

European Institute
for Crime Prevention
and Control,
affiliated with the
United Nations

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BLUE CRIMINOLOGY

*The power of United Nations
ideas to counter crime globally*
A monographic study

Sławomir Marek Redo

Criminología Azul

Criminologie onusienne

Синяя Криминология

蓝色犯罪学

الكتاب الأزرق عن علم الإجرام

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OUTLINE OF DEVELOPMENT OF CRIMINOLOGICAL THOUGHT AND INTERNATIONAL ACTION AGAINST CRIME IN THE WORLD BEFORE AND SINCE THE ESTABLISHMENT OF THE UNITED NATIONS*

1	Origin: Classical theory Contemporary theory: Rational choice theory	Beccaria, 1764 <i>On Crimes and Punishment</i>	Bentham, 1789 <i>Moral Calculus</i>	Bentham, 1830 <i>The Rationale of Punishment</i>	Kant, 1887 <i>Philosophy of Law</i>	von Hentig, 1940 <i>Remarks on the Interaction of Perpetrator and Victim</i>	Andenaes, 1966 <i>General Preventive Effects of Punishment</i>	Martinson, 1974 <i>What Works</i>	Cohen & Felson, 1979 <i>Routine Activities</i>	Clarke, 1992 <i>Situational Crime Prevention</i>	Loti, 2000 <i>More Guns, Less Crime</i>	Schneider & Kitchen, 2007 <i>Crime Prevention and the Built Environment</i>				
2	Origin: Classical theory Contemporary theory: Biosocial trait theory	Gall, 1800 <i>Cranioscopy Phrenology</i>	Lombroso, 1863 <i>Criminal Man</i>	Garofalo, 1885 <i>Criminologia</i>	Kretschmer, 1921 <i>Physique and Character</i>	Hooton, 1939 <i>American Criminal</i>	Montagu, 1968 <i>Man and Aggression</i>	Jeffrey, 1971 <i>Crime Prevention</i>	Wilson, 1975 <i>Thinking about Crime</i>	Mednick & Volavka, 1980 <i>Biology and Crime</i>	Ellis, 1989 <i>Evolutionary Sociobiology</i>	Rowe, 1995, <i>The Limits of Family Influence</i>	Harris, 1998, <i>The Nurture Assumption</i>	Schoenthaler, 2000 <i>Intelligence, Academic Performance and Brain Function</i>		
3	Origin: Positivist theory Contemporary theory: Psychological trait theory	Pinel, 1800 <i>Treatise on Insanity</i>	Dougdale, 1877 <i>The Jukes</i>	Tarde, 1912 <i>Penal Philosophy</i>	Freud, 1920 <i>General Introduction to Psychoanalysis</i>	Eysenck, 1964 <i>Crime and Personality</i>	Bandura, 1973 <i>Aggression</i>	Hirschi & Hindenlag, 1977 <i>Intelligence and Delinquency</i>	Henggeler, 1989 <i>Delinquency in Adolescence</i>	Wilson & Daly, 1997 <i>Evolutionary Psychology</i>	Lösel, 2001 <i>Behandlung 'gefährlicher Straftäter'</i>	Moffitt, 1990 <i>Neuropsychology of Crime</i>	Murray & Herrnstein, 1994, <i>The Bell Curve</i>	Bushman & Anderson, 2001 <i>Media Violence</i>		
4	Origin: Marxist theory Contemporary theory: Social conflict theory	Marx, 1848 <i>Communist Manifesto</i>	Bonger, 1916 <i>Criminality and Economic Conditions</i>	Rusche & Kirchmeier, 1939 <i>Punishment and Social Structure</i>	Vold, 1958 <i>Theoretical Criminology</i>	Chambliss & Seideman, 1971 <i>Law, Order & Power</i>	Christie, 1977 <i>Conflicts as Property</i>	Lea & Young, 1984 <i>Left Realism</i>	Hagan, 1989 <i>Structural Criminology</i>	Zehr & Mika, 1998 <i>Fundamental Concepts of Restorative Justice</i>	Sullivan & Tift, 2001, <i>Restorative Justice</i>	Gordon, 1973, <i>Capitalism, Classes and Crime in America</i>	Taylor, Walton and Young, 1973, <i>The New Criminology</i>	Dely & Chesney-Lind, 1988, <i>Feminist Theory</i>	Barak & Henry, 1999, <i>An Integrative-Constitutive Theory of Crime</i>	
5	Origin: Marxist theory Contemporary theory: Social structure theory	Piontkovski, 1924 <i>Ugolovnoje pravo RFSSR</i>	Kudriavcev, 1960 <i>Obiektivnaya strana prestuplenija</i>	Sharogrodski, 1968 <i>Determinizm i otvietsviennost'</i>	Nezkusil et al., 1978 <i>Československá kriminologie</i>	Gercenzon, 1962 <i>Sovietskaya juridiceskaya nauka</i>	Buchholz et al., 1971, <i>Sozialistische Kriminologie</i>	Balia, 1978, <i>Problemy kryminologii</i>	Kuzniecova, 1968, <i>Prestuplenije i prestupnost'</i>	Lernell, 1973, <i>Zarys kryminologii ogólnej</i>						
6	Origin: Sociological theory Contemporary theory: Social structure theory	Quetelet, 1831 <i>The Propensity of Crime in Society</i>	Durkheim, 1893 <i>The Division of Labour in Society</i>	Park et al., 1925, <i>The City</i>	Merton, 1938 <i>Social Structure and Anomie</i>	Cloward & Ohlin, 1960 <i>Delinquency and Opportunity</i>	Kornhauser, 1978 <i>Social Sources of Delinquency</i>	Wilson, 1987 <i>The Truly Disadvantaged</i>	Anderson, 1999 <i>Code of the Street</i>	Shaw et al., <i>Delinquency Areas</i>	Thrasher, 1926, <i>The Gang</i>	Sellin, 1938 <i>Culture, Conflict and Crime</i>	Lewis, 1966 <i>The Culture of Poverty</i>	Blau & Blau, 1982 <i>Crime, Shame and Reintegration</i>	Agnew, 1992 <i>General Strain Theory</i>	LaFree, 1998 <i>Losing Legitimacy</i>
7	Origin: Sociological theory Contemporary theory: Social process theory	Mead, 1917 <i>The Psychology of Punitive Justice</i>	Sutherland, 1924 <i>Criminology</i>	Sutherland, 1937 <i>The Professional Thief</i>	Cressey, 1955 <i>Changing criminals</i>	Becker, 1963, <i>Outsiders</i>	Hirschi, 1969 <i>Causes of Delinquency</i>	Schur, 1972 <i>Labeling Deviant Behavior</i>	Akers, 1977 <i>Deviant Behavior</i>	Kaplan, 1992, <i>General Theory of Deviance</i>	Heimer & Matsueda, 1994, <i>Differential Social Control</i>	Akers, 1999, <i>ocial Learning and Social Structure</i>				
8	Origin: Multifactor theory Contemporary theory: Life course theory	Glueck & Glueck, 1930 <i>500 Criminal Careers</i>	Glueck & Glueck, 1950 <i>Unraveling Juvenile Delinquency</i>	West & Farrington, 1977 <i>Delinquent Way of Life</i>	Thornberry, 1987 <i>Interactional Theory</i>	Sampson & Laub, 1993 <i>Crime in the Making</i>	Olds, 2002, <i>Prenatal and infancy home visiting by nurses</i>	Weis, 1981 <i>Social Development Theory</i>	Loeber, 1998, <i>Pathways to Delinquency</i>	Moffitt, 1995, <i>Adolescence-limited and Life-course Persistent Antisocial Behaviour</i>						
9	Origin: Multifactor theory Contemporary theory: Latent trait theory	Hathaway & Monachesi, 1953 <i>Analyzing and Predicting Juvenile Delinquency with the MMPI</i>	Wolfgang, Figlio & Sellin, 1972 <i>Delinquency in Birth Cohorts</i>	Wilson & Herrnstein, 1985 <i>Crime and Human Nature</i>	Tittle, 1995 <i>Control Balance: Toward Theory of Deviance a General</i>	Gottfredson & Hirschi, 1990 <i>General Theory of Crime</i>										
10	Origin: Polish positivist thought Contemporary theory: Positivist criminological thought	Dawid, 1886 <i>O zarazie moralnej</i>	Petrażycki, pisma zebrane, 1889-1931 <i>O nauce, prawie i moralności</i>	Znaniecki, pisma zebrane, 1919-1954, <i>Společné role uczonych</i>	Ossowska, pisma zebrane 1919-1974, <i>O człowieku, moralności</i>	Bossowski, 1945, <i>Wiadomości z nauk kryminologicznych</i>	Hołyst et al., 1974, <i>Przestępczość na Świecie; Studia Kryminologiczne...</i>	Ostrowska & Wójcik, 1986, <i>Teorie kryminologiczne</i>	Pływaczewski et al., 1994 <i>Aktualne Problemy Prawa Karnego i Kryminologii</i>	Blachut et al., 2004 <i>Kryminologia</i>						
11	Origin: International cooperation Contemporary theory: International criminal statistics	Brussels, 1853 <i>General Statistical Congress</i>	Veli Verikko, 1931 <i>Ja Pahoipitelyrikollisuuden Kehitysuunnan Ja Tason Määräämisestä</i>	Mark Ancel, 1954 <i>La Défense Sociale Nouvelle</i>	Alper & Boren, 1972 <i>Crime: International Agenda</i>	Interpol crime statistics, 1975-2009	López-Rey, 1985 <i>A Guide to the United Nations Criminal Policy</i>	Clark, 1994, <i>The UN Crime Prevention and Criminal Justice Programme</i>	Newman et al., 1999 <i>Global Report on Crime and Justice</i>	Walters, 2001, <i>Social defence and postwar reconstruction</i>	Reichel 2005 <i>Handbook of International Crime & Justice</i>	Natarajan, 2010 <i>International Crime and Justice</i>	van Dijk, 2008, <i>Justice and Development Across the World</i>			
12	Origin: International cooperation Contemporary theory: United Nations standards and norms	Standard Minimum Rules for the Treatment of Prisoners, 1955	Code of Conduct for the Law Enforcement Officials, 1979	Principles on the Prevention of Extrajudicial Executions, 1985	Principles on Restorative Justice in Criminal Matters, 2002	Declaration of the Basic Principles of Justice for the Victims of Crime and Abuse of Power, 1985	Convention against Transnational Organized Crime, 2000	Convention against Corruption, 2003	Guidelines for the Prevention of Crime, 2002	Standard Minimum Rules on Non-Custodial Measures, 1990	Guidelines for the Prevention of Crime, 2002					
13	Origin: International cooperation Contemporary theory: Genesis	Frankfurt, 1846 <i>International Penitentiary Congress</i>	London, 1872 <i>First International Penal and Penitentiary Congress</i>	League of Nations, 1923-1939 <i>Legal protection of children, delinquents & comparative penitentiary matters</i>	The Hague, 1950 <i>12th International Penitentiary Congress</i>	Geneva, 1955 <i>1st UN Congress</i>	London, 1960 <i>2nd UN Congress</i>	Stockholm, 1965 <i>3rd UN Congress</i>	Kyoto, 1970 <i>4th UN Congress</i>	Geneva, 1975 <i>5th Kongres</i>	Caracas, 1980 <i>6th UN Congress</i>	Havana, 1985 <i>7th UN Congress</i>	Cairo, 1990 <i>9th UN Congress</i>	Vienna, 2000 <i>10th UN Congress</i>	Bangkok, 2005 <i>11th UN Congress</i>	Salvador, 2010 <i>12th UN Congress</i>
14	Origin: Global events and guiding ideas Contemporary theory: Important documents, publications & scientific discoveries	French Revolution Industrialization	The Spring of Nations	First World War	October Revolution	← Repressive criminal policy →	Second World War	Establishment of the UN	Origins of the European Union	New International Economic Order 1974-1992	Origin of transformation in Central and Eastern Europe	Establishment of the European Union	Terrorist attack 9/11	Urbanization		
		American Declaration of Independence Adam Smith, <i>On the Wealth of Nations</i>	Darwin <i>On the Origin of Species</i>	Einstein <i>The Theory of Relativity</i>	Nuremberg & Tokyo Tribunals Atlantic Charter UN Charter UN Declaration of Human Rights International Covenant on Civil and Political Rights	Roosevelt <i>Four Freedoms</i> 1950 GA res. 415 (V) 1948 ECOSOC res. 155(VIII)C	Permanent sovereignty over natural resources 1962 GA res. 1803 (XVII)	Declaration on social progress & development 1969 GA res. 2542 (XXIV)	Vasak, <i>Three generations of human rights</i>	Brundtland Report 1986 GA res. 41/128	Becker, <i>The economic way of looking at behavior</i> 1991 GA res. 46/152	Annan, <i>In Larger Freedom</i>	Security Council discusses transnational organized crime as a threat to peace and security			

* Adapted from: Larry J. Siegel, *Criminology: Theories, Patterns and Typologies*, Eighth edition, Thomson-Wadsworth 2008.

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Blue Criminology

The power of United Nations ideas to counter crime globally

A monographic study

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For Aaron, Alex, Chris, Don, Jennifer, Jim, Lucie, Mary-Anne and Sabine.

For my wife Jolanta and my son Piotr.

For Freda and in the memory of G.O.W. Mueller and Vincent Del Buono.

Sławomir Marek Redo¹

Blue Criminology

The power of the United Nations ideas to counter crime globally

A monographic study

On résiste à l'invasion des armées; on ne résiste pas à l'invasion des idées.

Victor Hugo, Histoire d'un crime, 1852

Life must be lived forwards, but can only be understood backwards.

Soren Kierkegaard, Danish philosopher, 1813-1855

If to judge the development of criminology only by the number of its fallen ideas, its field would have been full of victims.

Jerzy Bafia, Problemy kryminologii. Dialektyka sytuacji kryminogennej, 1978

¹ The idea of this study originated from the topic of the author's lecture to the Council of the Faculty of Law of the University of Białystok (Poland) at his habilitation proceedings (2009).



From the Host of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice

In 2015 the Government of Qatar will host the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice. This book covers the history of all international crime prevention and criminal justice congresses, but is a forward-looking expert text that offers the global readership valuable insights into the ideas and practicalities of pursuing effective international counteraction to crime.

Qatar, the Host of several earlier United Nations crime and justice conferences, welcomes the publication of “Blue Criminology”. It is a first substantive contribution to the new perspectives of international cooperation in crime prevention and criminal justice that will broadly be discussed at the Thirteenth Congress.

We encourage academics and practitioners to study this book. We hope it may motivate them to rethink the role of the United Nations Crime Prevention and Criminal Justice Programme in its common fight against crime and contribute to the preparations of the Thirteenth Congress, and the global counteraction to crime in general.

Doha, Qatar, 2012

Foreword



The United Nations, in its 65-year history, has brought to light powerful ideas that have often been translated into international norms and laws. Sławomir Redo's *Blue Criminology* reinterprets, in criminological terms, the three major global UN ideas of freedom from fear, freedom from want, and sustainable development.

Although in the history of the United Nations there have already been criminological books, the present book issues an intellectual challenge, for two main reasons. It is probably the first book in criminology which draws on those ideas in an overarching, thought-provoking and practical way, inter-relating the past with the present and future through its historical lens. This perspective provides us with what Sir Winston Churchill observed, namely that "The farther backward you can look, the farther in the future you are likely to see". Secondly, the book highlights the global dimensions of crime and justice issues and showcases how the United Nations' crime prevention and criminal justice mandate has expanded, especially since the 1990s. This book tours the United Nations criminological horizon in three ways.

Firstly, it emphasizes the importance of an efficient and humane criminal justice system to effectively address transnational organized crime, money-laundering, sea piracy, terrorism and corruption. Secondly, the book stresses that crime prevention is the first imperative of criminal justice. And thirdly, it highlights tendencies, trends, mega or major developments, rather than focuses on minor crime prevention and criminal justice issues.

The publication of this book shows that in global criminology, United Nations criminology not only has its rightful place, but also that the academic

world should attentively and vigorously pursue its research interest in the United Nations world. The book is an interface between the two. It offers a common vocabulary around which scholars and practitioners can engage in shared and informed discourse.

The United Nations has long been defining global norms and setting global goals. This book provides an illuminating account of how over the past 60 years of its crime prevention and criminal justice programme, the United Nations managed to advance the global objective of responding to crime.

This book not only seeks to capture major international crime prevention and criminal justice developments spanning from the end of the 18th century until now. Its purpose may be best stated in UNESCO's constitution: "Since wars begin in the minds of men ... it is in the minds of men that the defences of peace must be constructed".

This book convincingly communicates this message to readers. A message that should continue to be at the centre of global criminological discourse and international criminal policy action, including education and training.

Dr. Thomas Stelzer

United Nations Assistant
Secretary-General for Policy Coordination and
Inter-Agency Affairs

United Nations, New York, 2012

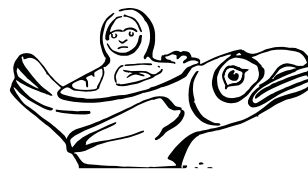


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prevention internationally and in various UN human rights and criminal justice fora including: Rapporteur for the UN Expert Group Meeting on "Elements of Responsible Crime Prevention: Addressing Traditional and Emerging Crime Problems", Buenos Aires (1999); Observer to the Council of Europe Working Group Meeting on Partnerships in Crime Prevention (2000-02); Co-Chair of the UN Expert Group Meeting to Develop Draft Guidelines for the Prevention of Crime (Vancouver 2002) that became UN Guidelines (2002); Representative at Expert Group Meeting to Develop Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (2003) that became UN Guidelines (2005); Representative to the UN Expert Group Meeting to develop a questionnaire for UN Member States on the use and application of standards and norms in relation to crime prevention and technical assistance (2006); Co-organizer with UN-Habitat and UNODC of numerous prevention workshops at the World Urban Forum (Vancouver 2006); Plenary Speaker at the Commission on Crime Prevention and Criminal Justice on the theme of Urban Crime Prevention (2007); Representative to the UN Expert Group Meeting on Making the Guidelines on Prevention Work (Berlin, 2008). Member of the Board of Directors of the International Bureau of Children's Rights (2006~).

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Facilitator of the UNDP Internet discussion forum, Rule of Law in Conflict and Post-Conflict Situations (cprp-net@groups.undp.org), 2009~. Chief of the United Nations Human Rights Office in Iraq (2004 - 2006), responsible for monitoring the human rights situation and participating in the reconstruction of Iraq; involved in a number of capacities with the United Nations Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories (1969 - 1988). During this time, he also assisted the Commission on Human Rights to establish the special rapporteur system, which is now one of the most important human rights tools of the United Nations. He held a senior position with OHCHR from 1996 to 1999. There he pioneered the now universally accepted "rights-based approach" to development. He was secretary to the Commission on Human Rights (1978-1991, 1993-1994). In between those periods, he was the coordinator for the World Conference on Human Rights (Vienna, 1993).

Michael PLATZER

BA, MA, JD - Cornell University; PhD (Government) Columbia University; M.Div (Comparative Ethics), Union Theological Seminary, associated with Columbia University (New York, USA). Liaison Officer for the Academic Council on the United Nations and Chair Vienna NGO Alliance for Crime Prevention and Criminal Justice. Served 34 years in the United Nations Secretariat in various capacities in the Office of the Secretary General, human rights, technical cooperation, UN-Habitat, UNDP, peacekeeping, and the Office on Drugs and Crime. Guest lecturer at the Diplomatic Academy of Vienna (Austria), University of Graz (Austria), Law School of Vienna University, Austrian Centre for Peace Studies (Schlaining), Bond University (Australia), Sydney University Centre for Peace Studies, University of Tillburg (Netherlands), University of Otago (New Zealand), University of the West Indies (Barbados, Jamaica, Trinidad), Kingston University (UK) and Cornell University (USA). Participant at the Twelfth United Nations Congress Workshop "International Criminal Justice Education for the Rule of Law" (2010); organizer ACUNS conference "United Nations and New Social Media" (Wels, 2007), "Using the New Information Technology: Creating a Web.2 Environment for Human Rights", contribution to Vienna World Conference on Human Rights (2008). Producer/Director of teaching videos "Making Standards Work" (SMRs for the Treatment of Prisoners), "The Forgotten Ones" (Victim Rights), and "Crime Prevention Works". Member of the European Society of Criminology, Academy of Criminal Justice Sciences, World Society of Victimology, International Catholic Commission of Prison Pastoral Care, Penal Reform International, and the United Nations Associations of Austria and of Australia.

