

CP/RES. 908 (1567/06)

HEMISPHERIC PLAN OF ACTION AGAINST
TRANSNATIONAL ORGANIZED CRIME

(Adopted at the meeting of October 25, 2006)

THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES,

CONSIDERING:

That in the Declaration on Security in the Americas, adopted at the Special Conference on Security, held in Mexico City in October 2003, the member states condemned transnational organized crime, since it constitutes an assault on institutions in our countries and negatively affects our societies, and therefore renewed their commitment to fighting it by strengthening the domestic legal framework, the rule of law, and multilateral cooperation, while respecting the sovereignty of each state;

That the United Nations Convention against Transnational Organized Crime and the three Protocols thereto: the Protocol against the Smuggling of Migrants by Land, Sea and Air, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, make up the international legal framework for fighting transnational organized crime; and

That the General Assembly, in resolution AG/RES. 2116 (XXXV-O/05), "Fighting Transnational Organized Crime in the Hemisphere," established a Special Committee on Transnational Organized Crime (CEDOT), under the Permanent Council, as a means of drafting the plan of action against such crime, using the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the Protocols thereto as a reference point;

GRATIFIED at the conclusion of the work of the CEDOT and the preparation of the Hemispheric Plan of Action against Transnational Organized Crime;

WELCOMING the report of the CEDOT (CE/DOT-56/06), which introduces this resolution and the Hemispheric Plan of Action;

BEARING IN MIND that the General Assembly, in its resolution AG/RES. 2189 (XXXVI-O/06), "Fighting Transnational Organized Crime in the Hemisphere," authorized the Permanent Council to adopt the Hemispheric Plan of Action once the work of the Special Committee had been completed; and

NOTING WITH SATISFACTION the offer by the Government of Mexico to host the first meeting of the Technical Group on Transnational Organized Crime, which was proposed in the Hemispheric Plan of Action and will consider matters related to its implementation,

RESOLVES:

1. To adopt the Hemispheric Plan of Action against Transnational Organized Crime, which is attached to this resolution.
2. To transmit the Hemispheric Plan of Action against Transnational Organized Crime to the member states and to instruct the General Secretariat to take the necessary action to implement those aspects of the Hemispheric Plan of Action that are entrusted to it.
3. To transmit this resolution and the Hemispheric Plan of Action against Transnational Organized Crime to the Committee on Hemispheric Security, to the next Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas, and to the United Nations Office on Drugs and Crime.
4. To accept with gratitude the generous offer by the Government of Mexico to host the first meeting of the Technical Group on Transnational Organized Crime.
5. To instruct the Technical Group to review the Hemispheric Plan of Action against Transnational Organized Crime two years after its adoption to ensure its continued effectiveness, and to propose, through the Committee on Hemispheric Security, any revisions for the Permanent Council's approval.
6. To declare that the work of the Special Committee on Transnational Organized Crime has been completed and to submit this resolution to the General Assembly at its thirty-seventh regular session for its information.

HEMISPHERIC PLAN OF ACTION AGAINST TRANSNATIONAL ORGANIZED CRIME

The principal objective of this Hemispheric Plan of Action is to promote the application by the OAS member states of the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the Protocols thereto: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol Against the Smuggling of Migrants by Land, Air and Sea; and the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.^{1/2/}

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1. Colombia has ratified the United Nations Convention against Transnational Organized Crime and its Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and is fully committed to their application. Colombia, in keeping with the Vienna Convention on the Law of Treaties, took the sovereign decision not to ratify the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition and the Protocol against the Smuggling of Migrants by Land, Sea and Air. Colombia does not agree with the text of Article 4, paragraph 2, of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, concerning its scope of application. Colombia would have preferred that the Protocol apply to all transfers of firearms, their parts and components, and ammunition. The definition of “illicit trafficking” contained in Article 3, section (e), of the Protocol must be borne in mind: it states that a transfer is lawful only with the authorization of all the states parties involved. An escape clause, such as that appearing in Article 4, runs counter to that definition inasmuch as it implies that a state may transfer arms without the authorization or consent of one of the other states concerned. This would not only make such a transfer illicit but also open up the possibility of arms transfers to non-state actors. Colombia does not accept the exclusion from the protocol’s control measures of certain arms transfers, such as transfers to non-state actors, which, in our view, constitute a serious crime, and transfers among states. With reference to the Protocol against the Smuggling of Migrants by Land, Sea and Air, Colombia considers it to contain provisions designed to legitimize the forced repatriation of migrants who have not necessarily been smuggled. That approach was promoted during the negotiation of the Protocol by the destination countries, none of which has ratified the 1990 United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Colombia believes that the clause contained in Article 6, paragraph 4, could lead to the criminalization of migrants, whereas the purpose of the Protocol is to pursue organized criminal gangs, not migrants.
 2. The Bolivarian Republic of Venezuela considers transnational organized crime (TOC) to be a social phenomenon stemming from diverse sources. It cannot be addressed as a purely criminal matter; it must be dealt with as a multidimensional problem. This Plan of Action does not reflect the relationship between transnational organized crime and social problems that may contribute to its emergence, such as poverty, inequity, and social exclusion. Accordingly, the Bolivarian Republic of Venezuela believes that preventing, controlling, and fighting transnational organized crime effectively in the Hemisphere requires, *inter alia*, strengthening our countries’ commitment to broadening and improving programs and initiatives to fight and reduce poverty, inequity, and social exclusion.

