their geographical scope and diversity.

Most also indicated that modern technologies had played a significant role in the evolution of offences, including the spread of offender expertise, the actual use of technologies by offenders to target victims and the use of technologies to transfer, conceal and launder proceeds. Several delegates noted that, while developing a typology or classification of fraud cases would be desirable, some of the most critical approaches to the issues involved “cross-cutting” factors, which generally amplified the seriousness of offences. These included the increasing involvement of organized criminal groups, the role played by information and communication technologies, the presence of elements of identity fraud and the increasing presence of elements of transnationality. One delegate also noted that, in considering the role of organized crime, differences in the nature of organized crime itself in different countries and regions would have to be considered. Some delegates also noted that the different commercial cultures of Member States and their approaches to legitimate commercial arrangements would also be important to understanding illicit activities in fraud cases.

23. Most delegates also raised concerns about identity issues, described by many as either “identity theft” or “identity fraud”. Many noted that identity fraud could be linked to a wide range of other offences as a preparatory step or as a part of the offence itself. However, the most closely linked offence was considered to be fraud, noting that, in fraud cases, identity abuses often played a multiple role, helping offenders to deceive victims as well as to avoid prosecution and to transfer, conceal and launder proceeds. One delegate noted that, while it was clear that economic crimes were closely linked to identity fraud, non-economic offences, including terrorist activities, would also need to be considered in the course of the study, bearing in mind that identity fraud had in the past been used to commit terrorist activities and that a range of fraud offences had been used to fund them. Some delegates also noted that a context for identity issues would be needed, taking into consideration factors such as the overall infrastructure for establishing and verifying identity in each country. Several specific forms of identity fraud were raised, including “phishing”, in which victims were induced to provide their own identity information to offenders masquerading as commercial or authority figures, and a range of activities involving fraudulent identification or travel documents, which were both used to commit further offences and were themselves commodities for illicit trafficking.

24. Several delegates noted the multifaceted nature of modern fraud and identity fraud and the need for a multidisciplinary approach by Member States and the international community to respond to it. This included the need to integrate public criminal law and private commercial law approaches, in particular in developing preventive measures, most of which would involve commercial structures or practices. Many also noted that access to technologies and other factors and the resulting increases of transnational offences required cooperation at the local, national, regional and international levels to ensure effective prevention, investigation and prosecution and that adequate laws and training were needed to ensure that offences involving technologies could be dealt with quickly and effectively. The importance and applicability of the United Nations Convention against Transnational Organized Crime as the legal basis for cooperation in the vast majority of serious transnational fraud cases was also noted.

25. Some delegates noted areas in which the interests of developing countries and countries with economies in transition might have to be considered specifically. These included factors such as the nature and extent of the infrastructure to establish and validate personal identity and the different approaches to legitimate and fraudulent commerce in countries with largely cash-based economies. It was noted that the study should incorporate the widest possible range of expertise and information to ensure that such issues were adequately taken into consideration and addressed.

26. Several delegates referred to other studies, including those of UNCITRAL and of national or regional bodies, that might include relevant information, and those with access to the results agreed to make them available. The representative of the UNCITRAL secretariat and some delegates noted that there were some sensitivities with respect to commercial data that led to the underreporting of commercial fraud and would have to be taken into consideration in obtaining and analysing commercial data. One delegate also noted that in examining identity issues relating to travel documents, the work of ICAO should also be taken into consideration.

27. There was discussion of the scope of the study and some of the specific types of criminality that might be covered. There was also general support for the approach taken by the annotated agenda and the technical paper provided by the delegation of Canada with respect to the identification of specific topic areas. Most delegates also expressed the view that specific activities or offences should be selected on the basis of their seriousness, their presence in or impact on many Member States, the fact that they were typical or exemplary of other types of fraud or identity fraud and other factors. One delegate suggested that the study should also include frauds other than economic frauds, such as those related to violent crimes. Another noted that the links between fraud, identity fraud and other offences, including money-laundering and computer-related crimes, should also be addressed. Some delegations also noted the importance of the recovery of proceeds of fraud in public criminal law systems and of restitution and the compensation of victims in private commercial law systems. The meeting did not select specific types of criminal activity, preferring to leave this to the experts, taking into account the data as they were gathered. Several delegates also noted that the costs of fraud and identity fraud should be covered by the study, including not only the economic costs to fraud victims, but other less tangible costs, such as the damage to commercial structures or activities, the harm to persons whose identities were misused and harm to the reputations of individuals, as well as commercial and other entities. In the case of identity fraud, some delegates noted that, as this was not a term of art in most countries, it would be necessary for the questionnaire to seek to identify and address the underlying conduct and to explain the concept in order to assist recipients in responding. One delegate suggested that recipients should be asked to provide summaries of their most serious cases, in terms of sophistication, proceeds, number of offenders or victims or other criteria, to support an analysis of the types of case and impact encountered.

28. Some delegates discussed the time frame for the study and one expressed the view that it would be important to make every effort to complete the work for submission to the Commission on Crime Prevention and Criminal Justice at its fifteenth session. It was hoped that some effort and time could be saved by using data already accumulated by UNCITRAL and other sources. One other delegate

noted that timing would also be governed to some extent by the length of time it would take to produce and disseminate the questionnaire and the time taken by Member States to respond to it. The Secretariat noted that brevity and clarity would be needed to ensure a relatively rapid response and that this would be taken into consideration in preparing the questionnaire.

29. The representative of the UNCITRAL secretariat emphasized the need for the study to provide detailed qualitative information regarding fraudulent commercial practices with a view to identifying common features and indicators of fraudulent schemes. The Intergovernmental Expert Group took note of the willingness expressed by the UNCITRAL secretariat to assist UNODC in the preparation of the study and the drafting and dissemination of the related questionnaire.

VI. Adoption of the report

30. At its third meeting, on 18 March, the Intergovernmental Expert Group adopted the present report and decided to submit it as a report on the progress of the study to the Commission on Crime Prevention and Criminal Justice at its fourteenth session in accordance with Economic and Social Council resolution 2004/26.

Note

¹ *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 17 (A/57/17), paras. 279-290.*