Christopher RAM

From 1999-2003, member of UNODC's Commission Secretariat and Legal Affairs Branch responsible for the questions of Rule of Law, cybercrime, transnational economic crime. Represented the UNODC in work on the prevention and control of corruption, trafficking in persons, and implementation of the United Nations Convention against Transnational Organized Crime. Since his return to Canada (2003) he has served as a member of Canada's dele-

gation to the United Nations Commission on Crime Prevention and Criminal Justice and as Rapporteur and member of several substantive UN expert groups in the same subject areas.

Jolanta REDO

Permanent Resident Representative of the Asia Crime Prevention Foundation (non-governmental organizations in general consultative status with the United Nations) to the United Nations Office at Vienna (Austria) and Geneva (Switzerland). 1999-2002: Representative of the Asia Crime Prevention Foundation for Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan and Uzbekistan. Since 1979 Barrister at Law, registered by the Supreme Council of the Bar of Poland.

Emil WANDZILAK

Started his career in 1981 with the United Nations Office located at Vienna (Austria). He was responsible for the establishment of the Reference Centre for what was then known as the United Nations Crime Prevention and Criminal Justice Branch. At the beginning of 2006, he was reassigned to what is now known as the Strategic Threat Analysis Section (Division for Policy Analysis) as a researcher. Prior to joining the United Nations, he graduated in 1979 from Rutgers University, U.S.A., with a degree in Political Science (B.Sc.) and in 1983 from Webster University, Austria, with a degree in Management (M.Sc.).

About the Author

Sławomir Marek REDO had worked for the United Nations Office on Drugs and Crime (1981-2011), most recently in its Justice Section/Division for Operations. As a Senior Crime Prevention and Criminal Justice Expert, he had been involved in technical assistance projects and activities implementing the United Nations crime prevention and criminal justice standards and norms in Central Asia to fight organized crime. He also worked on crime prevention cooperation among developing countries (South-South); urban crime prevention; crime prevention and civilian private policing; virtual forum against cyber crime; on-line international crime prevention and criminal justice education. He was the Coordinator of the workshops at the Twelfth United Nations Congress on Crime Prevention and Criminal Justice (Salvador de Bahia, Brazil, 2010). In addition to these tasks, he was actively involved in the organization and servicing of the Naples World Ministerial Conference on Organized Transnational Crime (1994), and until early 1999, in the preparations

for the elaboration of the United Nations Convention against Transnational Organized Crime (2000). Currently, he serves as the Chairman of the Russian Eastern European and Eurasian Studies Center at the University of Graz (Austria).

He holds a Ph.D. degree in law and is a Habilitated Doctor in Law and Criminology (Poland). He has been guest lecturer/speaker at many universities and institutes worldwide, and has published about 50 articles, mainly on the United Nations law and practice of crime prevention and criminal justice. He published three and co-edited three other books, including a cross-cultural book, *For the Rule of Law. Criminal Justice Teaching and Training @cross the World* (Helsinki-Seoul 2008).

He is a member of the Academic Council on the United Nations System, a non-governmental organization in general consultative status with the United Nations Economic and Social Council, and the Austrian Society for Criminal Law and Criminology.

About the Graphic Design

“One picture is worth a thousand words”. This saying explains why the graphics of this book play such an important function. Most of the graphics in this book come from the collection of clip art by Jiri Moucka, a Czech graphic artist, and these seem to be especially well-fitting. Written in a “back to the future” manner, the book is aided by the futuristic graphic design of Moucka’s “Blanco Man” in various configurations and/or with various artefacts. They range from a single-placed individual confronted with the challenge of entering into meandering issues that can be successfully solved only by acting in concert with other actors, to the same individual who at the conclusion of this book is himself meandering. At the end of the foreword and afterword of the book are copyright images of Canadian West Coast native art, courtesy of Bomamfg. According to native belief, the Raven shown in the Foreword symbolizes prestige and knowledge. The “bear and frog” image shown at the end of the afterword symbolize stability and communication.

The visuals (graphs, photographs, figures, tables and movie documentaries) are intended to provide a more comprehensive picture of the information contained in the book. Save one graph (Figure 6), all other graphs, figures and tables are typical contemporary visual representations and/or metaphors. Figure 6, which shows “Progressive development of international action against crime in the world, 1764-2010”, is atypical because it does not follow linear calendar infographics, and instead depicts a cyclical-time development of action as a three-dimensional spiral. Although such a historiographic metaphor may be rare in contemporary criminological publications, it is meant to communicate that when interpreting sequences of events in time, not only a linear perspective (dominating Occidental thought) but also a cyclical (Oriental) time perspective is relevant. Both contribute to the *Dialogue among Civilizations* to which the United Nations has committed itself since 1945.

Photographs nos. 1, 9-12, 14-17, 20, 21 and 24 were obtained from “UN Photo”, Department of Public Information, United Nations Headquarters, New York, USA. Photographs nos. 2, 22 and 28 were obtained from the collection of Ms Terhi Viljanen (HE-UNI). Photographs nos. 5 and 13 were obtained from the collection of ISPAC. Photograph No. 25 was obtained from the collection of the RWI. Photographs nos. 29 and 40 were obtained from the collection of “Fotostudio Pfeifer” (Vienna, Austria). All other numbered photographs come from the author’s own collection. The photographs in Figure 7 of United Nations criminal justice reformers come from the respective collections of Mr Eduardo Vetere, AIC, RWI and UNAFEI. All photographs listed in this paragraph are published with the respective permissions. Other photographs in the book come from the Wikipedia or other public domain collections. The United Nations movie documentaries may be shown subject to acknowledgment of the original copyright source contained in the movie files.

The back cover photograph of the Author was taken in the Austrian National Library at the Imperial Palace Hofburg (Vienna), the largest baroque library in Europe. Against the background of some 200,000 books held in its State Hall, one of the most beautiful such halls in the world (on the photograph), is shown the celestial globe (1693) by Vincenzo Maria Coronelli (1650-1718), a cosmologist, cartographer and early Enlightenment encyclopedist. In this book, it symbolizes revolving global knowledge in the world in which reciprocal academic and practical exchange is pursued.

Славомир Марек РЕДО

Синяя Криминология

Способность идей Организации Объединенных Наций противостоять преступлению глобально

Монографическое исследование**Резюме****ЧАСТЬ ПЕРВАЯ. ПРОТИВ СТРАХА И НУЖДЫ, ЗА УСТОЙЧИВОЕ РАЗВИТИЕ**

Программа Организации Объединенных Наций по уголовному правосудию и борьбе с преступностью основывается на более чем двухсотлетнем развитии преступления и правосудия. Все началось с реформ международного уголовного права, начатой классической школой уголовного права Чезаре Беккарии (1764) и первыми сравнительными уголовными рекомендациями Джона Говарда (1777). Его международные начала могут быть приписаны Международному Уголовному Конгрессу во Франкфурте на Майне (1846), а также к последующему ряду двенадцати международных уголовных конгрессов (Лондон, 1872 – Гаага, 1950). Его программные начала были не только развиты выше упомянутыми достижениями, но и все более заметной политикой социального благосостояния в эпоху индустриализации и урбанизации (модернизации). Особенно во второй половине XIXго века и до сих пор модернизация встала на европейскую повестку дня и распространилась по всему миру. С того времени, мандат Организации Объединенных Наций по уголовному правосудию и борьбе с преступностью унаследовал программный и всегда динамически изменяемый фокус на «социальное», а затем «несовершеннолетнее» и «уголовное» правосудие, с особым отношением к положению детей в системе правосудия, начиная с вопроса их одиночного заключения и благотворительных опасений в отношении их благосостояния.

После Второй мировой войны, много детей и взрослых как «грядущие поколения» (или как-либо другие подобные понятия) были в центре международного внимания и действий. В 1945 году Организация Объединенных Наций, крупнейшая пацифистская межправительствен-

ная организация, опасаясь повторения ужасов войны, которая уничтожила миллионы жизней и основы существования и привела к бедности народов и наций, начала достигать поставленную в ее Хартии цель предотвратить повторение случившегося путем поддержки социального и экономического развития («устойчивое развитие») и прав человека (1948-1987).

В конце концов, с начала 1990-х годов, развивающиеся и развитые страны (члены Организации Объединенных Наций) совместно пришли к ряду многосторонних соглашений, которые открыли путь к практической реализации общей борьбы с проблемами безопасности, включая безопасность людей и городов, а также реформы правосудия и сектора безопасности.

На этом фоне, научное исследование и политика Организации Объединенных Наций в области уголовного права отреагировали на основные идеи свободы от страха и нужды и идею устойчивого развития и либо самостоятельно или совместно внесли в них свою долю.

ЧАСТЬ ВТОРАЯ. МАНДАТ ОБЪЕДИНЕННЫХ НЕЦИЙ ПО УГОЛОВНОМУ ПРАВОСУДИЮ И БОРЬБЕ С ПРЕСТУПНОСТЬЮ

С 1946 года, мандат Организации Объединенных Наций по уголовному правосудию и борьбе с преступностью постепенно создал в своих рамках различные технические аспекты социально-экономического развития. Все началось с обращения с детьми / подростками и взрослыми, и уже в 1955 году на первом Конгрессе Организации Объединенных Наций по борьбе с преступностью и обращению с правонарушителями были установлены новаторские Минимальные стандартные правила обращения с заключенными (SMR).

Двенадцатый конгресс Объединенных Наций по уголовному правосудию и борьбе с преступностью, который с тех пор проводится раз в пять лет (1955-2010), а также и соответствующие меры, принятые сначала более объёмным и институциональным экспертным (1950-1991), а затем межправительственным механизмами (комиссия по уголовному правосудию и борьбе с преступностью) подготовили для Экономического и Социального Совета, Генеральной Ассамблеи и Совета Безопасности (некоторых органов Организации Объединенных Наций) осуществимые рекомендации, которые эти органы соответственно объявили как закон Организации Объединенных Наций по борьбе с преступностью.

Наиболее заметными среди мягких прав Организации Объединенных Наций были вышеупомянутые SMR, договорное право, конвенции Организации Объединенных Наций против транснациональной организованной преступности (2000) и коррупции (2003). Между 1955-2010 Программа Организации Объединенных Наций по уголовному правосудию и борьбе с преступностью приняла в целом около 60 документов мягкого права, и Управление Организации Объединенных Наций по наркотикам и преступности (составная часть Программы) было хранителем этих инструментов, а также и трех конвенций Организации Объединенных Наций против наркотиков и психотропных веществ (1961, 1972, 1988), и 16 универсальных правовых договоров о борьбе с терроризмом.

Именно эти документы нынче являются законодательной сущностью «голубой криминологии». Со временем она прошла через различные этапы развития с большим количеством компонентов социальной обороны (1946-1990). В настоящее время они заменяются другими идеями, ориентированными на социальное обеспечение, и программами, направленными на продолжение цели гуманного и эффективного противодействия преступности, наркотикам, терроризму и виктимизации.

Установление стандартных правил продолжается (и включает в себя юридические и дипломатические навыки ведения переговоров, из-за чего они все более содержат темы Организации Объединенных Наций развития и верховенства закона). Выполнение всех этих принятых международно-правовых документов в области международной реформы уголовного правосудия методом технической помощи, онлайн-обучения

по существу стало обратной стороной одной медали. Уроки, извлеченные из разработки этих правовых инструментов, увеличили доступный запас экспертных знаний, особенно необходимых для более успешного чем ранее проведения различных миссий Организации Объединенных Наций по поддержанию мира, которые применяют принципы Организации Объединенных Наций по верховенству закона на практике.

На картине международной реформы уголовного закона, которая продолжается в мире с момента ее научного начала в второй половине XIXго века, и которая, в частности, была динамична и плодотворна после периода «холодной войны» (1945-1989), когда в пост-конфликтных странах начался переходный процесс в области правосудия, можно наблюдать не только новые формы все более глобализованных преступлений, но и постепенное сближение правовых режимов для их контроля, и более медленное, но очевидное развитие самой борьбы с городской и другой преступностью на основе сотрудничества и партнерства. В условиях борьбы с преступностью, путем достижения баланса между «контролем» и «борьбой», международная реформа уголовного правосудия включает в себя в настоящее время альтернативы тюремному заключению, восстановительное правосудие, и наконец-то, оказание помощи пострадавшим и компенсацию. Это относится как к старым так и к новым формам преступности, в том числе и к транснациональной преступности, включая киберпреступность как одну из ее самых современных и сложных форм.

Итоги работы Организации Объединенных Наций в некоторых из этих областей являются удовлетворительными, а в некоторых нет. Реформаторы международного уголовного правосудия, среди которых были руководящие и технические кадры Организации Объединенных Наций, сосредотачивались на оказании помощи развивающимся странам при изменении их правового и уголовного правосудия в отношении таких преступлений в контексте меняющихся международных рекомендаций по вопросам уголовной политики и идеологических концепций прогресса методом различных, хотя порой и несовместимых, форм модернизации. Со снижением независимости от Секретариата Организации Объединенных Наций, как одного из главных органов Организации (в отличие от

первоначальных идеалов в Хартии Организации Объединенных Наций), сотрудники УНП ООН и его предыдущие административные единицы были предметом различных споров идеологического, политического и уголовно-политического плана, затрагивающих целостность и производительность Организации.

Внебюджетно финансируемые программы технической помощи и проекты, которые были частью программы Организации Объединенных Наций с первых лет ее существования, в первое десятилетие XXIго века преобразовались в деятельность подготовки способности и профессиональной компетентности по борьбе с преступностью на основе фактических данных, включая национальную ответственность и политические обязательства с целью устойчивого изменения. Самым последним побочным эффектом подавляющей зависимости от внебюджетного финансирования оказались изменения состава сотрудников ООН с дальнейшей эрозией изначальной концепции их целостности.

Стандартами, нормами и передовой практикой Организации Объединенных Наций по уголовному правосудию и борьбе с преступностью (опубликованными и показанными по всему миру) были поддержаны 16 институтов из сети Программы и многочисленные неправительственные организации, чьи национальные, региональные и межрегиональные заявки были выполнены УНП ООН, через развития партнерских отношений, в ответ на меняющиеся требования: либо включая противодействия транснациональной организованной преступности и коррупции или преступности в городах и среди молодежи.

ЧАСТЬ ТРЕТЬЯ. НАЗАД В БУДУЩЕЕ

Несмотря на крупномасштабный сравнительный правовой и социально-экономический подход к борьбе с преступностью, УНП ООН применяет и нейробиологические и аналогичные выводы на основе фактических данных, существенные для индивидуального риска и защитных факторов насильственных преступлений совершаемых молодежью и злоупотребления наркотиками, опираясь на научные успехи, достигнутые в последнее время.

Будь она микро-или макро-ориентированная, «синяя криминология» в основном направлена на «народы» (общины / физические лица) и преследует частично другой метод, чем академические криминологии, для осуществления мандата Организации Объединенных Наций.

Данная книга документирует, что преобразующая способность Программы Организации Объединенных Наций по уголовному правосудию и борьбе с преступностью была значительной, но в некоторых областях больше, чем в других. Программа приводится в действие, иногда совместно иногда отдельно, научными и межправительственными идеями. Она превращает сама себя в еще более преобразующие, мощные и целенаправленные действия, которые могут способствовать миру и безопасности в мире. Новая дисциплина «Исследование Организации Объединенных Наций» была выделена в данном монографическом исследовании как один из потенциально влиятельных и практических инструментов, чтобы распространить идею Организации Объединенных Наций по уголовному правосудию и борьбе с преступностью на весь мир.

Sinopsis

PARTE I. CONTRA EL MIEDO Y CONTRA LA NECESIDAD, POR EL DESARROLLO SOSTENIBLE

El Programa de las Naciones Unidas en materia de prevención del delito y justicia penal hunde sus raíces en más de dos siglos de avances en materia de criminalidad y justicia. Estos avances comenzaron con la reforma penal internacional abanderada por la escuela penal clásica de Cesare Beccaria (1764) y los primeros estudios penitenciarios comparados de John Howard (1977). El comienzo de su andadura institucional internacional puede atribuirse al Congreso Internacional Penitenciario de Frankfurt am Main (1846), y a los posteriores veinte congresos penales y penitenciarios (Londres, 1872, - La Haya, 1950). Sus fundamentos programáticos encontraron también desarrollo en una política social del bienestar incipiente en la etapa de la industrialización y la modernización. De manera especial a partir de la segunda mitad del siglo XIX, la modernización ocupó la agenda europea y se extendió por el mundo desde entonces. Más tarde el mandato de Naciones Unidas en materia de prevención del delito y justicia penal heredaría programática y dinámicamente esa perspectiva de la justicia “social” “juvenil” y “penal, especialmente en relación a la posición de los menores en el sistema judicial, su reclusión, y a preocupaciones filantrópicas referentes a su bienestar.

Tras la Segunda Guerra Mundial, la suerte de menores y adultos - representada en la noción de “las generaciones futuras” (u otras similares)- se convirtió en objeto de atención y acción internacional. En 1945, las Naciones Unidas, la mayor organización intergubernamental pacifista creada hasta la fecha, temerosa de la posible recurrencia de los horrores de la guerra que destruyeron millones de vidas y de formas de vida, y que empujaron a la pobreza a pueblos y naciones, puso en marcha los mecanismos de su Carta fundacional para prevenir esa recurrencia promoviendo el desarrollo social y

económico (“desarrollo sostenible”) y los derechos humanos (1948-1987).

Desde principios de los noventa, países en desarrollo y desarrollados (miembros de las Naciones Unidas) han aunado esfuerzos en un buen número de iniciativas multilaterales, destinadas a facilitar la operatividad de la lucha en común contra los desafíos a la seguridad, lo que incluye la seguridad humana y urbana, la justicia y la reforma del sector.

En este contexto, tanto la investigación académica como la política criminal de Naciones Unidas han contribuido autónoma y conjuntamente a expandir las ideas fundamentales de la libertad frente al miedo y frente a la necesidad, así como del desarrollo sostenible.

PARTE II. EL MANDATO DE NACIONES UNIDAS EN MATERIA DE PREVENCIÓN DEL DELITO Y JUSTICIA PENAL

Desde 1946, el mandato de Naciones Unidas en materia de prevención del delito y justicia penal ha extendido su alcance hacia distintas facetas técnicas del desarrollo social y económico. Comenzó orientado al tratamiento de menores, jóvenes y adultos, y ya en 1955 tuvo su primera plasmación en el Primer Congreso de Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, con sus pioneras “Reglas Mínimas de Tratamiento Penitenciario”.

El decimosegundo de los congresos de Naciones Unidas sobre prevención del delito y justicia penal, celebrados quinquenalmente desde entonces (1955-2010), y las actividades complementarios primero en forma de asesoramiento experto (1950-1991) y después a través de mecanismo sustantivo intergubernamental (la Comisión sobre Prevención del Delito y Justicia Penal) han realizado recomendaciones viables al Consejo Económico y Social, la Asamblea General y el Consejo de Seguridad (algunos de los

organismos de Naciones Unidas), recomendaciones reconocidas como la legislación de Naciones Unidas en materia penal.

Entre las normas más relevantes en materia penal generadas en Naciones Unidas se encuentran las ya mencionadas “Normas mínimas de tratamiento penitenciario”, así como los tratados, las convenciones contra la criminalidad organizada internacional (2000) y la corrupción (2003). Entre 1955 y 2010 el Programa de Naciones Unidas en materia de prevención del delito y justicia penal adoptó alrededor de sesenta instrumentos de *soft law*, y la Oficina de Naciones Unidas contra las Drogas y el Delito (que forma parte del programa) ha sido el custodio de esos instrumentos tanto de *soft law*, como convencionales, además de de las tres convenciones de Naciones Unidas contra las drogas y las sustancias psicotrópicas (1961, 1972, 1988), y de 16 tratados universales contra el terrorismo.

Todo esto conforma la esencia legislativa de una “*criminología azul*”. Una criminología que a lo largo del tiempo, ha conocido distintas etapas, con un importante protagonismo de la defensa social (1946-1990), actualmente desplazado en favor de otras iniciativas de naturaleza más social y asistencial, orientadas hacia el objetivo de un control humano y efectivo del delito, las drogas, el terrorismo y la victimización.