I. GENERAL OBJECTIVES

The general objectives of the Hemispheric Plan of Action are to urge member states to:

1. Prevent and combat transnational organized crime, in full observance of human rights, using as a frame of reference the Palermo Convention and the three additional Protocols thereto. This shall be done in accordance with the principles of sovereign equality and territorial integrity of states and of nonintervention in the internal affairs of other states;
2. Enhance cooperation in the areas of prevention, investigation, prosecution of, and judicial decisions related to, transnational organized crime;
3. Encourage coordination among OAS bodies responsible for issues related to combating transnational organized crime and cooperation among those bodies with the United Nations Office on Drugs and Crime (UNODC); and
4. Strengthen national, subregional and regional capacities and capabilities to deal with transnational organized crime.

II. ACTIONS

In order to achieve the general objectives, member states, consistent with their respective laws and legal systems, should consider:

1. National strategies against transnational organized crime
 - a. Taking a comprehensive approach to preventing and fighting transnational organized crime, with the participation of all institutions having responsibilities in this area;
 - b. Strengthening the ability of public institutions to fight transnational organized crime effectively and promote cooperation and the exchange of experiences among states;
 - c. Recognizing the fundamental role of education in contributing to a culture of respect for human rights and democratic values;
 - d. Continuing to review, when appropriate, national policies and laws in order to improve cooperation in areas such as mutual legal assistance, extradition, and, when applicable, deportation to the country of origin;^{3/}
 - e. Adopting and implementing appropriate legislative measures to combat transnational organized crime;

3. Plan of Action of Quebec City, Third Summit of the Americas.

- f. Exchanging and using, as appropriate, evidence lawfully obtained through special investigative techniques in order to prosecute crimes related to transnational organized crime;
- g. Pursuing, prosecuting, and appropriately punishing perpetrators of transnational organized crime;
- h. Seeking to ensure, when possible, the collection and dissemination of statistical data that make it possible to measure the scope of the problem of transnational organized crime and its incidence with respect to overall crime in the country; and
- i. Where applicable, adapting domestic law to the Palermo Convention, taking into account the legislative guidelines adopted by UNODC.

2. Legal instruments

- a. Urging those member states that have not yet done so to consider signing, ratifying, and/or acceding to, as the case may be, the following international agreements:
 - i. United Nations Convention against Transnational Organized Crime (Palermo Convention);
 - ii. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
 - iii. Protocol against the Smuggling of Migrants by Land, Sea and Air;
 - iv. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition;
 - v. UN Single Convention on Narcotic Drugs (1961), amended by its 1972 protocol;
 - vi. UN Convention on Psychotropic Substances (1971);
 - vii. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988);
 - viii. Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA);
 - ix. United Nations Convention against Corruption;
 - x. Inter-American Convention against Corruption; and
 - xi. Inter-American Convention on Mutual Legal Assistance in Criminal Matters.
- b. Signing bilateral agreements or arrangements, when appropriate, for effective implementation of the Palermo Convention and the Protocols thereto, thereby complementing the actions envisaged in this Hemispheric Plan of Action.

3. Law enforcement matters

- a. Adopting and implementing procedural, legal, and operational mechanisms for the protection of witnesses, in accordance with Article 24 of the Palermo Convention;
- b. Strengthening, within available means, measures to ensure the security, control, and integrity of travel or identity documents so that they cannot be easily misused, falsified, or altered; and
- c. Actively promoting the adoption and use of special investigative techniques and, when appropriate, coordinating their use with other member states to combat transnational organized crime, in accordance with the fundamental principles of their respective legal systems, as well as with the Palermo Convention.

4. Training

- a. Requesting the General Secretariat to make recommendations on training, technical assistance, and capacity-building to the technical group on transnational organized crime, referred to in Section III, as may be required to advance the goals of this Hemispheric Plan of Action;
- b. Developing and/or supporting specific training programs—bilateral, multilateral, subregional, and regional—which further the goals of this Hemispheric Plan of Action;
- c. Requesting the General Secretariat to organize conferences and seminars to enhance existing capabilities to prevent, investigate, and prosecute transnational organized crime; and
- d. Exchanging experiences and best practices of relevant institutions in member states in the fight against transnational organized crime, including the use of technology for this purpose.