La producción y fijación de estándares continúa (y requiere de habilidades jurídicas y diplomáticas que aseguren su progresivo desarrollo y el “Estado de Derecho” en cuanto a las normas de Naciones Unidas). En la implementación de todos los instrumentos internacionales adoptados en materia de justicia penal, la asistencia técnica y la capacitación *online* y presencial se han convertido en la otra cara de la moneda. Las lecciones aprendidas durante la elaboración de esos instrumentos jurídicos han nutrido un acervo de conocimiento experto especialmente necesario cuando se aspira a lograr una implementación más efectiva de los principios del estado de derecho de Naciones Unidas en sus varias misiones de mantenimiento de la paz.

El movimiento internacional de reforma del derecho penal ha tenido continuidad desde sus comienzos científicos en la segunda mitad del siglo XIX, siendo particularmente prolífico después del periodo de la Guerra Fría (1945-1989), etapa en la que aparece la noción de justicia transicional orientada países que han sufrido conflictos armados. A la vez, se ha asistido a la aparición de nuevas formas de delincuencia globalizada, así como a una

gradual convergencia de los regímenes jurídicos para controlarlas, y una más lenta pero evidente tendencia a la cooperación en materia de prevención de la delincuencia urbana y de otros tipos. Además de perseguir el control del delito, el reformismo penal internacional busca un balance entre “control” y “prevención”, abordando materias como las alternativas a la prisión, la justicia restaurativa, y en último lugar, la asistencia y compensación de las víctimas. Todo ello en relación con viejas y nuevas formas de criminalidad, incluyendo el crimen transnacional y la emergente cibercriminalidad como una de sus manifestaciones más sofisticadas y desafiantes.

El historial de Naciones Unidas en algunos de estos campos es satisfactorio, y en otros no lo es. Los reformadores penales internacionales, entre los cuales se cuentan tanto altos cargos como personal técnico de Naciones Unidas, han concentrado sus esfuerzos en asistir a países en desarrollo a la hora de modificar sus ordenamientos jurídico-penales, en un contexto de nociones político-criminales cambiantes y de concepciones ideológicas del progreso, plasmadas a través de modelos de modernización a veces incompatibles. Con el declive (contrario a los ideales originarios de la Carta de Naciones Unidas) de la independencia del Secretariado de Naciones Unidas como uno de los órganos principales de la organización, el personal de la UNODC y los organismos administrativos que la precedieron han sido objeto de diversas controversias ideológicas, políticas y político-criminales, que han afectado a la integridad de la Organización y a su rendimiento.

Los programas de asistencia técnica financiados extrapresupuestariamente y los proyectos que fueron parte del programa de Naciones Unidas desde sus primeros años de andadura, se han convertido en la primera década del siglo XXI en programas empíricos de capacitación y formación contra el delito que implican el control nacional y el compromiso político hacia los ideales del cambio sostenible. En los últimos tiempos, como efecto secundario de la abrumadora dependencia de fondos extrapresupuestarios, se ha producido una transformación de la plantilla de Naciones Unidas y una erosión de la concepción original acerca de su integridad.

En cuanto a la labor de promoción de los estándares y buenas prácticas de Naciones Unidas en materia de prevención del delito y justicia penal (publicadas y diseminadas a nivel mundial), su aplicación nacional, regional e interregional ha sido llevada a cabo por la UNODC, los institutos que integran la red del Programa de Prevención del Delito y Justicia

Penal de las Naciones Unidas (PNI), y numerosas organizaciones no gubernamentales, a través de distintas iniciativas conjuntas, y en respuesta a demandas cambiantes: desde la lucha contra la criminalidad organizada transnacional, hasta el control de la corrupción o el tratamiento de la delincuencia urbana o juvenil.

PARTE III. REGRESO AL FUTURO

Junto con la aproximación a gran escala, comparativa y socioeconómica, al control del delito, la UNODC recurre también al conocimiento neurobiológico y a otros datos empíricos fundamentados en avances académicos recientes con relevancia sobre la individualización del riesgo y las estrategias de protección en materia de delincuencia juvenil violenta y el abuso de drogas.

Ya sea micro- o macro- orientada, la “criminología azul” tiene su objeto de atención en “la gente” (comunidades e individuos), y en la implementación del mandato de Naciones Unidas utiliza metodologías parcialmente distintas a las de la criminología académica.

Este libro documenta cómo el poder transformador del Programa de Naciones Unidas en materia de Prevención del Delito y Justicia Penal ha sido considerable, pero en algunos aspectos más que en otros. Está presidido, a veces conjunta y a veces separadamente, por ideas tanto académicas como intergubernamentales. Se compromete con una acción aún más transformadora, poderosa y atenta, que pueda contribuir a la paz y la seguridad en el mundo. Los “Estudios sobre Naciones Unidas”, una disciplina emergente, son identificados en este volumen como uno de los instrumentos potencialmente influyentes y prácticos a la hora de conseguir que el mensaje de Naciones Unidas en materia de justicia penal se extienda por el mundo.

La figura 6 muestra de forma gráfica el desarrollo progresivo de la acción internacional contra el delito en el mundo, desde sus comienzos en 1764 (Cesare Beccaria) hasta 2010, el año del Decimosegundo Congreso, y de la reunión del Consejo de Seguridad en la que la criminalidad organizada transnacional fue declarada amenaza a la paz y la seguridad internacional. La figura muestra en su parte izquierda los datos de importantes conferencias internacionales, y en la derecha ideas que configuraron progresivamente la política criminal de Naciones Unidas.

Sławomir Marek Redo

Criminologie onusienne

Le pouvoir des idées des Nations Unies dans la lutte contre le crime à l'échelle mondiale.

Une étude monographique.

Synopsis

L'objectif de la dernière section de cette étude consiste à présenter en langage clair un résumé de nature uniquement descriptive des tendances criminologiques majeures ayant modelé le programme des Nations Unies pour la prévention du crime et la justice pénale tel qu'on le connaît.

Pour ce faire, on a extrait l'essentiel du texte (corps et boîtes de texte) afin de présenter une synthèse axée sur l'action.

PARTIE I, CONTRE LA PEUR ET LA PAUVRETÉ, POUR LE DÉVELOPPEMENT DURABLE

Le programme des Nations Unies pour la prévention du crime et la justice pénale est fondé sur plus de deux siècles d'évolution en matière de crime et de justice. Ces derniers ont commencé avec les travaux internationaux de réforme en matière pénale de l'école de droit pénal classique de Cesare Beccaria (1764) et les premières recommandations relatives à l'étude comparée de la détention formulées par John Howard (1777). Les débuts institutionnels du programme, à l'échelle internationale, peuvent être attribués au Congrès pénitentiaire international de Francfort-sur-le-Main (1846) et à la série subséquente de douze congrès internationaux en matière pénale et pénitentiaire (Londres, 1872-La Haye, 1950). Ses débuts programmatiques ne découlent pas seulement de ces réalisations, mais également des politiques d'aide sociale qui ont gagné en importance à l'époque de l'industrialisation et de l'urbanisation (modernisation). Dans la deuxième moitié du 19^e siècle, en particulier, la modernisation a touché l'Europe, avant de gagner le monde entier. C'est à ce moment que le mandat des Nations Unies concernant la prévention du crime et la justice pénale a gagné une perspective programmatique et dynamique de justice « sociale », puis de justice « pour les jeunes » et de justice « pénale », spécialement axée sur la présence des enfants dans le

système de justice, à commencer par leur isolement cellulaire et les préoccupations philanthropiques liées à leur bien-être.

Après la Deuxième Guerre mondiale, en tant que représentants des « générations à venir » (ou suivant d'autres notions similaires), les enfants et les adultes ont été ciblés par l'attention et les mesures internationales. En 1945, les Nations Unies, la plus grande organisation intergouvernementale pacifiste de tous les temps, craignant la reprise des horreurs de la guerre qui avaient mis fin à des millions de vies et de moyens de subsistance, en plus de causer la pauvreté chez les peuples et les nations, se sont attelées à la réalisation de l'objectif établi dans sa charte visant à éviter qu'une telle situation se reproduise en favorisant le développement économique et social (développement durable) et les droits de l'homme (1948-1987).

Ainsi, à partir du début des années 1990, les pays industrialisés et les pays en voie de développement (membres des Nations Unies) ont, ensemble, élaboré un certain nombre d'accords multilatéraux qui ont ouvert la voie à l'opérationnalisation de la lutte commune contre les défis liés à la sécurité, dans laquelle s'inscrivent les réformes dans les secteurs de la sécurité, de la justice et de la sécurité des personnes et des villes.

Dans ce contexte, la recherche universitaire et les politiques des Nations Unies en matière pénale, deux éléments qui reposaient sur les concepts de l'affranchissement de la peur et de la pauvreté, et de développement durable, ont, séparément ou ensemble, contribué à ces trois idées fondamentales.

PARTIE II, LE MANDAT DES NATIONS UNIES POUR LA PRÉVENTION DU CRIME ET LA JUSTICE PÉNALE

Depuis 1946, diverses facettes techniques du développement social et économique se sont graduellement intégrées au mandat des Nations Unies pour

la prévention du crime et la justice pénale. Ceci a commencé par le traitement réservé aux jeunes et aux adultes, et déjà en 1955, dans le cadre du premier Congrès des Nations Unies pour la prévention du crime et le traitement des délinquants, on établissait l'ensemble de règles minima pour le traitement des détenus, un jalon important.

Le congrès des Nations Unies pour la prévention du crime et la justice pénale, tenu tous les cinq ans depuis (12 de 1955 à 2010) et les mesures connexes prises dans le cadre du mécanisme d'expert qui s'est peu à peu spécialisé et institutionnalisé (1950-1991), avant de devenir un mécanisme intergouvernemental de fond (Commission pour la prévention du crime et la justice pénale), ont donné lieu à des recommandations viables à l'intention du Conseil économique et social, de l'Assemblée générale et du Conseil de sécurité (tous des organes des Nations Unies), recommandations qui ont été déclarées constituer le droit des Nations Unies en matière de lutte contre la criminalité.

Parmi les instruments non contraignants des Nations Unies, les plus importants sont l'ensemble des règles minima mentionné ci-dessus, le droit des traités, les conventions des Nations Unies sur la criminalité transnationale organisée (2000) et contre la corruption (2003). Entre 1955 et 2010, le programme des Nations Unies pour la prévention du crime et la justice pénale a adopté environ 60 instruments juridiques non contraignants et l'Office des Nations Unies contre la drogue et le crime (ONUDD) (dont relève le programme) est le gardien de ces instruments non contraignants et relevant du droit des traités, en plus de trois conventions des Nations Unies contre le trafic illicite de stupéfiants et de substances psychotropes (1961, 1972, 1988) et de 16 traités universels contre le terrorisme.

Les éléments ci-dessus constituent, de nos jours, l'essence législative de la *criminologie onusienne*. L'évolution de celle-ci s'est faite en de nombreuses étapes au fil du temps sur le fondement, en grande partie, de notions relatives à la défense sociale (1946-1990), remplacées aujourd'hui par d'autres idées et programmes de bien-être social visant à faire avancer l'objectif de lutter contre la criminalité, la drogue, le terrorisme et la victimisation avec respect et efficacité.

L'établissement de normes se poursuit (et nécessite des habiletés de négociation, aux plans juridique et diplomatique, afin d'assurer l'évolution progressive de ces normes ainsi que l'application des instruments des Nations Unies relatifs à l'état de droit). La mise en œuvre de tels instruments juridiques internationaux

dans le cadre de la réforme de la justice pénale internationale par l'intermédiaire d'assistance technique sur le terrain et de formation (en ligne ou non) est sensiblement devenue l'envers de la même médaille. Les leçons apprises à la suite des mesures prises pour faire fonctionner ces instruments juridiques ont eu pour effet d'accroître l'expertise disponible, ce dont on avait particulièrement besoin pour mieux réussir les missions de maintien de la paix des Nations Unies en appliquant les principes des Nations Unies relatifs à la primauté du droit.

On observe non seulement de nouvelles formes de crimes de plus en plus mondialisés, mais aussi une convergence graduelle des régimes juridiques visant leur répression, ainsi que la mise en place, lente mais manifeste, de mesures de prévention des crimes (en milieu urbain ou autre) axées sur la collaboration et les partenariats. Ceci a commencé dans le cadre général de la réforme du droit pénal international qui se poursuit de par le monde depuis ses débuts scientifiques dans la deuxième moitié du 19^e siècle et qui a été particulièrement dynamique et prolifique après la guerre froide (1945-1989), lorsque se sont amorcés les travaux de transition en matière de justice dans les pays touchés par le conflit. La réforme en matière de justice pénale internationale lutte contre la criminalité en visant l'atteinte d'un équilibre entre la répression et la prévention, mais, aujourd'hui, fait intervenir la justice réparatrice, des options de rechange à l'emprisonnement ainsi que, enfin, l'aide aux victimes et l'indemnisation de celles-ci. Ces éléments concernent les anciens et les nouveaux types de crimes, notamment la criminalité transnationale, dont la cybercriminalité, de plus en plus courante, constitue l'une des formes les plus sophistiquées et complexes.

Le bilan des Nations Unies est satisfaisant dans certains de ces domaines, mais l'est moins dans d'autres. Les responsables de la réforme en matière de justice pénale internationale, notamment les hauts dirigeants et le personnel technique des Nations Unies, s'attachent à aider les pays en voie de développement à modifier les mesures prises dans le cadre de leur système juridique et de leur système de justice pénale à l'égard de ces crimes, alors qu'évoquent constamment les recommandations de politiques pénales internationales et les concepts idéologiques sur le progrès, et ce, à la suite de mesures de modernisation variées, parfois incompatibles. Avec le déclin (contrairement à l'idéal fixé originalement dans la Charte des Nations Unies) de l'indépendance du Secrétariat des Nations Unies parmi les principaux organes des Nations Unies, le personnel de

l'ONUDC et des unités administratives précédentes ont été au cœur de différentes controverses de nature idéologique et politique et concernant les politiques en matière pénale, ce qui a nui à l'intégrité et au rendement des Nations Unies.

Les programmes et les projets d'assistance technique financés au moyen des fonds extrabudgétaires, qui figurent dans le programme des Nations Unies depuis le tout début, dans la première décennie du 21^e siècle, sont devenus des travaux de lutte contre la criminalité fondés sur les faits visant le renforcement des capacités et l'acquisition d'habiletés nécessitant une prise en charge interne et un engagement politique, et ce, en vue d'un changement durable. En conséquence du recours massif aux fonds extrabudgétaires, il a récemment fallu modifier la composition du personnel des Nations Unies, ce qui a entraîné une érosion additionnelle du concept original d'intégrité.

L'application interne, régionale et interrégionale des normes et des pratiques exemplaires (publiées et appliquées de par le monde) en matière de prévention du crime et de justice pénale, appuyée par les travaux de défense de certains intérêts faisant intervenir la promotion de ces normes et pratiques exemplaires, a été effectuée par l'ONUDC, 16 des membres du réseau d'instituts du programme et de nombreuses organisations non gouvernementales dans le cadre de partenariats qui évoluent selon les demandes changeantes, qu'il s'agisse de la lutte contre la corruption et la criminalité organisée transnationales, ou bien la criminalité urbaine ou chez les jeunes.

PARTIE III, RETOUR VERS LE FUTUR

Nonobstant l'approche juridique et socioéconomique comparative à grande échelle de lutte contre la criminalité, l'ONUDC s'appuie également sur les conclusions neurobiologiques et d'autres constatations similaires fondées sur les faits qui sont perti-

nentes sur les plans du risque individuel et des facteurs de protection relatifs aux crimes avec violence commis par des adolescents et à la toxicomanie. Pour ce faire, l'ONUDC s'appuie sur les avancées universitaires réalisées récemment.

Que ce soit à petite ou à grande échelle, la *criminologie onusienne* est d'abord axée sur les « peuples » (collectivités et individus) et, dans le cadre de l'exécution du mandat des Nations Unies, recourt à une méthodologie différente, à certains égards, de celle utilisée en criminologie théorique.

Le livre explique que le pouvoir de transformation du programme des Nations Unies pour la prévention du crime et la justice pénale a été considérable, mais dans certains domaines en particulier. Ce pouvoir repose sur la théorie et les idées gouvernementales, ensemble et séparément. Il s'agit d'une force d'autant plus transformatrice, puissante et ciblée dans le domaine de la paix et de la sécurité dans le monde. Dans l'étude monographique, on fait ressortir les « études sur les Nations Unies », une nouvelle discipline, parmi les instruments pratiques d'influence permettant de diffuser dans le monde le message des Nations Unies sur la criminalité et la justice.

La figure 6 illustre à l'aide d'un idéogramme l'évolution progressive de la lutte internationale contre le crime dans le monde, depuis ses débuts en 1764 (Cesare Beccaria) jusqu'en 2010, année du 12^e congrès des Nations Unies, de la réunion du Conseil de sécurité à laquelle la criminalité transnationale organisée a été déclarée une menace à la paix et à la sécurité internationales, et de l'adoption par l'Assemblée générale des Règles des Nations Unies concernant le traitement des femmes détenues et les mesures non privatives de liberté pour les femmes délinquantes (Règles de Bangkok). L'idéogramme montre les dates d'importantes conférences internationales et les idées majeures qui, peu à peu, ont donné lieu à l'établissement des politiques des Nations Unies en matière pénale que nous connaissons aujourd'hui.

斯拉沃米尔·马力克·雷多

蓝色犯罪学

联合国应对全球犯罪理念的力量

专题研究

摘要

第一部分 反对恐惧和匮乏，实现可持续发展

联合国预防犯罪和刑事司法署从长达两个多世纪的犯罪和司法活动的开展中吸取经验。这些活动起始于贝卡利亚古典刑法学院倡导的国际刑事改革工作（1764）以及约翰·霍华德的首份监狱比较介绍（1777）。国际体制的起始可归功于在莱茵河畔法兰克福市召开的国际监狱大会（1846）以及后来十二次国际刑事和监狱系列大会（自 1872 年在伦敦至 1950 年在海牙）。活动开始后不仅通过上述成果得到发展，同时也通过工业化和城镇化（现代化）时代日益显著的社会福利政策得到发展。特别是 19 世纪后半叶，现代化进入欧洲日程，从此波及全世界。从那时起，联合国防止犯罪和刑事司法的权限继承了有计划的、并且总是积极调整的重点，先是“社会”，接着是“青少年”和“刑事”司法，在司法制度中特别提及儿童地位，关于他们孤独禁闭的问题以及有关对他们福利的慈善关怀。

第二次世界大战后，“后继各代”（或以任何其他相似的概念）儿童和成年人的命运成为国际关注和行动的中心。1945 年，联合国这个有史以来最大的和平主义政府间组织，唯恐曾毁灭千百万生命和生计并导致各国人民和民族贫穷的战争恐怖再次发生，开始通过促进社会和经济可持续发展）和人权（1948-1987）来防止那些灾难的再次发生，实现其宪章的目标。

终于，自 20 世纪 90 年代初开始，发展中国家和发达国家（联合国会员）达成了若干多边协议，为共同应对安全挑战的运作铺平道路，把人类和城市安全、司法和安全部门的改革也纳入其中。

在此背景下，学术研究和联合国刑事政策——双双已摆脱恐惧和匮乏两种基本观念并达到可持续发展的观念——自觉地或共同地对这三种基本观念做出贡献。

第二部分 联合国防止犯罪和刑事司法权限

自 1946 年起，联合国预防犯罪和刑事司法权限越来越多地建立于社会和经济领域发展的各种技术范围。起初是儿童/少年和成年人的待遇，在 1955 年就由联合国第一届预防犯罪和罪犯待遇大会确立了具有里程碑意义的囚犯待遇最低标准规定（SMRs）。

此后，每5年召开一次的12次联合国预防犯罪和刑事司法大会（1955-2010），由越来越多的专家开展的相关活动（1950-1991），以及政府间实质性机制（预防犯罪和刑事司法委员会），向经社理事会、联合国大会和安理会（联合国的一些机构）提出了可行的建议，由它们宣布分别成为联合国抵制犯罪的法律。

联合国软法律中最为突出的是上面所提到的囚犯待遇最低标准规定(SMRs)、条约法，以及联合国反对跨国有组织犯罪公约（2000）和反腐败公约（2003）。1955-2010年间，联合国预防犯罪和刑事司法署一共通过了60件软法律文书，联合国毒品与犯罪问题办公室（其构成部分）一直是那些软法律和条约法文书的保管单位，外加联合国反对毒品和精神药物的三个公约（1961、1972、1988），16个反对恐怖主义的普遍法律条约。

上述各项构成如今的“蓝色犯罪学”的立法要素。它经历了不同的发展阶段，有大量涉及社会防卫的内容（1946-1990），目前已被其它面向社会福利的理念和计划所取代，旨在继续推进有效地针对犯罪、毒品、恐怖主义和迫害的人道目标。

标准的建立仍在继续（涉及法律上的和外交上的谈判技巧，以确保渐进和联合国的法治内涵）。在国际刑事司法改革领域通过实地技术援助及在线和不在线的培训来实施所有已经订立的这类国际法律文书已经成为同一钱币的反面。在制定那些法律文书工作中获得的教训增加了可利用的专门知识，对于在实践中应用联合国法治原则，更为成功地执行早先各类联合国维和任务，是特别需要的。

科学地始于19世纪下半叶的国际刑法改革在全世界继续进行，在冷战时期（1945-1989）结束后尤其富有活力且成果丰富。在此大背景下，冲突结束后的国家里的司法过渡工作已经开始，人们不仅可以看到新形式的越来越全球化的犯罪，而且可以看到合法政权逐渐合力加以控制，以及动作较慢但显然是合作的和基于伙伴关系的城市和其它犯罪预防。在抗击犯罪活动中，通过在“控制”与“预防”中谋求平衡，国际刑事司法改革现在涉及采用替代囚禁的办法、教改司法、以及给予受害人援助和赔偿的办法。它们涉及新老形式的犯罪，包括跨国犯罪，而新兴的网络犯罪是最为先进和富有挑衅性的形式之一。

联合国在一些领域的所作所为是令人满意的，而在其它一些领域的所作所为是不能令人满意的。国际刑事司法改革者们，其中有联合国的高级和技术职员，根据正在演变的国际刑事政策建议和思想观念的进展，通过各种，有时是毫不相干的，现代化形式，着重于协助发展中国家改良它们应对此类犯罪的法律和刑事司法制度。随着作为该组织主要机构之一的联合国秘书处的独立性逐渐衰退（这是与联合国宪章的本来理想违背的），联合国毒品与犯罪问题办公室的职员和以前的行政单位受制于意识形态、政治和刑事政策的争论，影响了该组织的正直和绩效。

预算外出资的技术援助方案和项目，自联合国早期以来就是其活动的一部分，在21世纪的第一个十年里已成为一项基于证据、能力和技能培训的抗击犯罪工作，牵涉国内主导权和政治承诺，以期实现可持续变革。过分依赖预算外资助的近期副作用涉及到改变联合国职员的组成，进一步侵蚀他们原有的正直观念。

在涉及促进联合国预防犯罪和刑事司法标准、准则和善行（对全世界公示）的提倡工作的支持下，它们的国内、地区和区域间适用已由联合国毒品与犯罪问题办公室执行。16个

规划网络学会和无数个非政府组织通过正在发展的伙伴关系，应对正在变化的要求：不论涉及及抗击跨国有组织犯罪和腐败，还是国家和地方涉及城市和青年犯罪。

第三部分 回望未来

尽管有了大规模抗击犯罪的比较法律和社会经济手段，但自从联合国毒品与犯罪问题办公室也应用神经生物和相似的基于证据的结果，近期制作了关系到个人危险以及对青年暴力犯罪和滥用药物的保护因素的学术进展图片。

不论从微观还是从宏观的角度来看，“蓝色犯罪学”以人（社团/个人）为本，为了执行联合国权限，寻求与学术犯罪学有所不同的方法。

本书记载了联合国预防犯罪和刑事司法署可观的变革力量，但只是在某些领域。本书的动力是学术和政府间的思想，有时是共同的，有时是分开的。它赋予自己更大的变革力量和集中的行动，可以对世界和平与安全做出贡献。“联合国研究”，正在形成的学科，已经纳入当前的专著研究，被评选为具有影响潜力和实用的文书之一，可以把联合国关于犯罪和司法的信息传播全世界。

图 6 用表意符号显示世界上反对犯罪的国际行动进展情况，自 1764 年（贝卡利亚）伊始，至 2010 年第 12 届联合国预防犯罪和刑事司法大会，以及安理会会议上，跨国有组织犯罪被宣布为国际和平与安全的威胁。表意符号在左侧显示重要国际会议的日期，右侧显示逐渐成为当今联合国刑事政策的各种思想。

الكتاب الأزرق في علم الإجرام— تسخير قوة أفكار الأمم المتحدة من أجل مكافحة الجريمة عالمياً

دراسة موضوعية متخصصة

في ختام هذه الدراسة، يُستنتج أن الهدف الذي ترمي إليه في آخر قسمٍ منها إنما هو التركيز على تقديم ملخصٍ وصفيٍّ تماماً وإجماليٍّ بلا استطراد لما حدث في علم الجريمة من تطوراتٍ رئيسيةٍ أسهمت في الإرث الراهن لبرنامج الأمم المتحدة لمنع الجريمة والعدالة الجنائية وآفاقه الحالية.

ويتمُّ ذلك باستيعاب جوهر النص السابق (بكامل مثنه والأطر المعروض فيها)، بُغية تقديم توليفةٍ تركيبيةٍ ذات توجهٍ عمليٍ تلتئم فيها أجزاء الكتاب.

الجزء الأول— مكافحة الخوف والعوز من أجل التنمية المستدامة

إنَّ برنامج الأمم المتحدة لمنع الجريمة والعدالة الجنائية يستمدُّ زحماً من تطوراتٍ طويلة العهد في مجالي مكافحة الجريمة وتحقيق العدالة، تعود إلى أكثر من عقدين من الزمن. وقد بدأت تلك التطورات عن طريق العمل على إصلاح قوانين العقوبات على الصعيد الدولي، وقد استُهلَّ ذلك العمل من خلال مدرسة القانون التقليدية، التي قادها الفقيه سيزار بيكاريا (1764)، وكذلك من خلال توصيات جون هوارد (1777) الخاصة بالقوانين العقابية الإصلاحية المقارنة. ومن الجائز أن يُعزى الفضل في البدايات المؤسسية على الصعيد الدولي، التي كانت إرهاصات للبرنامج، إلى المؤتمر الدولي بشأن القوانين العقابية والمؤسسات الإصلاحية، الذي عُقد في فرانكفورت أم ماين (1846)، وإلى السلسلة التي تلتها من الإثني عشر مؤتمراً دولياً عن القوانين العقابية والمؤسسات الإصلاحية (السجون) (لندن، 1872 – لاهاي، 1950). أما بداياته البرنامجية فلم تتطوّر من خلال هذه المنجزات المشار إليها آنفاً فحسب، بل كذلك من خلال السياسات العامة بشأن الرعاية الاجتماعية التي أخذت تتبوأ مكانةً بارزةً متزايدةً في حقبة التصنيع والتحصّر المدني (التحديث). وفي النصف الثاني من القرن التاسع عشر على وجه الخصوص، دخلت ظاهرة التحديث جدول الأعمال الأوروبي، وأخذت تنتشر عبر العالم بقوةٍ بعد ذلك. ومنذ حينذاك، أخذ ينتقل ذلك الإرث إلى الولاية المسندة إلى الأمم المتحدة بشأن منع الجريمة والعدالة الجنائية، من حيث محور التركيز البرنامجي الدائم التعديل بقوةٍ حركيةٍ متدرّجةٍ عبر مراحل العدالة "الاجتماعية"، ثم العدالة الخاصة "بالأحداث"، ثم العدالة "الجنائية"، مع توجيه الانتباه بصفة خاصة إلى وضعية الأطفال في نظام العدالة، بدءاً بمسألة حجزهم الإفرادي ودواعي القلق الإنسانية الخيرة بشأن رفاهتهم الصحية والنفسية.

بعد الحرب العالمية الثانية، أصبح الحرصُ على مصير الأطفال، والبالغين أيضاً، باعتبارهم "الأجيال العاقبة" (أو بحسب أيِّ مفهومٍ مشابهٍ آخر)، ركيزةً الانتباه والعمل الهادف على الصعيد الدولي. وفي عام 1945، عمدت الأمم المتحدة – وهي أكبر منظمة حكومية دولية داعية إلى السلام وُجدت في أيّما وقت مضى – خشيةً من تكرار أهوال الحروب التي دمّرت حياة الملايين من البشر وأرزاقهم، وتسببت في إفقار الشعوب والأمم، إلى البدء في سعيها إلى تحقيق الهدف المنشود في ميثاقها صوب منع تكرار تلك الأهوال، وذلك بتعزيز التنمية الاجتماعية والاقتصادية ("التنمية المستدامة") وحقوق الإنسان (1948-1987).

في نهاية المطاف، توصلت البلدان المتقدمة النمو والبلدان النامية (الأعضاء في الأمم المتحدة) على نحو مشترك، منذ بداية التسعينات، إلى إبرام عدد من الاتفاقات المتعددة الأطراف، التي تمهد الطريق نحو تفعيل العمل على التصدي المشترك للتحديات الأمنية، والتي أدمج ضمنها الأمن البشري والحضري (في المدن) وإصلاح قطاعي العدالة والأمن.

وبناءً على هذه الخلفية التاريخية، أخذت البحوث الأكاديمية وكذلك السياسة العامة لدى الأمم المتحدة بشأن القضايا الجنائية، تستجيب إلى الأفكار الأساسية الخاصة بالتحرك من الخوف، والتحرر من العوز، وتحقيق التنمية المستدامة، كما أخذت تسهم بنصيبها، إما على نحو مستقل وإما على نحو مشترك، في تعزيز هذه الأفكار الجوهرية الثلاث.

الجزء الثاني - الولاية المسندة إلى الأمم المتحدة بشأن منع الجريمة والعدالة الجنائية

منذ عام 1946 فصاعداً، ما فتئت الولاية المسندة إلى الأمم المتحدة في مجالي منع الجريمة والعدالة الجنائية تزداد اتساعاً بما تستوعبه في نطاقها من جوانب تقنية متعددة ومتنوعة في مضمار التنمية الاجتماعية والاقتصادية. وقد بدأ ذلك بقضايا معاملة الأطفال/الأحداث والبالغين في هذا الصدد؛ وفي وقت مبكر منذ عام 1955، وضعت الأمم المتحدة، من خلال المؤتمر الأول لمنع الجريمة ومعاملة المجرمين، القواعد الدنيا النموذجية لمعاملة السجناء، التي تُعتبر معلماً بارزاً في هذا الميدان.

ثم عُقد منذ حينذاك إثنا عشر مؤتمراً من مؤتمرات الأمم المتحدة لمنع الجريمة والعدالة الجنائية، كانت تجري كل خمس سنوات (1955-2010)؛ كما كانت تُتخذ إجراءات عمل ذات صلة من خلال الخبرة الموضوعية والمؤسسية المتزايدة (1950-1991)، وبعد ذلك من خلال الآلية الفنية الحكومية الدولية (لجنة منع الجريمة والعدالة الجنائية). وقد قُدمت إلى المجلس الاقتصادي والاجتماعي والجمعية العامة ومجلس الأمن (بعض من أجهزة الأمم المتحدة) توصيات مُجدية، أُعلن فيما بعدُ على التوالي أنها تشكل قانون الأمم المتحدة لمكافحة الجريمة.

من أبرز المكونات القانونية لهذا القانون غير الملزم الصادر عن الأمم المتحدة القواعد الدنيا النموذجية لمعاملة السجناء المذكورة من قبل، وقانون المعاهدات، واتفاقيات الأمم المتحدة لمكافحة الجريمة المنظمة عبر الوطنية (2000) واتفاقية مكافحة الفساد (2003). وخلال الفترة بين عامي 1955 و2010، اعتمد برنامج الأمم المتحدة لمنع الجريمة والعدالة الجنائية ما مجموعه 60 صكاً قانونياً غير ملزم؛ ولا يزال مكتب الأمم المتحدة المعني بالمخدرات والجريمة (الكيان التأسيسي الرئيسي) القيم على تلك الصكوك غير الملزمة والتعاهدية، إضافةً إلى ثلاث اتفاقيات وضعتها الأمم المتحدة بشأن مكافحة المخدرات والمؤثرات العقلية (1961 و1972 و1988)، و16 معاهدة قانونية عالمية بشأن مكافحة الإرهاب.

إنَّ العناصر المذكورة أعلاه تشكل في أيامنا هذه الجوهر التشريعي للموضوع الذي يتناوله "الكتاب الأزرق في علم الإجرام". وقد تطوّر علم الإجرام لدى الأمم المتحدة عبر مراحل مختلفة، حيث استوعب قدراً كبيراً من مكونات الدفاع الاجتماعي (1946-1990)، استيعب عنها في الوقت الراهن بأفكار وبرامج أخرى موجّهة نحو الرعاية الاجتماعية، ترمي إلى مواصلة السعي صوب الهدف المنشود في مكافحة الإنسانية والفعّالة للجريمة والمخدرات والإرهاب والإيذاء الذي يُوقع بالضحايا.

كذلك يتواصل العمل على تحديد المعايير (ويشتمل على صقل المهارات التفاوضية من الناحيتين القانونية والدبلوماسية لضمان التقدم التدريجي في تطوير تلك المعايير وإرساء المضمون الذي تعززه الأمم المتحدة بشأن حكم القانون). ولكن هذا هو الجانب الأول، أما الجانب الآخر فهو أساساً تنفيذ كل تلك الصكوك القانونية الدولية التي يتم اشتراكها في مجال إصلاح العدالة الجنائية على الصعيد الدولي من خلال المساعدة التقنية والتدريب، ضمن الشبكة الحاسوبية وخارج هذه الشبكة على حد سواء. كما إن الدروس المستفادة في جعل تلك الصكوك تؤدي عملها بنجاح قد أدت إلى زيادة مجموع الخبرة الاختصاصية المتاحة، واللازمة بصفة خاصة لإحراز المزيد من النجاح أكثر من ذي قبل في الاضطلاع بمختلف بعثات حفظ السلام التي توفدها الأمم المتحدة بشأن تطبيق مبادئ الأمم المتحدة الخاصة بسيادة القانون في الممارسة العملية.

وإن ما يمكن أن يلاحظه المرء لا يقتصر على ظهور أشكال جديدة من الجريمة التي تزداد اتساعاً في عالميتها، بل يشمل أيضاً حدوث تقارب تدريجي بين الأنظمة القانونية المعنية بمراقبتها وضبطها، ونشوء اتجاه متباطئ قليلاً ولكنه ظاهر بوضوح في مكافحة الجريمة الحضريّة وغير الحضريّة يقوم على التعاون والشراكة. وقد بدأ هذا كله بالبناء على الصورة الكبيرة لإصلاح القانون الجنائي الدولي، الذي يتواصل في العالم منذ بداياته العلمية في النصف الثاني من القرن التاسع عشر، ثم تطوره بنشاط حركي وبراء في الإنتاج على وجه الخصوص بعد فترة الحرب الباردة (1945-1989)، حينما بدأ العمل في مجال العدالة الانتقالية في البلدان التي تمرّ بمرحلة ما بعد انتهاء النزاعات. ومع الحرص على مكافحة الجريمة، بمواصلة السعي إلى إقامة التوازن بين "المكافحة" و"الوقاية"، فإن إصلاح العدالة الجنائية على الصعيد الدولي أصبح يشمل الآن بدائل السجن، والعدالة التصالحية، وأخيراً، وليس آخراً: مساعدة الضحايا وتعويضهم. ويتصل ذلك أيضاً بأشكال الجريمة القديمة والجديدة، بما في ذلك الجريمة العابرة للحدود الوطنية، مع نشوء الجريمة الحاسوبية (السيبرانية) المستجدة، باعتبارها من أشد أشكال الجريمة تعقداً في تطورها، وأخطرها بما تنطوي عليه من تحديات.

وإن سجل الأمم المتحدة في بعض هذه الميادين مُرضٍ، وفي بعض الميادين أقلّ إرضاءً. وقد دأب مصلحو العدالة الجنائية على الصعيد الدولي، ومن ضمنهم كبار موظفي الأمم المتحدة وموظفوها التقنيون، على التركيز على تقديم المساعدة إلى البلدان النامية في مجال تعديل تدابير النظم القانونية ونظم العدالة الجنائية لديها في التصدي لهذه الجرائم، في سياق توصيات السياسات العامة الجنائية المتطورة على الصعيد الدولي، ومفاهيم التقدم الأيديولوجية من خلال مختلف أشكال التحديث، والتي هي أحياناً غير متوافقة. ومن جرّاء تناقص استقلال الأمانة العامة للأمم المتحدة بصفتها أحد الأجهزة الرئيسية للمنظمة (على النقيض من المثل العليا الأصلية التي تُستمدّ من ميثاق الأمم المتحدة)، أخذ موظفو مكتب الأمم المتحدة المعني بالمخدرات والجريمة والوحدات الإدارية السابقة يخضعون إلى مختلف الجدالات الخلافية الأيديولوجية والسياسية والمتعلقة بالسياسات العامة، الأمر الذي يؤثر في سلامة المنظمة وأدائها.

وقد أصبحت برامج ومشاريع المساعدة التقنية الممولة بموارد من خارج الميزانية، والتي باتت تُعدّ جزءاً من برنامج أنشطة الأمم المتحدة منذ سنوات مرحلته المبكرة في العقد الأول من القرن الحادي والعشرين، عملاً يُعنى ببناء القدرات والتدريب على المهارات في مكافحة الجريمة، يقوم على الأدلة العلمية، ويشمل امتلاك زمام الأمور في هذه المكافحة والالتزام السياسي على الصعيد الداخلي بغية إحداث تغيير مستدام في هذا الصدد. علماً بأن الأثر الجانبي المترتب حديثاً على التمويل الشديد غالباً على التمويل من خارج الميزانية انطوى على تغيير تشكيل ملاك موظفي الأمم المتحدة، مع ازدياد التناقض في المفهوم الأصلي الخاص بنزاهتهم.

غير أن الدعم الذي يوفّره العمل المعني بالدعوة إلى المناصرة، والذي يشمل الترويج لمعايير وقواعد الأمم المتحدة بشأن منع الجريمة والعدالة الجنائية والممارسات الجيدة في هذا الصدد (التي نُشرت وبرزت في العالم قاطبةً)، قد أدّى إلى العناية بتطبيقها على الصعيد الداخلي والإقليمي والأقاليمي من جانب مكتب الأمم المتحدة المعني بالمخدرات والجريمة، و16 معهداً من المعاهد المنضوية إلى شبكة برنامج الأمم المتحدة، والعديد من المنظمات غير الحكومية، من خلال الشراكات المتطورة، وذلك استجابةً للمطالب المتغيرة: سواء فيما يشمل مكافحة الجريمة المنظّمة العابرة للحدود الوطنية والفساد أو فيما يشمل مكافحة الجرائم الحضريّة والجرائم الشبابية.

الجزء الثالث - الرجوع إلى المستقبل

على الرغم من اتّساع نطاق النهج القانوني والاجتماعي-الاقتصادي المقارن المتّبع في مكافحة الجريمة، يطبّق مكتب الأمم المتحدة المعني بالمخدرات والجريمة أيضاً الاستنتاجات الأحيائية العصبية، وما يشابهها من الاستنتاجات القائمة على الأدلّة الإثباتية، على عوامل المخاطرة الفردية والعوامل الوقائية في مجال مكافحة جرائم العنف لدى الشباب وتعاطي المخدّرات والعقاقير. ويستمدّ المكتب من معين منجزات التقدّم في البحوث الأكاديمية الحديثة العهد.

إنّ الموضوع الذي يتناوله "الكتاب الأزرق في علم الإجرام" يركّز أساساً، سواء في توجّهه الجزئي أو في توجّهه الكلّي، على "الناس" (الجماعات المحلية/الأفراد)؛ كما إنه يتّبع، فيما يخصّ تنفيذ ولاية الأمم المتحدة، منهجيةً مختلفةً في جانب منها عن منهجية علم الإجرام الأكاديمي.

ويوثّق هذا الكتاب الرأْي القائل بأن القدرة على التغيير التي ينطوي عليها برنامج الأمم المتحدة لمنع الجريمة والعدالة الجنائية كبيرة، وإن كان ذلك في بعض الميادين أكثر مما هو في بعضها الآخر. وهو برنامج تُوجّه مساره، أحياناً على نحو مشترك وأحياناً أخرى على نحو مستقل، الأفكار الأكاديمية والأفكار الحكومية الدولية. كما أنه يمكن تسخيرها لصالح إجراءات عمل أشدّ تميّزاً بالقدرة على التغيير والقدرة على التأثير والتركيز، من شأنها أن تسهم في تعزيز السلم والأمن في العالم. وقد أبرزت في هذه الدراسة الموضوعية المتخصصة "دراسات الأمم المتحدة"، وهي فرع معرفي ناشئ، باعتبارها إحدى الأدوات العملية وذات التأثير المحتمل لإيصال رسالة الأمم المتحدة بشأن العدالة عبر العالم.