5. Information-sharing

- a. Requesting the General Secretariat to maintain an updated list of national points of contact based on information provided by member states;
- b. Ensuring that their laws on transnational organized crime are provided to existing OAS databases and recommending that the General Secretariat ensure that such databases are easily accessible, streamlined, and consolidated;
- c. Enhancing the exchange of information, including real-time operational information, among national institutions with similar competence; maximizing the use of technology, particularly databases or other technical

mechanisms such as secure information systems; and using, *inter alia*, INTERPOL and the OAS Network for Mutual Legal Assistance in Criminal Matters and Extradition;

- d. Urging member states that have not yet done so to respond to the United Nations questionnaires for the Conference of Parties to the Palermo Convention on the application of that Convention and the Protocols thereto and to make those questionnaires available to the OAS General Secretariat;
- e. Strengthening the capacity of existing financial intelligence units and other competent authorities, in accordance with the Financial Action Task Force (FATF) recommendations and the Egmont Group principles on information exchange, to ensure effective international cooperation to combat money laundering; and
- f. Actively promoting, when appropriate, the use of new communication technologies such as videoconferencing and similar means to obtain evidence.

6. International Cooperation and Assistance

- a. Urging the General Secretariat, when appropriate, to obtain cooperation and assistance from other states and international organizations, including multilateral development banks and international financial institutions, as well as the UNODC, for effective implementation in the Hemisphere of the Palermo Convention and the Protocols thereto and for the implementation of this Hemispheric Plan of Action;
- b. Requesting the General Secretariat to promote general cooperation with other specialized international organizations and entities related to the prevention of and fight against transnational organized crime and to disseminate information about member states' and OAS initiatives in this area in order to obtain support for those initiatives;
- c. Encouraging, where necessary, the development of cooperation mechanisms among states in matters concerning comprehensive assistance to victims of transnational organized crime;
- d. Adopting, where appropriate and feasible, multilateral and/or bilateral arrangements and/or agreements to foster mutual legal assistance among member states;
- e. Considering, in accordance with domestic laws and if bilateral arrangements and agreements so permit, where feasible, the designation of liaison officers in the embassies and/or consulates of member states located in the Hemisphere to promote efficient and expeditious cooperation in the prevention, investigation, and prosecution of transnational organized crime;

- f. Strengthening cooperation and technical assistance at various levels, with special emphasis on developing countries in the Hemisphere, in order to strengthen their capacities to prevent and combat transnational organized crime; and
- g. Promoting specific agreements and/or arrangements regarding the seizure and forfeiture of the instrumentalities and proceeds of crime and consider, when domestic law permits, the possibility of signing agreements and/or arrangements regarding the distribution of money or assets seized or forfeited, in accordance with the terms and criteria of the Palermo Convention.

III. FOLLOW-UP TO THE HEMISPHERIC PLAN OF ACTION AGAINST TRANSNATIONAL ORGANIZED CRIME

To strengthen and coordinate OAS efforts in fighting transnational organized crime and to implement this Hemispheric Plan of Action, it is recommended that:

1. The Meeting of Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA) and the organs, agencies, and entities of the OAS competent in the matter continue to include the fight against transnational organized crime on their agendas;
2. The Permanent Council, through the Committee on Hemispheric Security, as established in the Declaration on Security in the Americas, coordinate, from an integral perspective, the efforts of the inter-American system in its fight against transnational organized crime in accordance with the Palermo Convention and the Protocols thereto;
3. Each member state designate a point of contact to coordinate and facilitate at the national level follow-up to this Hemispheric Plan of Action;
4. A technical group be established on transnational organized crime made up of national delegations as determined by each member state to consider issues related to the implementation of this Hemispheric Plan of Action;
5. In order to implement the Hemispheric Plan of Action, the General Secretariat collaborate in the development of a work plan for the technical group, to be evaluated and approved by the Permanent Council. The technical group would be responsible for follow-up to the Hemispheric Plan of Action and could propose to the member states for their approval new multilateral cooperation initiatives for fighting transnational organized crime; and
6. The General Secretariat convene regular meetings of all relevant OAS bodies combating transnational organized crime (including the Secretariat of the Inter-American Drug Abuse Control Commission - CICAD, the Technical Secretariat of the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Materials - CIFTA, the

Department of International Legal Affairs, the Executive Secretariat of the Inter-American Commission on Human Rights, the Permanent Secretariat of the Inter-American Commission of Women, the Inter-American Children's Institute, the Executive Secretariat for Integral Development, and others), and report to the Committee on Hemispheric Security on the outcome of those meetings and of OAS efforts to fight transnational organized crime. The General Secretariat will also facilitate coordination and information-sharing with the national authorities responsible for this area.

IV. FINANCING

To ensure that the General Secretariat has the resources necessary to implement this Hemispheric Plan of Action, member states should:

1. Request that the OAS Regular Fund continue contributing the necessary resources, subject to an evaluation by the Committee on Administrative and Budgetary Affairs, to provide the Department of Public Security with human and financial resources to ensure its ability to carry out its responsibilities under this Hemispheric Plan of Action;
2. Request that the General Assembly establish a specific fund for fighting transnational organized crime, administered by the General Secretariat. The Fund would be open to voluntary contributions from member and permanent observer states and international organizations; and
3. Consider making voluntary contributions to the Fund once established, given the seriousness of the threat to public security in the Americas posed by transnational organized crime.