ويبيّن الشكل 6، في صيغة رسم تمثيلي رمزي، مسار التطوّر التدريجي للعمل الدولي على مكافحة الجريمة في العالم منذ بدئه الفعلي في عام 1764 (سيزار بيكاريا) وحتى عام 2010 - عام مؤتمر الأمم المتحدة الثاني عشر، وعام اجتماع مجلس الأمن الذي أعلن فيه أن الجريمة المنظّمة العابرة للحدود الوطنية هي خطر يهدّد السلم والأمن الدوليين، وعام اعتماد الجمعية العامة قواعد الأمم المتحدة لمعاملة السجينات والتدابير غير الاحتجازية للجانيات ("قواعد بانكوك"). كما يبيّن الرسم التمثيلي الرمزي تواريخ انعقاد المؤتمرات الدولية المهمة، والأفكار الرئيسية التي تنامت تدريجياً حتى نتج عنها ما يشكّل الآن السياسة العامة لدى الأمم المتحدة في معالجة الشؤون الجنائية.

List of Abbreviations

A	Assembly
ACPF	Asia Crime Prevention Foundation
ACUNS	Academic Council on the United Nations System
AD	Anno Domini
AIC	Australian Institute of Criminology
ASG	Assistant Secretary-General
AIDS	Acquired Immune Deficiency Syndrome
BC	Before Christ
BRIC	Brazil, the Russian Federation, India, The Peoples' Republic of China
CE	Common Era
CIFTA	The Inter-American Convention Against Illicit Manufacturing of and Trafficking in Firearms
COW	Committee of the Whole
CPCJP	Commission on Crime Prevention and Criminal Justice
CRP	Conference Room Paper
CSDHA	Centre for Social Development and Humanitarian Affairs
DDR	Demilitarization, Demobilization and Reintegration
DESA	Department of Economic and Social Affairs
DIESA	Department of International Economic and Social Affairs
DPI	Department of Public Information, United Nations Secretariat, New York, USA
DTCD	Department of Technical Cooperation for Development
ECHR	European Covenant on Human Rights
ECOSOC	Economic and Social Council
ECLAC	Economic Commission for Latin American Countries
EFUS	European Forum for Urban Safety
EU	European Union
G8	Group of 8 countries (Canada, France, Germany, Italy, Japan, the Russian Federation, the United Kingdom, the United States of America)
G77	Group of 77 countries
GA	General Assembly
GDP	Gross Domestic Product
GNP	Gross National Product
HEUNI	European Institute for Crime Prevention and Control, affiliated with the United Nations (Helsinki, Finland)
HIV	Human Immune Deficiency Virus
HQ	Headquarters
IANSAs	International Action Network on Small Arms
IAP	International Association of Prosecutors
IBRD	International Bank for Reconstruction and Development
ICC	International Criminal Court
ICCLR & CJP	International Centre for Criminal Law Reform and Criminal Justice Policy (Vancouver, British Columbia, Canada)
ICCPR	International Covenant on Civil and Political Rights

ICPC	International Centre for the Prevention of Crime (Montreal, Québec, Canada)
ICTR	The International Criminal Tribunal for Rwanda
ICTY	The International Criminal Tribunal for the former Yugoslavia
ICVS	International Crime Victims Survey
ILANUD	United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (San Jose, Costa Rica)
ILO	International Labour Organization
IMF	International Monetary Fund
INCB	International Narcotics Control Board
IPPC	International Penal and Penitentiary Commission
IPPF	International Penal and Penitentiary Foundation
IRCP	International Review of Criminal Policy
ISISC	International Institute of Higher Studies in Criminal Sciences (Siracusa, Italy)
ISPAC	International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme (Milan, Italy)
ISS	Institute for Security Studies, Pretoria, South Africa
ISSD	International Society for Social Defence and Humanitarian Policy
JSSR	Justice and Security Sector Reform
KIC	Korean Institute of Criminology (Seoul, The Republic of Korea)
KICJP	Korean Institute of Criminal Justice Policy (Seoul, The Republic of Korea)
MINUSTAH	United Nations Stabilization Mission in Haiti
NAASS	Naif Arab Academy for Security Sciences (Riyadh, The Kingdom of Saudi Arabia)
NGO	Non-Governmental Organisation
NIEO	New International Economic Order
NIJ	National Institute of Justice (Washington, USA)
OAS	Organization of American States
ODA	Official Development Assistance
ODCCP	Office of Drug Control and Crime Prevention
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the High Commissioner on Human Rights
OSCE	Organization for Security and Cooperation in Europe
PNI	United Nations Crime Prevention and Criminal Justice Programme Network of Institutes
RWI	Raoul Wallenberg Institute (Lund, Sweden)
SASR	Small Arms Survey Report
SC	Security Council
SG	Secretary-General
SMRs	Standard Minimum Rules for the Treatment of Prisoners
SSR	Security Sector Reform
TDCA	Tajik Drug Control Agency
UNAFEI	United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (Tokyo, Japan)
UNAFRI	United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (Kampala, Uganda)
UNBiH	United Nations Mission in Bosnia and Herzegovina
UNCAC	United Nations Convention against Corruption

UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNEG	United Nations Evaluation Group
UNESCO	United Nations Scientific Educational and Cultural Organization
UN-HABITAT	United Nations Human Settlements Programme
UNICEF	United Nations Children's Fund
UNICRI	United Nations Interregional Crime and Justice Research Institute (Turin, Italy)
UNIFEM	United Nations Development Fund for Women (Fonds de développement des Nations Unies pour la femme)
UNIS	United Nations Information Service
UNODC	United Nations Office on Drugs and Crime
UNOV	United Nations Office at Vienna
UNSDRI	United Nations Social Defence Research Institute
UNTAC	United Nations Transitional Authority in Cambodia
UNTOC	United Nations Convention against Transnational Organized Crime
UNTV	United Nations Television
USB	Universal Serial Bus
USG	Under Secretary-General
WHO	World Health Organization

Other Abbreviations

app.	approximately
corr.	corrigendum (corrected text)
ed.	editor
eds	editors
i.e.	id est (that is)
ibid.	ibidem (the same place)
ch.	chapter
e.g.	exempli gratia (for example)
est.	established
etc.	et cetera (and so forth)
ftn.	footnote
op.	operative
op. cit.	opus citatum (from the cited work)
p.	preambular
sec.	section
sn	supra note
transl.	translated
vs.	versus (against)

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Picture 30. At the expert group meeting on “Mass Media and Crime Prevention” hosted by the Naif Arab University for Security Sciences (NAUSS, Riyadh, The Kingdom of Saudi Arabia, 1994). Among the participants are Matti Joutsen and Terhi Viljanen (HEUNI; second row on the left) and Mohsen Ahmed (NAUSS)

Picture 31. Pedro David, former Interregional Adviser, 1981-1992 (first on the right) with Minoru Shikita, former Chief of the Crime Prevention and Criminal Justice Branch, with Eduardo Vetere (Executive Secretary of the Eleventh United Nations Congress), the late Vincent del Buono (former Interregional Adviser, 1994-1998) and Irene Melup (former UN staff member, 1946-1990)

Picture 32. G.O.W. Mueller, Chief of the United Nations Crime Prevention and Criminal Justice Branch (second on the right, lower row) with his staff (Lamin Sesay and Eduardo Vetere, second and third on the left lower row) the late Kurt Neudek, the author and Bill Burnham (left upper row) in the company of Austrian law enforcement officials during a courtesy visit to the provincial police HQ in Eisenstadt (close to Vienna, Austria, 1982)

Picture 33. Commission on Crime Prevention and Criminal Justice (Vienna, Austria, 2009 in the Board Room dedicated to the memory of Prof. John Martinussen (1947-2002), pioneer of sustainable industrial development) while considering the item on the preparations for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice (Salvador de Bahia, Brazil, 2010). Sitting from left to right: Cosmin Dinescu (Romania, Chairman of the Commission), Andres Finguerut (Secretary of the Commission), Dimitri Vlassis (Secretary of the Twelfth United Nations Congress), Sandra Valle, Interregional Adviser on Crime Prevention and Criminal Justice, Sławomir Redo (Coordinator of the Twelfth United Nations Congress Workshops)

Picture 34. Address by Antonio Maria Costa, Secretary-General of the Twelfth Congress. On the podium, sitting from left to right: John Sandage, Executive Secretary, Ambassador Helmut Böck (Austria), Vice-Chairman of the Congress, Vivian Pliner, Secretary of the plenary meeting, Dimitri Vlassis, Substantive Coordinator. Below: Maher Nasser, Director of UNIS, servicing the plenary meeting of the Twelfth United Nations Congress

Picture 35. The “Committee of the Whole” negotiating the draft Salvador Declaration at the Twelfth United Nations Congress on Crime Prevention and Criminal Justice

Picture 36. Delegation of Poland at the Twelfth United Nations Congress on Crime Prevention and Criminal Justice (from left to right: Ambassador Jacek Junosza-Kisielewski, head of delegation, Dr Wojciech Filipkowski, Rapporteur of Committee II of the Congress, Prof. Emil Plywaczewski, Vice-Chairman of the Congress)

Picture 37. Eleventh Congress Workshop “Measures to Combat Computer-related Crime” which opened the way for the creation by the Korean Institute of Criminology of the Virtual Anti-Cybercrime Forum. Among those sitting at the podium from right to left: KIC Director Dr. Taehoon Lee, Prof. Peter Grabowsky (Australia), Jo Dedejne (UNODC), Iskander Ghattas (Egypt, Chairman), Sławomir Redo (UNODC), Mark Shaw (UNODC), Gareth Sampson (Canada)

Picture 38. KIC/UNODC Expert Group Meeting on the Development of the Virtual Anti-Cybercrime Forum (Seoul, 2006). Hosts: in the middle Dr Taehoon Lee (Director of the KIC), first on the right side and Dr Joon Oh Jang with the experts and the KIC and UNODC staff

Picture 39. Twelfth Congress Workshop “International Criminal Justice Education for the Rule of Law” organized by the KIC, HEUNI, ISISC, ISS and RWI

Picture 40. Considering the “Salvador Declaration” of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice at the follow-up session of the Commission on Crime Prevention and Criminal Justice (Vienna, Austria, 2010). Behind the name plate of Qatar (the host of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, 2015): General Dr Abdulla Al-Mall, Advisor to the Minister of Internal Affairs, head of delegation. On his right the delegation of San Marino, on its left the delegations of Portugal and Poland. Behind the front row (left) two representatives of the United Nations Office of the Higher Commissioner for Human Rights (Geneva, Switzerland) and other international representatives

Preface

The atrocities of the Second World War catalyzed changes in international cooperation against crime. This criminological problematic (the impact of wars on crime), has so far been mainly discussed in academia. In 1945, when the United Nations (UN) was established, it became a launching pad for broad-based intergovernmental social and humanitarian development activities.

In this study I analyze the question of whether and, if so, how UN criminological and academic ideas permeate one another, are complimentary to one another or create added value. I do so from the academic perspective, to which I was privy, but also from the perspective of an international criminal justice practitioner.

I have sought to do so:

First, by outlining the historical and political context in which, in the framework of its practical developmental action since 1945, the UN gradually influenced penal and criminal policy aspects of responding to crime globally. Originally proposed by Franklin D. Roosevelt, they are interpreted in the Organization as "*freedom from fear*" and "*freedom from want*".

Next, by outlining the impact of some academic criminological ideas on the penal and criminal policy of the UN and the author's expectation of an imminent change of a criminological paradigm, resulting from the emergence of another United Nations idea, that of "*sustainable development*".

The above two points, that is the historical and political contexts in which the UN influences penal and criminal policy aspects of responding to crime, are presented here in an analysis on three levels.

Initially, this study outlines the relation that has existed since 1945 between the global development of criminological thought and the aforementioned three UN ideas ("*freedom from fear*", "*freedom from want*" and "*sustainable development*"), and also the relations with some of its lesser known ideas and the penal and criminal policy legal instruments that resulted from them.

Further, this study generally analyzes, through the lens of the sociology of knowledge, internal and reciprocal relations between academic criminological ideas and the above three guiding United Nations ideas.

Finally, this study raises the above parts up to a higher level of analysis involving UN Studies, a new crosscutting academic discipline of knowledge about the Organization, aiming at combining the theoretical and practical aspects of its social and humanitarian developmental activities, including responding to crime. This is the aforementioned added value.

Its essence is a crosscutting United Nations look at the global problematic of responding to crime, seen not through the lens of particular criminological schools of thought or theories, but rather as a culmination of all academic and practical knowledge. That knowledge is set out also in a number of "text boxes", several of which have been contributed to this study by criminal justice practitioners – "Friends of the United Nations Crime Prevention and Criminal Justice Programme" - with whom I have had the honour to work on its implementation. I found their contributions extremely perceptive and relevant to the topic of this study. These text boxes seek to exemplify that amalgamation of criminological theory with the practice of responding to crime, on their own terms and autonomously from one another (and indeed also internally). This is needed and is possible in the area where we have common methodological standards or common internal and temporal paths or sequences of the ideas. In this context, the study reveals past and present aspects of the involvement of the United Nations in the international response to crime, aspects which are not known to a broader audience.

These aspects contribute to a more general conclusion, which is that academic and practical criminological thought (including UN thought), sometimes separately, sometimes jointly, paves the way for the global response to crime, orientated towards the qualitative improvement of the life of the individual.

Kofi Annan, the former Secretary-General of the United Nations and co-founder of the Academic Council on the United Nations System, when asked what he knows about his Organization, reportedly answered that after three months of working in it he was ready to lecture about it, after one year he started having doubts about whether he knows anything, and ever since he found himself in that state of confusion. The U.S. sociologist Robert Merton had a somewhat similar observation regarding academic science: Studying its new paths surrenders the author to the cult of unintelligibility.² I can only second both views. Therefore, in this criminological book, confusing as it may at first appear because of the way in which many disciplines and issues intersect in it, but also path-blazing as it should be, I now would like to add my personal considerations.

These personal considerations should start by noting that I originally intended to write a personal account of my work for this Organization, following the model of some prominent United Nations colleagues.³ After all, my time with the United Nations provided me with many sensitive and sensational stories, which I have been tempted to save for my memoirs.

It is not for the first time that I have had this temptation to write a personal “*My Story*”. When working in Central Asia (1999–2002), I hoped that at the end of each week of my stay there I could write one page about my exotic but difficult experiences, so that at the end I would have at least 150 pages of text ready for print. Instead, I published two academic books. Apparently, the time has not yet come for me to accomplish my original plan, as per the first motto of the present book that “*No army can resist an idea whose time has come*”. Even in such sensitive and volatile matters as United Nations personnel policy (on which this book touches in several aspects, including “who does not like whom”), I started to discover more sense than sensation, when it occurred to me that such tricky issues can be more productively addressed in the book via the question of negotiating skills and training, rather than sympathies and antipathies.

So, after all these considerations, and when I eventually abandoned the “*My Story*” idea, I was requested to prepare a lecture on United Nations criminological thought. That lecture gave me the idea of

presenting a more comprehensive picture of the topic. Initially I wanted to write it in the form of a historical essay. But I realized that a historical approach to studying the roots of crime and the response to crime will have value only when it matters for the future. That is why this book has as its second motto, “*Life must be lived forwards, but can only be understood backwards*”. And it is this that gave me the idea to write this text “back to the future”.

I further realized that another idea that I had for a criminological “essay” would have fallen under the weight of numerous tables, text boxes, figures, photos and other visuals which the book carries, in line with the assumption communicated by the third motto of this book that “*If to judge the development of criminology only by the number of its fallen ideas, its field would have been full of victims*”. Consequently, I opted for delivering a monographic study, even though the noun sounds somewhat too academic, given the book’s focus on the practical side of United Nations legal policy, criminal policy and technical assistance.

The United Nations, for which I have had the honour and privilege of serving for 30 years, is a people-centred Organization working for that purpose. To achieve it, the founding Charter and declarations of the UN contain the culmination of normative thinking on how human beings ought to treat one another⁴ in seeking peace and security, and in seeking a world that is safer from drugs, crime and terrorism. Consequently, this book argues for the further development of United Nations Studies, and, in particular, of United Nations Criminal Justice Studies. They should be at the core of global academic and political interest. The content of those Studies content is formed by the reformist, progressive value-oriented United Nations crime prevention and criminal justice standards and norms – continuously advancing criminological global knowledge stored in the form of rules.⁵ The argument for combining academic and bureaucratic criminological knowledge for United Nations Criminal Justice Studies is developed throughout this book and concluded at its end.

Its preface should be supplemented by a few other remarks.

First, the concept of “*criminological*” knowledge goes beyond its academic meaning. In the present study it includes, for instance, ideas from the area of

² Merton 1938: 333.

³ Anstee 2003; Di Gennaro 1992; Radzinowicz 1999; Shikita 2004.

⁴ E-mail communication from Gary Lewis, United Nations staff member (4 November 2010).

⁵ Jacobsson 2000:41.

international criminal law and public international law, which are two separate university-level disciplines. The study draws also on international humanitarian and human rights law. In criminology, both would probably find their functional equivalents in “humanitarian” and “humane” criminal policy. In this study the problematic of crime and deviance is more instrumentally connected with this international (and especially United Nations) criminal policy mixture (“blue criminology”) than with academic criminology, whether “green”,⁶ “peacemaking”,⁷ “peacekeeping”, “radical”⁸ or any other kind.

At U.S. universities, in addition to criminology or the sociology of deviance, there is also the discipline of “Criminal Justice”.⁹ In the UN, this term - only nominally similar to the U.S. term - appeared during the 1970s. Since then it has been invoked much more often than criminology or the sociology of deviance, both of which have retained their academic valour. This study, the very title of which includes the noun “criminology” and the adjective “blue”, is an attempt to look in an academic way at the UN criminological and criminal justice problematic of responding to crime, as has been done more than once earlier.¹⁰

I found “blue” an apt adjective in this book, because, as will be documented, the origins of the United Nations and of its crime prevention and criminal justice mandate involve the humanitarian concerns of the Allies in the Second World War. At that time, before the D-Day landing on 6 June 1944 under the command of U.S. General Dwight D. Eisenhower, his orders from the Anglo-American Chiefs of Staff read: “You will enter the continent of Europe and in conjunction with the other United Nations, undertake operations aimed at the heart of Germany and the destruction of her armed forces.” The description of the unit shoulder-patch of his Supreme Headquarters

Allied Expeditionary Force states that, “The heraldic chief of azure (BLUE) above the rainbow is emblematic of a state of peace and tranquillity the restoration of which to the enslaved people is the objective of the United Nations”.¹¹ In the seventh decade of the existence of the United Nations, there have been many more ingredients that make its criminology “blue”. The United Nations Crime Prevention and Criminal Justice Programme continues to be one of them.

Within this study’s limits the “blue” metaphor is more reflective of the process of the globalization of criminology (of which the UN crime mandate is its essential ingredient) than a historical metaphor of “penitentiary tourism”¹² with which international penal reform started more than two centuries ago. That latter metaphor only marks the dichotomy between the early contributions of John Howard (1777) and other like-minded individual prison reformers-travellers, and those of their followers. In Frankfurt am Main in 1846 they started formulating their collective recommendations via international penitentiary congresses, to which the establishment of the UN crime mandate has originally been credited.

The United Nations Crime Prevention and Criminal Justice Programme indeed draws not only on both types of these historical penitentiary developments, but - as emphasized by Margaret J. Anstee, then the UN Under Secretary-General Director-General of the UNOV¹³ - also on the earlier penal reform developments (Cesare Beccaria, 1764). Currently, the Programme is a meta-representation of an international cooperation process in the globalization of criminology, including its penal and penitentiary dimensions. In that criminology, the blue colour certainly is within its spectrum, and the UN projects it through its own supranational ideas and other contributions.

⁶ One definition highlights corporate interests and emerged through corporate redefinitions of green environmentalism. Another definition highlights common elements in social movements concerned with environmental justice while emphasizing the commitment of these movements to simultaneously incorporating race, class and gender-oriented issues into green criminology (Lynch & Stretsky 2003:217-238).

⁷ Nominally only similar to “peacekeeping” and “peacemaking” as part of the approaches of the United Nations to maintaining global peace and security, peacemaking criminology and peacekeeping criminology as academic intellectual currents are, in fact, reminiscent of the early criminological views of Bernardo de Quirós and Enrico Ferri, combining socialism with theology (see part I of this book). According to their current proponents, “crime may be eliminated once we establish peace and justice” (Hagan 2010:186).

⁸ Radical or critical criminology is a branch of conflict theory, drawing its ideas from a basic Marxist perspective (see Figure 1).

⁹ Eskridge 2003.

¹⁰ Carroll 1957; Mueller 1983.

¹¹ Plesch 2008:144. See also WD 268 CO/110, The United Nations Conference on International Organization, Summary Report of Second Meeting of Advisory Committee of Jurists, June 10, 1945 on art. 3 of the draft United Nations Charter, for a discussion on the name “United Nations”, The United Nations Conference on International Organization, Summary Report of Second Meeting of Advisory Committee of Jurists, June 10, 1945 (in:) Documents of the United Nations Conference on International Organization, San Francisco, 1945, Vol. XVII, Part. I, United Nations, New York 1954: 404-405.

¹² Dupont-Bouchat 2002.

¹³ Anstee 1988:10. UNESCO is another entity which associates itself with Beccaria’s work (See: Problemi Attuali di Scienza e Di Cultura, Secondo centenario della pubblicazione dell’opera ‘Dei delitti e delle pene’ di Cesare Beccaria. Atti delle Celebrazioni indette, sotto l’alto patronato del Presidente della Repubblica, dall’Academia Nazionale dei Lincei e dalla Commissione Nazionale Italiana dell’UNESCO, Roma, Villa della Farnesina, 15-16 giugno 1964, Milano, Palazzo Marino, 18 giugno 1964, Accademia Nazionale Dei Lincei, Anno CCCLXII-1965, Quaderno N.71, Roma 1965).

Second, because this study has academic ambitions, its readers will determine whether indeed it has met that academic standard. The study makes positive remarks about several criminological works and initiatives, their authors and the animators of international and UN criminal policy. During my work at the United Nations I met many of them. The remarks that I shall be making in the later sections of this book may perhaps give the impression that I am writing a hagiography, since a diplomatic opinion of the roles and accomplishments of those persons "*went into my blood*". I cannot deny this. But, first and foremost, this account is that of a criminologist and an international civil servant who seeks to account for an academic vision of the UN crime programme, to the extent that the study's formula permits it. For this reason this study seeks to contribute to the institutional development of the UN *crime mandate*, as much as it is about its criminological ideas, in line with its title and the mottos.

Conversely, non-academic or bureaucratic readers may feel that in some places the text is not descriptive enough; it may be short of the proper bureaucratic perspective; it may be overly intellectual and meandering, and hence out of touch with the realities on the ground. Admittedly, the book's narrative contains such incongruence.

Two dichotomies are responsible for such incongruence. **First**, especially since this text deals with various academic and United Nations issues, there are different intellectual writing styles. Tongue-in-cheek: although the text may be "triple distilled", it still is no "single malt". Blending fully those styles into one seamless text was not possible. Academic writing has its own idiosyncrasies and ideologies. However, as a former UN official and, once more as

an academic, the point I would like to make through this study is that both intellectual writing styles (academic and bureaucratic) in this study may still go hand in hand, even if on other occasions those hands should be separate. Therefore, the present text is occasionally descriptive (bureaucratic) and occasionally discursive (academic).¹⁴

Second, and more importantly, such incongruence has its origin in two only partly compatible kinds of global narration: "writer responsible" and "reader responsible". **Writer responsible** narration emphasizes clarity and concision, actions over nouns, practicality over theory, present over past. It is direct, and is explicit over implicit. It is linear – it tends to go straight to the point. Writer responsible writing involves a rigid deductive reasoning in the text, and the narration tends to be confrontational. Intellectually, it may be action-specific. **Reader responsible** narration puts the burden of communication on the reader. It may be intellectually self-serving. It tends to be verbose, ornate, emphasizes subjects over actions, theory over practice, past over present, implicit over explicit. It contextualizes and connects. It may be fuzzy. It requires "reading between the lines", because it is inductive (lenient) in logic.¹⁵ It is also less linear than writer responsible narration and it is diversionary in building up the arguments. It emphasizes social harmony.¹⁶

In most official United Nations documents (resolutions, reports)¹⁷ one can find several such reader responsible features, even though efforts continue to make them more writer responsible. Nonetheless United Nations documentation suffers from verbosity. That "*stock of empty words*", that "*obsession with words*", as one UN insider correctly noted, is "off-putting".¹⁸

¹⁴ Because of this prosaic difference it was quite challenging to retain in both types of narration a "global writing style". Such writing styles are implicitly and intercultural very different. They have different assumptions, strategies and goals (Cool 2009: chpts. 1 & 6). The "United Nations language" must accommodate them in more than its six official languages can convey. This starts with English as a core working language of the United Nations Secretariat and French which is another such language. Through the former, either by the virtue of original (but not necessarily native-language) communication, the United Nations Secretariat processes or "recycles" other language texts. In effect, "UN language" is an amalgam of all such influences and instrumentalities.

¹⁵ Karl R. Popper (1934/1984:3-5) argued that one of the most serious methodological flaws in social science research involves pursuing inductive logic. This is because of its probability-language "would"/"could" rather than the "yes"/"no" of deductive logic. If we judge United Nations criminology only on the strength of its inductive logic (the UN "language" is very probability-conditioned where "would"/"could" and "may"/"can" are often used), then it could never satisfy this argument. However, this argument mattered more in the pre-globalization stage (up to 1989) of crime and justice issues than it does today, in the world of recognized plurality of legal cultures. Irrespective of that date, as if by definition in intercultural and international studies and especially in international organizations (let alone in the United Nations since its inception) it is in their very concept and interest to pursue inductive logic because of that legal pluralism.

¹⁶ McCool 2009.

¹⁷ This should not come as a surprise. The United Nations as a client-oriented organization (Member States are really its stake holders and employers), must relate to them and relay their substantive recommendations. In less official documents (technical reports, books, press releases, etc.), there is much more leeway in simplifying their language.

¹⁸ Bertrand 1996:67 & 78. The press releases of the United Nations Department of Public Information (DPI) are much more direct and informative. Either directly or through the United Nations Information Service (DPI's outpost in Vienna), DPI has covered all the important developments related to the United Nations crime mandate. The press releases are written in a journalistic manner and help considerably to deliver the United Nations criminal justice messages in a newsworthy way.

Ideally, it would be desirable to enhance writer responsible features of "United Nations language". This is because it facilitates better understanding among diverse populations in which readers arrive with a variety of values, native languages and customary beliefs.¹⁹

However, writer responsible narration in the United Nations has its own limits. Verbosity may be justified, and the context matters. The United Nations as the largest peacemaking organization in the world must emphasize social harmony. Seemingly superfluous words count - and so do fuzzy expressions and definitions (if not also their absence).²⁰

Compared with the domestic plane, on the plane of international relations, including, occasionally, the legislative process, a different logic is at work. These superfluous or absent words/definitions may in their own ways be useful to consensus building. Rather than considering them as oversights or poor drafting, we should note how they prevent the international community from being slowed down in responding to crime. The present text has some of these reader responsible features.

Another reason for the justification is that "*United Nations language*" is shaped by many thought patterns.²¹ It is not only intercultural but also global in its own terms. Transforming it into one logical thought pattern is a considerable challenge. English legal terms may have no corresponding term in other languages and vice versa. The same is true about English criminological, political science or other terms.

It is for this reason that this book includes a glossary of terms and a Guidance Note. Both should help to clarify otherwise reader responsible text. The note provides its readers who are instructors (trainers) with a list of study questions for their audiences that may be found in some ways quite theoretical but always focused on practical problems and solutions. Further, the book provides in the Annex additional bibliographical information about United Nations crime and justice developments with a set of photos

related to their contents. For either kind of audience, whether academically or practically-minded, those visuals may be helpful in getting to know the United Nations as a living organism that feels, addresses and responds to the daily concerns of victims of crime and offenders in many ways.

To the above one may add two more facts: not only is the author a Slavic native-language Pole accustomed to reader responsible text, but also the author may be overrepresenting in it the Polish academic contributions at the cost of some others (e.g., African, Asiatic, Arabic and European - from the Balkans in particular). Save native English speakers, this probably is the predicament faced by all other native-language educated authors from any country. It goes without saying that such insights make criminology even more global than it would be if dominated only by Western European and North American contributions, particularly written in English.

Likewise, a charge of over-representativeness may be formulated because of a somewhat disproportionate number of Canadian contributors to this study. In my opinion, this reflects the relevant official contribution of Canada to the United Nations Crime Prevention and Criminal Justice Programme, a contribution that is difficult to overestimate. In this way I want to express my appreciation to this Member State for its very many official initiatives directed at the UN crime programme, which either I witnessed or I was involved in. Canada believes in "*good international citizenship*" for which promotion of justice is key for a stable order.²²

Especially from 1981 to 2002, Canada's representatives, many of whom became "*Friends of the Programme*" (and also my friends), made concrete substantive and financial contributions to the Programme, very constructively and always in a considerate manner. They introduced progressive ideas to the UN crime programme, among others through UN policy-making bodies. The way in which Canada in this way documented "*good international citizen-*

¹⁹ McCool 2009:133.

²⁰ Such an absence of definitions may be demonstrated by two United Nations legal instruments: the ECOSOC resolution providing the *Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions* (1989), and the *United Nations Convention against Corruption* (2003). Moreover, none of the sixteen universal legal instruments against terrorism contain a definition of this offence. The term itself is used only three times in the titles of those legal instruments (in two conventions and one declaration). Such outcomes are deliberate and also evident in European Union law. Although they are termed "confusing" or (pejoratively) "fuzzy" (non-Aristotelian) logic, in fact they document that many international concepts are purposely left ambiguous, indeterminate or even incomplete. The incongruence evident at times in international legal reasoning results from varieties in national legal reasoning, varieties which sometimes are fundamentally incompatible with one another (See further: Delmas-Marty 2002:99-100; Mathisen 2010:200). In international law, the response to cross-national shortcomings of deductive reasoning has led to balancing it out by inductive reasoning entailing ambiguity (Schwarzenberger 1965:8).

²¹ Redo 2009. This article addresses Aristotelian and non-Aristotelian logic with culturally different mindsets. In this context, it looks at the goal of the United Nations of creating "a common language of justice" as a "meta-language" for humane and effective crime prevention and criminal justice policy and project delivery, facilitated by understanding better the need for intercultural communication skills.

²² Axworthy 2001.



Picture 1. Professor Inkeri Anttila (Director of HEUNI, founding member of the Committee on Crime Prevention and Control) and Giorgio Giacomelli (Under Secretary-General, Director General of UNOV; at the microphone) at the 1992 handing-over ceremony of the ICCLR&CJP / HEUNI commemorative tableau with the list of 137 members of the former Committee on Crime Prevention and Control

ship" (a term coined by Gareth Evans, Australian Foreign Minister, 1988-1996), has always impressed me. More recently, when negotiating with Canada the financial arrangements for one United Nations meeting, to be originally hosted and directly financed by one Government, the Canadian representative wondered if such financing (payments for airline tickets) can be indirectly channelled via the United Nations Secretariat, something which apparently is easier for Canada to accept than direct Government-to-Government payments. This is one of very many examples of why I find Canada a country that promotes even more than "good" international citizenship, while also promoting United Nations "honest brokerage". This study, therefore, pays my respect to the Canadian civil service and many of its members with whom I have had the honour and pleasure to cooperate. The initial dedication on the opening page of this study lists the first names of these friends.

In the peer review process of this book I was asked what these friends really did. My response was always the same: Those Canadian friends with whom I worked closely demonstrated a high State ethos. How well they prepared for each and every United Nations meeting could be seen by the vo-

luminous documentation that they always brought with them from Ottawa. One example serves as a good demonstration of this. Since the beginning of my involvement with the Canadians in connection with various preparations for the quinquennial United Nations congresses on crime prevention and criminal justice, I have not only been aware of their immense "home work" in terms of their internal consultations, but I have also seen the voluminous documentation prepared by them for the congresses. In 2010, at the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, my admiration for the volume of that homework grew further, when I saw Lucie Angers and Donald Piragoff, two high-ranking Justice Department officials, walking into the consultations room with a suitcase full of such documents. Jeannette Acroyd, Aaron Caplan, Vincent Del Buono, James Hayes, Alex Himmelfarb, Sabine Nolke, Mary-Anne Kirvan and Christopher Ram – all these Canadian friends acted in a similar fashion. Hard-working, well prepared, always fulfilling the duties of a public civil servant. I was therefore not surprised to see that in the aftermath of the Twelfth Congress, among the few countries that responded on a short notice to the request

of the Secretary-General for advice on how to improve the efficiency of the process involved in the United Nations congresses on crime prevention and criminal justice, there was Canada.²³ The same virtue that I recognize in such public servants I find in other nationals, including many Chinese servants, as well as international civil servants with the interstate United Nations ethos - those who have the "blue blood". This dedication, then, should be read in a much broader way than a casual interpretation would have suggested.

The book is also dedicated to my wife Jolanta and my son Piotr. Both deserve my utmost thanks for supporting me in my personal and professional life. Last but not least, this book is dedicated to Freda Adler and the late G.O.W. Mueller - my first "UN Chief". He recruited me into the international civil service of the United Nations. "Freda and Gerd", as old-time colleagues and friends use to call them, have been in my mind ever since. We shared very many precious moments together and I have always admired their professional accomplishments.

But there is still one more reason to emphasize the role of "friends". Among descendents of European immigrants in North America, this term is commonly used to describe someone you know well, someone you like, and someone you feel a close personal bond with. Unlike kinships, friendships are voluntary among people who see themselves as similar in some important ways and who often belong to the same social class. Friendship is based on a shared activity, event and experience. For friendship, it is more important what you do and have achieved, than who you are. Thus friendship is really fragmented, but involves shared values.²⁴

"*Friends of the Programme*" (uppercase "F") which includes lowercase "friends" in a Northern American/European sense, is a bigger and more formal euphemism. It involves like-minded people and entities sharing programme values. It is less personal, but still based on ensuing interrelationships which influenced me and, I hope, provided me with the capacity within this larger intercultural framework to communicate through this book important criminal justice messages regarding the

power of the United Nations to respond to crime globally. In return, I hope that through my Canadian and other "friends" and "Friends" coming from so many world cultures, I also was able to be more intercultural and empathetic to their perspectives, which eventually helped to form my own United Nations perspective.

It is through this kind of incorporation (certainly not the only one possible) that I embrace in this book the development of United Nations crime prevention and criminal justice policy. Between 1946 and 1991 it had been developed, inter alia, through the expert Committee on Crime Prevention and Control. In the almost half century of that Committee's work, it was composed of many eminent criminologists, lawyers and other experts. Regrettably, in this book I have been able only modestly - or not at all - to demonstrate the accomplishments of several of them. This is because of the formula of this study - methodologically less demanding than that of a monograph. However, as I am still seeking due geopolitical coverage in this study, it includes all 137 names of that United Nations expert body.²⁵

Similarly, some may object on methodological grounds to two features of this study. **First**, it focuses primarily on the mandate of the United Nations in the field of crime prevention and criminal justice rather than on its presently expanded drugs and crime mandate. For this purpose this study employs various, not always functionally equivalent, terms: "*the United Nations Crime Prevention and Criminal Justice Programme*", "*the United Nations crime and drugs programme*" and "*the United Nations Office on Drugs and Crime*", even though what flows from all of them should be corollary in terms of a succinct and logical development of the entire history (1946-2011) of what is colloquially termed the "*UN crime programme*". The quoted terms originated in various phases of that development. On 18 December 1991, the United Nations General Assembly, in resolution 46/152 (Annex), used the "*Programme*" designation, when at about the same time it also used the designation "the United Nations International Drug Control Programme", on the history of which there are other publications.²⁶

²³ E/CN.15/2011/15, Follow-up to the Twelfth United Nations Congress on Crime Prevention and Criminal Justice and preparations for the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, 1 February 2011.

²⁴ In other cultures friendship may be composite or whole (also in shared-values terms). In such a kind of relationship shared values may not necessarily be those that should be shared with or by a State. Where this happens, friends are called "brothers" or "sisters", even if there is no kinship, as in the case of Central Asia or Africa (Lustig & Koester 2010:245).

²⁵ See Table 3 on the enclosed DVD.

²⁶ Ghodse 2008; UNODC 2009; Redo 2011. In 2003, the Secretary-General reconstituted the Secretariat's portion of the UN crime programme mandate, and included it in the newly created United Nations Office on Drugs and Crime. The Glossary explains more differences.

Second, this study offers only a cursory academic analysis of its concept of "crime", "drugs" and related notions, such as, e.g. "prevention" and "justice". Therefore, a mere statement that "crime is what has been defined as such by national, international or transnational law" will not satisfy a reader who may argue that in any society there are types of behaviour expressly or tacitly accepted even if under law they are criminal. But the book is not about this kind and level of explanation, whether on "crime", "justice" or "drugs".

Therefore three other explanations should be added here. **First**, probably much to the surprise of many readers, the evolution of the UN crime programme mandate has not begun with the implementation of the UN Charter that in its preamble and arts. 1(1) and 2(3) alludes to achieving "justice", which "means something different from international law ... and ... refers to natural law".²⁷ In the UN crime programme specifically, "justice", qualified either as "criminal" or "juvenile", has really been only a gradually and constantly developing concept, driven and shaped by various orientations regarding its meaning and scope, as stipulated in the programme's international criminal law and other legal instruments.

This broad UN definition of "justice" is legally and diplomatically a very subtle matter. It should be embedded in an even broader concept of justice. Over decades of development of that concept it has followed diffused and often incoherent paths.

Second, unlike the UN drugs mandate, the UN crime mandate has not begun by taking over "legal control" responsibilities from the League of Nations on the implementation of the two international conventions on the suppression of traffic in women and children (1921) and on the circulation of obscene publications (1933) nor from implementing the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (1950).

Similarly, the UN crime programme has not been mandated to deal with the implementation of the two first legal instruments against human trafficking: the *International Agreement* (1904) and the *International Convention for the Suppression of White*

Slave Traffic (1910), and of one instrument against pornography: the *International Agreement for the Suppression of Obscene Publications* (1910). It was France that was entrusted to deal with the three of them before the birth of the UN. Taking over France's functions²⁸ in 1948, the UN has administered all the above international instruments, and several subsequent ones through its Legal Office.²⁹ Unlike the UN drugs programme which took over the responsibilities of the League of Nations involving the implementation of the *Opium Convention* (1912), originally pursuant to the Treaty of Versailles, shared until 1920 between France and The Netherlands, the UN crime programme had nothing to do directly with those other, originally, French mandates.

However, save the above, it is a continuation of the work programme of the League of Nations, subsequently expanded by other programmatic contributions, all responding to the objectives of the *United Nations Charter*. In the preamble the *Charter* expresses the determination of the United Nations "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person ... to promote social progress and better standards of life in larger freedom, and for these ends ... to employ international machinery for the promotion of the economic and social advancement of all peoples". These broad social and economic objectives are further specified in articles 1 and 55. In article 1, one of the four basic purposes of the United Nations is stated as being "to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".

In article 55, the social and economic objectives of the United Nations are also related to the broader aims of the Organization: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: higher standards of living,

²⁷ Commentary 2002, Vol. 1:36.

²⁸ GA resolution III (256) of 3 December 1948.

²⁹ Since 1948, with the gradual development of the *UN Bill of Human Rights* (1948/1966) and subsequent international legal instruments, a considerable portion of criminological work has also been carried out in the UN Secretariat by the Office of the Higher Commissioner on Human Rights (Geneva, Switzerland). The Division for the Advancement of Women, another entity of the Secretariat (New York, USA), after the adoption of the *Convention on the Elimination of All Forms of Discrimination against Women* (1979), often described as an international bill of women rights, has been carrying out considerable criminological work on violence against women. Outside the Secretariat, several agencies in the UN system, including the UNDP, the World Bank, WHO, the UN-HABITAT, UNICEF and UNESCO deal with various criminological topics and projects. The latter organization published in The University Teaching of the Social Sciences series its *Criminology* (Carroll 1957).

full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".

Paradoxically then, the UN crime programme mandate has neither originated from the *Charter's* "justice" provisions nor from any of the above international criminal law treaties. Its original feature, which until now has remained dominant, is a social welfare orientation.

That orientation can be traced back to the first half of the nineteenth century – the onset of modernization. Then the idea of universalizing certain concepts across the world, such as expanding "formal" (classical/legal) justice to "social" justice, had its beginning in Europe.³⁰

Between 1830 and 1920, there were three phases of legal reform in Western Europe. Until 1850 legal reform had focussed on ascribing individual responsibility and on the risk posed to society by those in conflict with law (in line with the classicist criminal law school); between 1870 and 1890 on family law development, and between 1900 and 1920 on a State's involvement in family matters.³¹

In the middle phase, otherwise known as the phase of social justice, that legal reform has started getting its first criminological connotations. These became very pronounced during the 1870s, when the International Penitentiary Commission was established. They had been further developed up to the First World War, and to the time of the League of Nations. The emergence of the UN crime mandate can be associated with these connotations, as will be detailed later.³²

With that penal and social reform orientation, from its early time the UN anti-crime programme has started assuming international leadership. Initially this leadership was shown through criminological research on juvenile delinquency and justice,

the preparation of a cross-national survey for planning the combating of the traffic in persons and the suppression of the exploitation of the prostitution of others, and comparative work on domestic criminal statistics and on probation. It was soon extended to advocacy on behalf of the humane treatment of offenders and victims, international expert networking, and – last but not least – to assisting in elaborating soft law regulations on responding to crime. In any case, that legislative work had been relevant in issues regarded as an internal matter of Member States.

Between 1946 and 1948 the above founding mandate has been given its design by the resolutions of the UN Temporary Social Commission (later renamed the Social Commission, and now the Commission for Social Development). From 1949 until 1991, the initial recommendations on the mandate originated from an expert committee, which after 1983 had reported directly to the Economic and Social Council. Since 1992 this reporting procedure has been followed by the intergovernmental Commission on Crime Prevention and Criminal Justice. From that time to the present, the mandate has developed and combined various social and international elements of crime into the programme on its prevention and control. But it was not until 2000 that crime in that mandate became a manifestly international matter, when the General Assembly approved the *United Nations Convention against Transnational Organized Crime*.³³

The above shows the context in which this study emerged and the importance of bureaucratic ("administrative") criminology.³⁴ As emphasized by one of the greatest authorities in the doctrine of public international law, in the United Nations what is important is its mandate and authority, and in academia what is important is its concept and methodology.³⁵ But even within this relatively strict bureaucratic mandate, occasionally the variety of interdisciplinary contributions to it made it difficult to speak in one "common language" because of differ-

³⁰ Kennedy 2003a:646.

³¹ Pierre & Dupont-Bouchat 2001:427-428.

³² Here it must suffice to say that at the initiative of Édouard Ducpétiaux (1804-1868), the Belgian general inspector of prisons and public welfare institutions, concerned with the overrepresentation of unemployed young people in prisons, the General Statistical Congress (Brussels, 1853) called for the development of international comparative surveys that should help to determine "the economic budget of the working classes" (i.e., what is now called "household statistics"). Low wages were believed to be criminogenic. The Congress also called for a variety of comparable criminal statistics: for young and adult offenders, from offences recorded through imprisonment and on capital punishment executions (Levi 1854:10-13).

³³ GA resolution 55/25, Annex, 15 November 2000.

³⁴ Walters 2003:36. The term was originally coined in the U.K. Home Office Research Unit. Its staff had "the difficult task of maintaining 'scientific integrity while acting as a servant of the secretary of state'" (T.S. Lodge quoted in: O'Brien & Majid 2008:4).

³⁵ Bassiouni 2003.



Picture 2. Dusan Cotic (Yugoslavia) and Elias Carranza (ILANUD) during an informal discussion at a HEUNI seminar in Helsinki, Finland (1992)

ent terminologies; indeed, this is also the case in the academic world.³⁶

When writing this study, in the quest for locating the origin and current whereabouts of criminological ideas, I often crossed the bridge between the various disciplines, and between "bureaucracy" and "academy", which seem to me otherwise to be very secluded domains. As a bureaucrat, I could see that the academic world may indeed look very alien to most officials. As a former academic, I could "think out of the box" and sense how researchers can perceive the distant bureaucratic world. And yet in both groups there are similar sub-groups of professionals. Among the bureaucrats and academics there are "generalists" and "empiricists". Empiricists are field-orientated persons who prefer doing practical work, instead of sitting in an armchair and negotiating their way and vision either through the upper levels of the hierarchies or through the academic layers of recognition. Similarly, in both worlds one will find, among others, "visionaries"

and "methodologists", "thinkers" and "managers". So, despite some evident differences showing the divide between "authority" and "science", there are also commonalities between the two in terms of jointly responding to crime.

These commonalities will be easily identified by the experts involved in this crosscutting work. It is for this reason that the current United Nations Crime Prevention and Criminal Justice Programme deserves more than the present monographic study. It merits a new monograph, as it did more than once in the past.³⁷ In writing it, those experts will need to go beyond the scope of this study and deal further with two disconcerting facts: that neither academic criminology nor the United Nations crime mandate have managed to enter a larger global picture of peace and security in the world, and both remain parochial in their own terms.

How parochial indeed is shown by a rare academic book on international relations, United Nations Global Conferences.³⁸ In it, amongst the UN global conferences "mirroring the evolving world order"³⁹ there is no mention at all of the United Nations congresses on crime prevention and criminal justice, which have been convened every five years since 1955, and which historically are the conferences most rooted in the foundation of the Organization. Even more surprising is the absence of UN references in criminology proper, as reflected in such authoritative sourcebooks as *The Oxford Handbook of Criminology* (2007).

For some academics this may not be a great loss. After all, in academic research the freedom of thought and choice are of paramount value, whereas "administrative criminology",⁴⁰ such as "UN criminology", perhaps may not be held in high esteem by them, and thus would not a topic of choice. However, for those who regard the contributions of such criminology as central to global peace and security, the respective articles in serious encyclopedical criminological sources⁴¹ are good demonstrations of that

³⁶ For example, in the social welfare and developmental assistance fields it is common to speak of the "exclusion" of people. But this is hardly the case in bureaucratic criminology. There, one more often speaks of "marginalization" – a word that is partly different in meaning from "exclusion". And so it is between economics and criminology, criminology and political science, etc. In effect, the UN interdisciplinary crime mandate juggles various terms with different scope and precision-levels. For a criminal lawyer all this is particularly challenging, because in criminal law its own terms are far more rigorously defined.

³⁷ López Rey 1984; Clark 1994. There are also various "grey literature" descriptions of the UN anti-crime mandate. For example, for the Ninth Congress on the Prevention of Crime and the Treatment of Offenders (1995), a brochure on *The United Nations and Crime Prevention* was published by the UN Department of Public Information (DPI 1143/Rev.1/CRM, available at http://www.asc41.com/9th%20UN%20Congress%20on%20the%20Prevention%20of%20Crime/9th_congress.htm), with backgrounders and pamphlets.

³⁸ Schechter 2005.

³⁹ Ibid.:195.

⁴⁰ Walters 2003:36.

⁴¹ Mueller 1983; Joutsen 2004.

alternative perspective, even though their authors only intuitively (i.e., without explicitly naming that goal) make the case for it.

But there are still too few such cases. In looking for more, by a lucky coincidence *The Oxford Handbook on Political Analysis* (2008) came to my rescue. I found there the tool facilitating a reconstruction of the development of criminological ideas and inscribing them into a bigger global picture through path dependence analysis. It is "a property of a system such that the outcome over period of time is not determined by any particular set of initial conditions. Rather, a system that exhibits path dependency is one in which outcomes are related stochastically to initial conditions, and the particular outcome that obtains in any given 'run' of the system depends on the choices or outcomes of intermediate events between the initial conditions and the outcome".⁴²

To put it more visually, path dependence is a process comparable to the way in which external water can leak through the ground to the interior of the house. Where the leaks through the wall will appear, depends on how water negotiates its way through the ground. In the present case, that "ground" consists of layers of academic and United Nations criminologies. This may help to show where and how criminological ideas originated, how they have been institutionalized in academia or the United Nations, and how they have moved from one to another. What surprised me in criminology is that certain ideas have been treated in a disconnected fashion: for example the "theory of modernization" is dealt with autonomously from "The New International Economic Order", and "sustainable development" is dealt with autonomously from the "right to self-determination". If these examples are understood here as unrelated ideas, then indeed my surprise is justified. Anyhow, that's why this study reconnects the NIEO with Western Marxist criminological thought and shows how the United Nations crime programme has become an avenue for the global advancement of the NIEO.

Path dependence analysis does not guarantee that I was able to connect such ideas in the right way, nor that the detected connections are the ones or the only ones at work. After all, although the concept of "criminology" appeared around 1885 in Italy and France, in that it was respectively and almost concurrently used by both Raffaele Garofalo and Paul Topi-

nard, the concepts of "crime", "justice" and "prevention" have been around since ancient times.⁴³ Those ancient times include not only their judeo-christian interpretation, but also much older Egyptian and Chinese interpretations. Thus the origin and development of certain criminological ideas has or might have had different Occidental and Oriental "fathers", or a different course, if it all took place. And, therefore, last but not least, there may be no such connections between the ideas whatsoever. Thus some of those connections identified by the author of this study may be claimed to have been made up, for there are so many other possibilities "which we cannot disentangle".⁴⁴ There is, then, a risk of absurdity in seeking connections everywhere: while certain ideas may seem to be interrelated in substance, their development may not necessarily be interconnected, and may in fact be autonomous.

In light of the above, the most challenging part of the path analysis in this study was pursuing the multi-pronged global advancement of the idea of sustainable development and finding for it a full criminological context. This was not only because the challenge required detective investigation of the United Nations background to that idea, but also because of the theological and academic work interrelated with it, including the theory of modernization, among several other approaches.

To say that those paths meandered may be an understatement. It would probably be better to say that the paths were serendipitous and, among themselves, antagonistic. Consequently, this central part of the study is particularly vulnerable to criticism, especially of the academic sort.

Now the reader may easily judge whether, despite this study's own internal limitations, it nevertheless "toutes proportions gardées" manages to document how academic and practical criminological thought, sometimes separately, sometimes jointly paved the way for the global response to crime in the context of peace and security, while it draws on other sources, makes respective evaluations and seeks to retain a geopolitically balanced perspective.

Third, this study documents its theses not only on the basis of collected evidence, but also, in its absence, on the basis of the author's memory. This was aided by numerous conversations I have had with the Programme's "old-timers": the late Vincent del

⁴² Goldstone 1998:834.

⁴³ Drapkin 1989.

⁴⁴ Großfeld 2003:177.

Buono (Canada), Pedro David (Argentina), Marc-Andre Dorel (France), Luis Molina (Canada), Matti Joutsen (Finland), Marcia Kran (Canada), Irene Melup (Poland/USA), Minoru Shikita (Japan), Eduardo Vetere (Italy), but also with Kauko Aromaa and Terhi Viljanen (HEUNI, Finland).⁴⁵

Last but not least, the reviews of the manuscript of this book by Duncan Chappell (Australia), Roger S. Clark (New Zealand/USA) and Matti Joutsen (Finland) have been critical and helpful in certain areas. However, the responsibility for the entire content of the book rests with me alone.

That responsibility includes this book's inability to prove certain relays between academic and UN practical criminological ideas. That would have been possible only if and when such evidence were in "summary records", a kind of "*travaux préparatoires*", as the case may be for international treaties, and as the case is regarding the sessions of the ECOSOC and of the General Assembly. But there are no such records on the sessions of the United Nations Commission on Crime Prevention and Criminal Justice or its predecessor. There are only the summary reports on those sessions.⁴⁶

Background summary records are helpful in understanding the language of the UN resolutions, because they go into some detail, explaining what really stands behind the language of a resolution. Among such details the ECOSOC and GA records contain names of delegates and of other persons mentioned, like, e.g., that of Mahatma Gandhi, who is quoted in this study. In the language of UN publications (papers, books) such substantiating detailed records appear more often, but still less than in academic publications. This is because the UN publications are usually a synthesis of knowledge, sometimes based on preceding meta-analyses. From the academic perspective statements in that meta-language may seem to be oversimplifications but, more often than not,

this is a false impression. Moreover, attributing in such a case the ownership of a certain idea to a particular author would lead to another false impression, that it was only that single author who launched it. Such attributions are more frequent in the academic world. They do not happen in practice, at least not in the practice of the UN.

What counts in the UN is the accumulation of ideas. When political momentum builds, then one would not necessarily be able to retrieve from the institutional memory the name of the creator of a particular idea. In the sense of the result (that is not referring to a name) it is the same in the world of practice and the academic world. However, while in the latter this may be due to a reluctance to acknowledge someone's contribution, in the world of practice (at least that of the UN), this may be sheer ignorance, combined with an overriding pressure to communicate a problem or an idea succinctly and discuss the viable solutions.

Reemphasizing the above, the overriding idea of this study is to inscribe academic conceptions into a practical aim of responding to crime in the world by the UN and by reconstructing their origin. Driven by academic motives, in which methods and concepts are by definition most important, this study addresses their implementation from the standpoint of their intended practical global use.

This intention is materialized in two ways. Initially, by showing that criminology is not a peripheral science which from the outskirts of developments observes what happens in their core, but a partner discipline for a new science of sustainable development derived directly from the mainstream of life. Next, that UN social and criminal policy is a rarely used key to unlock the sense of international relationships, both academic and practical. As written by the researchers of UN ideas,⁴⁷ these are too little known in the world.

⁴⁵ Separately, my thanks go to the young generation of "Friends of the Programme": Chiara Cirillo (Italy), Sara Grilc (Austria), Lukas Gamlich (Austria), Ashenafi Gebreegziabher (Ethiopia), Marcela Rodríguez (Bolivia) and Danielle Van't Hoog (The Netherlands) whose help in visualizing certain information, which eventually found its way into this book, cannot be overestimated.

⁴⁶ The narrative part of those reports gives a limited idea of the rationale for the decisions and draft resolutions of the Commission. Only in contentious cases do the reports include reservations made by Member States, after the consensual adoption of them has taken place. Consensual adoption of the decisions/draft resolutions is a customary principle followed by all ECOSOC functional commissions, such as the Commission on Crime Prevention and Criminal Justice is. The few exceptions involve particularly contentious issues within the mandate of the ECOSOC NGO Committee, the Commission on the Status of Women (involving Palestinian women), and the former Commission on Human Rights (its successor, the Human Rights Council, is not an ECOSOC body). Making reservations at the Commission on Crime Prevention and Criminal Justice has in recent years become relatively more common than before, because Member States have had more legislative initiatives for draft decisions/resolutions made in the short time before the start of the Commission, thus preventing others from informally negotiating the drafts in good time before its beginning. Functionally, it is the Committee of the Whole (COW) of the Commission that should take care of the negotiations and iron out the legal details of the draft decision/resolution. But sometimes the negotiations continue in the plenary, mostly leading to the eventual adoption of the proposed text. With a few exceptions (particularly involving the recommendations of the NGO Committee), the ECOSOC usually approves the draft resolutions, as recommended by the commissions.

⁴⁷ Haack, Hafenstaller & Paepcke 2008.

It is said that to learn the culture of a nation, one should visit its prisons.⁴⁸ Doing that may show how nation's values are implemented in practice.

Learning that truth through studying the prisons from the books is certainly not enough, as some quite influential criminal justice reformers argue. One of them, the Pole Janusz Korczak, a juvenile justice reformer indeed (whom this study deals with later on) through the mouth of his child book novel hero "King Matt the First" cautioned about the value of academic work on prisons:

"So ... he wanted to write a scholarly book about prisoners in the whole world. How many of them are in a country, for what they were sent to prison, are they improving, are they treated well, do they die. And there is such a custom that if someone writes a scholarly book, everybody helps him. And for ten years that scholar travelled around the whole world - and he was allowed to look into papers ... Stupid, he seems to believe that he will learn anything from them. In the papers everything is all right".

More surprisingly, for some reformers even visiting prisons has not been telling enough, as in the case of two Frenchmen: Alexis de Tocqueville (1805-1859) and Gustave de Beaumont (1802-1865). After almost a year-long tour of the United States, during which they visited a number of American prisons and talked with their directors and inmates, they published in 1833 a contentious report on "*Système pénitentiaire aux États-unis et de son application en France*" (The Prison System of the United States and its Application in France). Even when Tocqueville visited the famous Sing Sing prison in New York, his mind blissfully started producing reflections on American society completely disconnected from his penitentiary study.⁴⁹

Tocqueville took nothing from the report's recommendations in his much hailed subsequent book on *Democracy in America*, which was the fruit of the same visit to the United States. It was as if the two topics had nothing to do with one another! In that book, he found no value in his earlier hard study of the U.S. prison system. There are only a few remarks about prison reform in that coun-

try, indeed unconnected with any observations regarding democracy.

In investigating the lack of interconnectivity between the first and second book, two reviewers reveal that eminent political thinker and historian as Tocqueville was, they found him unable to confront the writing of the prison reform report. One reviewer explains that Tocqueville "*fell into an unshakable inertia. ... [H]e could not make himself work, and ... confessed: 'I begin to believe that I was decidedly stricken with imbecility during the last months that I spent in America; we believed that it was an attack; but every day the ailment takes more the character of a chronic malady; I am still where you left me'*".⁵⁰

Thorsten Sellin, another reviewer, and an eminent U.S. criminologist (1896-1994), adds that a week later Tocqueville admitted that his mind still refused to stir. "*He could neither work nor write. What Beaumont called the 'steam engine' of his intelligence ran no longer ... Tocqueville ... sat for weeks in front of some white sheets of paper and finally he left the entire task to his faithful companion and friend*". He advised Beaumont, "*Do not wait to see my work during your absence. I have not done anything, or as little as possible. My mind is in lethargy and I absolutely do not know when it will awaken. So bring enough courage, ardour, enthusiasm, and so on for two*". In effect, Tocqueville's contribution was limited to a statistical appendix and notes.⁵¹

Had thus indeed the two rapporteurs, as Pierre Marcel would have claimed, indulged themselves in their report by developing to no end the effects of non-decisive causes for American democracy?⁵² By extension, has contemporary crime prevention and criminal justice nothing to do with the state of democracy in the world?

This study has, therefore, two additional goals: first, to provide its reader with a bigger picture in which crime prevention and criminal justice is inscribed, and in which criminology is a part of world peace and security politics; second, to raise awareness in the academic world of systemic UN ideas by resurrecting their genesis and actualizing their con-

⁴⁸ Freely translated from: "*man Die Kultur eines Volkes nach der Art der Behandlung seiner Gefangenen (bezw. seiner Verurteilten) erkennen kann*". The statement is credited by Leo Huber (1916:11) to Hans Gross (1847-1915), the eminent Austrian criminologist from the University of Graz, one of the founding fathers of academic criminology, who in 1912 opened there the Imperial Criminological Institute.

⁴⁹ Pierson 1996, ch. X.

⁵⁰ Schleifer 1980, ch.1.

⁵¹ George W. Pierson, *Le 'second voyage' de Tocqueville en Amérique, in Alexis de Tocqueville. Livre du centenaire 1859-1959*, Paris: Ed. Du Centre National de la Recherche Scientifique, 1960:71-85, quoted after Sellin 1964:xvii-xviii.

⁵² Renshaw 1998:xxix.

tents, in order to show that humane and efficient crime prevention and criminal justice promoted by the UN matters in democratizing the world.

As one can see, this approach takes care more of a larger policy picture of crime prevention and criminal justice in the world than it does of the development of theory regarding this. In this sense, this study is largely and programmatically atheoretical. It does not stick to any particular general theory or specific theories of crime, even though in the United Nations the concepts of criminogenic and victimological functions of *poverty* and *inequality*, regarded as roots of crime and victimization, seem to be the leitmotifs of many of its activities in response to crime. Moreover, this study is also "*under-theorized*" in the sense that it does not sufficiently dwell on any grand theories to the application of which academic comparativists have long alluded,⁵³ whilst its author nevertheless still aims at a high academic standard.

After all these introductory explanations, from a political science perspective, the reader of this study can easily find that its author falls into the category of idealists (constructivists or, more correctly - because of its historical theme - reconstructivists). He believes in the United Nations, even though the idea of *justice* to which that Programme contributes is still an illusion. Like others, therefore, he does keenly realize that the goal of upholding the ideals of the Charter is elusive as long as the United Nations is so weak, and when its social concerns are the last concerns of the governments and often of public opinion in rich countries.⁵⁴

From a broader social science perspective, the author falls into the category of comparativists. He sees complex, but still evolutionary progress, in United Nations criminology, interrelated with other advances. He looks for broad comparative brush strokes and practical, hopefully increasingly sustainable, solutions rather than for implicit comparisons of foreign materials and static observations. Therefore the ideal reader of this study is a person interested not only in analysing the "*state of affairs*", but also in learning how to arrive at a more internationally, socially and humanely desirable and practical crime prevention outcome. Also, rather than being seen as belonging to any particular school of thought, he sees himself as a pragmatist and a "*doer*" looking for a common-good result. This study should document this as well.

To follow easier its sequence and the sequence of all the criminological ideas (both before and after the establishment of the UN) that are presented, the study ordains them in the matrix. It graphically comprises their development over roughly 250 years (from 1764 until 2010). It illustrates their multilayer flow in 14 rows in a single figure (see the front inlay of this book), including the first idea of *freedom from fear*, the question with which the book starts below.

⁵³ Riles 2001:10-16.

⁵⁴ Bertrand 1996:67 & 91.

Part I – Against Fear and Want, for Sustainable Development



I Freedom from fear and the effects of military conflicts on crime and victimization

Shortly after the Second World War, four Polish authors produced criminological studies. One, by Leon Radzinowicz, appeared in the United Kingdom (London, 1945). The other three were published in Poland. The book by Radzinowicz does not contain a single word about the atrocities of the Second World War. There are only some passing references to the “Great War” of 1914-1917. The three other criminological books follow the same line. In his book “*News from Criminological Sciences*”, (published in October 1945),⁵⁵ Józef Jan Bossowski mentions only that it was written in the “*difficult time of war*”. Stanisław Szwedkowski,⁵⁶ another criminologist who produced a study on the fight against crime and looked into the future of law and order, notes merely that this study was “*drafted in the period of the greatest terror in Warsaw in the years 1943/44, and is dedicated to social workers and to the new generation of the fighters for law and order of the Republic*”. Finally, Emil Stanisław Rappaport, in his book published in 1948, reminded his readers about the postulate of the International Association of Penal Law (of which he was the vice president before the Second World War), an association that was regarded by the United Nations as a collective professional advisor in selecting the path “to be pursued by the criminal policy of civilized mankind.”⁵⁷ In following that path, the Association, aware of the criminal policy extremes that had taken place in the world, should stress the subjective and material (objective) elements of the definition of crime – quite a perceptive criminal policy recommendation, contributing nowadays to the ‘civilianization’ of domestic criminal law.⁵⁸

In sum, it seems as if these four authors wanted to define war outside the scope of their post-Second World War scholarly studies, if not entirely from their criminological thought. Could it be that, aware as they were of the horrors of war, they wanted to escape its bad memories? If so, they were not the only ones. Ruth Jamieson,⁵⁹ who prepared an in-depth review of contemporary criminology, concluded that it showed a general disinclination to take on board war-related issues.

This can be contrasted with others who almost from the outset of the war took up this problem. Already in 1941, the President of the United States, Franklin Delano Roosevelt, in a speech to the U.S. Congress, identified the right to freedom from fear and want caused by the horror of war as two of four fundamental rights to be attained by the post-Second World War new legal order. (The other two fundamental rights are freedom of speech and freedom of religion.) These rights were then inscribed in the so-called *Atlantic Charter* which laid the foundation of the *Charter of the United Nations* (“We the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights ... and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom ...”) The greatest peace-oriented Organization of the world was born.

In the aftermath of the horrors of the two wars, and under the influence in particular of Roosevelt, already in 1945 the *UN Charter* and then in 1948 the *Universal Declaration of Human Rights* stated that “*Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged*

⁵⁵ Bossowski 1945:2.

⁵⁶ Szwedkowski 1947:8.

⁵⁷ Rappaport 1948:185.

⁵⁸ See ch. XI.

⁵⁹ Jamieson 1998:480.

the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people ..."

After the Second World War, criminological research on the impact of war was renewed in the United States and in Europe. A collection of papers was published by the International Penal and Penitentiary Commission (IPPC, 1951). But even before that, the United Nations had embarked on a study of the impact of the Second World War on crime. The study analysed the dynamics of reported homicide and of convictions for other offences (1937-1946). Out of seven countries on which essential data were provided, in four (Belgium, Denmark, France and Iraq) the report noted that crime had increased at the beginning of the war, in two (Finland and the Union of South Africa, now the Republic of South Africa) it had increased at the end of war, while in one (Canada) no significant changes were identified (this was also the case in South America).⁶⁰ Regarding Iraq, it should be added that although this country had seemingly been remote from the epicentre of the Second World War, in 1940-41 it had been the scene of the British-Iraqi war, a war that could be traced back to a *coup d'état* in Iraq that had been given military support by Germany.

The UN report suggests that the closer a country is to the epicentre of war, the more negative is the influence of war on crime. More methodologically rigorous comparative analyses of countries which either had or had not been involved in the two World Wars (1914-1917 / 1939-1945) confirmed that in countries that had been involved in those two wars, there had been a higher incidence of homicide. Moreover, a comparatively higher level of homicides had similarly been recorded after an examination of their involvement in twelve other wars (1896-1967). According to the analysts, these findings can most likely be explained by the legitimization of violence.⁶¹

Other criminological findings suggest that the impact of war on crime is diversified and continues after its end. Thus, there may actually be a decrease in reported crime or in convictions as a result of, e.g., the mobilization of offenders released from prisons and of a shortage in the labour force (an increase in unemployment is believed to be criminogenic), and/

or an increase as a result of evacuations from conflict areas (looting) or of fuel and food rationing, plus the business dealings made in times of war by *white collar* criminals which enable them to earn enormous profits.⁶² But war also has a general demoralizing effect. After the end of a war, this demoralizing effect has an impact on economic and violent crime. Its impact on economic crime is a result of unemployment and of a steep drop in real wages; its impact on violent crime is a result of the *banalization of evil* (to use Hannah Arendt's term), in other words through a general depreciation of all values, a weakening of social bonds, and a weakening of the respect for law and for human life and property.⁶³

A more contemporary econometric study by the World Bank⁶⁴ sought to determine the correlation between economic conditions and the dynamics of recorded homicide. Based on World Health Organization data, a more precise estimate suggested that the residual effect of lower respect of law (the so-called *brutalization effect*) lasts five years after the termination of a domestic conflict. During that period of time, the level of homicides is 25% higher than later on. The most probable motive for this is personal vendettas carried out by the surviving victims in retaliation for the injustices that they had suffered during the civil war.

In the light of such conclusions, the direct macro-level relationship between crime and war, as inscribed in *the United Nations Declaration of Human Rights*, had taken on a new meaning during the 1990s. From that time on, this *Declaration* implies freedom from fear from the threats to collective and individual security, also when these threats arise from crime.

The security concept had thus come to consider the individual perpetrator of an offence. In this connection, the concept had also broadened to include the victims of crime. From the standpoint of the development of victimology, this development occurred quite late, since one would intuitively assume that fear of the threat of crime is associated with the potential victim of crime. However, this was not the case with the UN's diversionary approach at that time.

The reinterpretation of *freedom from fear* in the sense of freedom from fear of criminal victimization has been somewhat slow. Furthermore, it has met

⁶⁰ E/CN.5/204.

⁶¹ Archer & Gartner 1984, ch. 4.

⁶² Barnes & Teeters 1951:9-11.

⁶³ Mannheim 1946:217 & 259.

⁶⁴ Collier & Hoefler 2004.

with occasional resistance and has always been done outside the scope of the UN Declaration of Human Rights. It can be said that in the world literature on victimology (both the academic and the UN literature), the individual victim of crime has been more frequently overlooked than not, and even when seen, was seen only in a very fragmentary way. This by and large remains the situation today, at least in the UN.⁶⁵

In the United Nations, victim issues have always had difficulties in achieving parity with the other criminological issues that were communicated as part of the *larger freedom* identified in Kofi Annan's message to the world. Victim issues have been dealt with almost exclusively through more substantive channels. This has happened in three ways.

Nominally, the first time substantive victim issues came up in the context of the United Nations was in 1985. It was then, at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, Italy) and later at the General Assembly, that the United Nations adopted the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. The adoption of the *Declaration* was a great achievement. The necessary consensus had been reached despite much resistance along the way. At that time, the available measures for consensus-building within the United Nations Programme included five expert preparatory meetings on the various topics of the Congress, and five regional intergovernmental meetings.



Picture 3. Consensus building: Manuel López-Rey, chairman of the Committee on Crime Prevention and Control, with Minoru Shikita, Chief of the United Nations Crime Prevention and Criminal Justice Branch, Eduardo Vetere and the author at the informal consultations during the interregional Preparatory Meeting for the Seventh United Nations Congress on topic III: Victims of Crime – Ottawa, Canada, 1984

⁶⁵ Continuing this digression, and as an example only, Hans von Hentig of Germany has been identified as the person who established victimology as a science. He was an anti-Nazi who fled Germany before the Second World War and settled in the United States. In his first victimological publication, which appeared in 1940/1941, there is nothing whatsoever on victims of war crimes. Furthermore, nothing can be found on this topic even in a much later publication (2005) that dealt with victims of terrorist attacks, by the then United Nations Secretary-General Kofi Annan, *In Larger Freedom* (A/59/2005). Although this later report draws on the idea of freedom from fear, it cannot be said to contain any clear focus on the victims of crime. The victimological aspect is limited to the freedom from fear of terrorism and crime, but only of organized crime, and in either case there is no direct reference to victims. It was only in 2009 that the victimization perspective made headway in the United Nations counterterrorism field, in the landmark report of the Secretary-General on *Supporting Victims of Terrorism*. To conclude this digression, the concept of freedom from fear that evolved from the horrors of the Second World War may be more fully contextualized with the basic legal United Nations instrument, namely the *United Nations Convention against Transnational Organized Crime* (2000).



Picture 4. Taking a break. Dr Krzysztof Poklewski-Kozieł in conversation with the author, and Prof. Cherif M. Bassiouni in conversation with Prof. Manuel López-Rey and Dr Carlo Sarzana, among participants taking a break at the inter-regional Preparatory Meeting for the Seventh United Nations Congress on topic III: Victims of Crime – Ottawa, Canada, 1984



Picture 5. Leticia Ramos Shahani, Assistant Secretary-General, Head of the CSDHA, shown with Mino Martinazzoli, the Italian Minister of Justice at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, 1985), as featured in "Avanti!" (Milan newspaper, 28 August 1985), announcing the adoption of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power



Picture 6. At the Regional Preparatory Meeting for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (San José, Costa Rica, 1999): Monica Nagel Berger, Minister of Justice of Costa Rica (Chairperson). To her right, Francesco Bastagli, Officer-in-charge of the CICP, to her left Elias Carranza, Director of IL-ANUD and other members of the bureau of the meeting

The ideas incorporated in the *Declaration* matured well enough in order to arrive at the Congress and be converted into United Nations law. Notwithstanding the fact that this law for the first time ever gave global recognition to the plight of victims, the legal concepts of “justice” and “abuse of power” have remained so sensitive vis-à-vis one another that the implementation of the *Declaration* has not significantly progressed since 1985. Even so, from that time on *freedom from fear* has de facto been globally connected with UN victimology issues. Shortly after the adoption of the *Declaration*, in 1989, the United Nations adopted legal *Principles on the Prevention of Arbitrary, Extra-legal and Summary Executions*. These aimed at the prevention of the victimization which results from the attribution of criminal responsibility without the procedural guarantees necessary for allowing an effective right to defence.

Finally, after the entry into force in 2003 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, and the *Protocol against the Smuggling of Migrants by Land,*

Air and Sea, both supplementing the *United Nations Convention against Transnational Organized Crime*, these two protocols became important legal instruments in the countering of the victimization arising from transnational crime.

Potentially, the third Protocol supplementing the *United Nations Convention against Transnational Organized Crime*, the *Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition*, which entered into force in 2005, has the same utility.

The concept of the freedom from fear has been the subject of continuous underlying political confrontations, which have been even more volatile than those focusing on the eventual elimination of the death penalty in the world. Already Benjamin Franklin (1706-1790) and George Washington (1732-1799), who are remembered for example for their contribution to the U.S. Declaration of Independence (1776), have been regarded as the proponents of a broad right to possess firearms. Franklin proclaimed, “Those who would give up essential liberty to obtain



Picture 7. The United Nations Regional Workshop on Firearms Regulation for Crime Prevention & Public Safety (New Delhi, India, 1998). James Hayes (Canada, Coordinator of the United Nations International Firearm Regulation Study, seated in the first row, second from the left) with governmental, intergovernmental and nongovernmental representatives



Picture 8. Working at the Vienna International Centre on the United Nations International Firearm Regulation Survey (1997): James Hayes (Canada, coordinator of the United Nations International Firearm Regulation Study is seated in the middle. On his left is Arkadi Erokhine and on his right Sławomir Redo, both from the Centre for International Crime Prevention/CSDHA/UNOV)

a little temporary safety deserve neither liberty nor safety". Washington said: "A free people ought ... to be armed", and "When firearms go, all goes – we need them every hour". It has recently been estimated that 74% of firearms manufactured in the world is at the disposal of the civilian population, including the private policing sector.⁶⁶

The converse of this idea, that of regulating the right of the civilian population to possess firearms, was unanimously accepted by the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Cairo, Egypt, 1995). The idea was originally launched by the eight economically and politically most important States in the northern hemisphere: Canada, France, Germany, Italy, Japan, the Russian Federation, the United Kingdom, and the United States of America (the so-called G8 countries). According to official statistics, about 85% of all the weapons produced in the world have been traded by these eight countries.

Soon after the Ninth Congress, the idea of a resolution on firearms was picked up by these same countries at the Commission on Crime Prevention

and Criminal Justice, and at the Economic and Social Council (ECOSOC resolution 1995/27), and then by the UNODC, which started a project on firearm regulation. The idea finally came to fruition with the adoption of the aforementioned *Protocol* in 2001. This historical project was successfully implemented despite the opposition of pro-firearms lobbyists, members of the U.S. House of Representatives and Senators, and the National Rifle Association, which later requested and received non-governmental consultative status with the ECOSOC. The U.S. Government, the power of which to participate in the drafting of that resolution was very much influenced by those lobbyists, eventually cooperated in a very constructive way in the implementation of that protocol.

The anti-victimization legal UN instruments mentioned above, that is the *Declaration* (1985), the *Principles* (1989) and the protocols (2000/2001), now have lives of their own, just as is the case with all victimological problematics before 2000. However, until now they have been treated as subservient to other parts of the UN work programme. One indication of this, as pointed out by victimologists, was the ab-

⁶⁶ IANSA 2007:3.

BOX 1

James Hayes

The G8 and Powerful United Nations Criminal Policy Ideas: The Case of Firearm Regulation¹

Introduction

The UN firearms regulation study was launched in 1995 at the Ninth United Nations Congress in Cairo. From among the G8 countries, Canada had placed firearms on the agenda at the Cairo Congress. Emerging from Cairo was the resolution that created the mandate for the Study on International Firearms Regulation. The Cairo Resolution recognized that “criminal activities in which firearms are used have been increasing, in part because of an increase in illicit trafficking, at both the national and transnational levels”, and invited “Member States to take effective action against illicit trafficking in firearms, through mutual cooperation, the exchange of information and the coordination of law enforcement activities, considering that illicit trafficking in firearms is a widespread transnational criminal activity that frequently involves transnational criminal syndicates”.

A. Background

At its Economic Summit held during the same year in Halifax, the G8, recognizing the negative economic impact of international crime, began its work on transnational organized crime with the preparation of the 40 recommendations of the Senior Experts Group on Transnational Organized Crime. This work continued through the Lyon Summit in 1996, with the establishment of the Lyon Group of Experts, which produced an action plan to address the 40 recommendations to combat international crime, and presented them to the 1997 Summit in Denver. The Denver Communiqué called for increased efforts to combat illegal firearms trafficking through standard systems for firearms identification and consideration of a stronger regime for import and export licensing of firearms. It was then recommended that consideration be given to a new international instrument - a recommendation that was confirmed and strengthened by the Birmingham

Summit the following year - which called for a legally binding international instrument to be negotiated within the context of a convention on transnational organized crime.²

The first of its kind, the Study served as a catalyst for the development of a targeted strategy to deal with firearms trafficking. Then again in Washington in 1997, when the G8 Ministers of Justice and the Interior were considering the form of the instrument to deal with the illicit transnational movement of firearms, Canada was instrumental in obtaining consensus to develop a global, legally binding treaty.

B. The Firearm Regulation Study

The Study was completed within a fourteen-month period and served as a catalyst for bringing countries together and strengthening cooperation on this issue at the international level. The final report of the study shows a high participation rate, with sixty-nine countries representing 70% of the world population taking part. The fact that 33 countries co-sponsored the resolution resulting from the survey is an indication of a high degree of consensus among the participating countries. The study produced many interesting findings, including the fact that while historically most countries have import controls, few have export controls and there is no real accountability on exports or on in-transit shipments. The study served as a catalyst for some countries which became aware, through their responses to the study questionnaire, of the magnitude of the problem in their own country. Since participating in the Study, several countries have gone on to make changes to their laws to increase the accountability of firearms owners and strengthen measures to deal with illicit trafficking.

In the Study several principles dealing with the connection between firearms and crime secured wide consensus: firearms empower criminals and are a source of profit in the criminal world. Illicit transfers



¹ Excerpted from: James Hayes, The United Nations Firearms Protocol (in:) *The Changing Face of International Criminal Law: Selected Papers*, The International Centre for Criminal Law Reform and Criminal Justice Policy, Vancouver, British Columbia, Canada 2002:125-136, www.icclr.law.ubc.ca/Publications/Reports/ChangingFace.pdf.

² See: A. Scherrer, *G8 against Transnational Organized Crime*, Ashgate 2009:53.

of firearms are often carried out by organized criminal channels and move into civilian markets through transnational networks. Globalization - and the technology that makes it possible - is contributing to the ever-increasing sophistication of international firearms smuggling networks. Another important principle that has come to light and has received widespread recognition is the fact that countries can no longer limit their concern about firearms trafficking to what comes into their country, but must be equally concerned about what passes through and goes out. There is a need for greater accountability and transparency over imports, exports and in-transit shipments. This reflects a widely held belief that there should be no safe haven for firearm traffickers. Thus a very strong consensus has emerged from our international firearms activity: a consensus that the central focus of our efforts internationally must be on trafficking, and a consensus as to the tools to use in order to combat such trafficking. Adequate legislation and regulation, law enforcement, training and technology (e.g. for the marking of firearms or for firearms identification), are all important to achieving this result, whether we are dealing with peaceful societies or with societies emerging from conflict.

C. Results

These tools are contained in the recently adopted UN Firearms Protocol. Negotiated in Vienna as part of the UN *Convention against Transnational Organized Crime, the Firearms Protocol* focuses on crime prevention. In this regard, perhaps the most essential component of the *Firearms Protocol* sets out comprehensive procedures for the import, export and transit of firearms, their parts and components, and ammunition. It is a reciprocal system requiring countries to provide authorizations to one another before permitting shipments of firearms to leave, arrive in or transit across their territory. It also enables law enforcement to track the legal movement of shipments to prevent theft and diversion. As is the case with the OAS Convention, these standards will help to ensure that we achieve the level of transparency needed to assist member states to better target illicit transactions. Linked to the import/export/transit regime is the article dealing with firearms.

During the negotiations on the *Firearms Protocol* many important coalitions and dialogues were estab-

lished, not the least of which was between Canada and the European Union. Several areas in the *Protocol* presented challenges to the EU, particularly in the area of import/export/transit authorizations and firearms marking. This enhanced control over firearms was seen to be inconsistent with the fluid border control configurations among countries within the EU, which were designed to facilitate trade. The European Commission had competence to negotiate these articles on behalf of the (then) 15 member states and near the end of the negotiations, on behalf of the accession countries. It worked hard to develop an approach to balance its trade and crime control concerns. During the course of these deliberations, the European Commission engaged Canada and others in the internal EU discussions of its Multidisciplinary Group on Organized Crime and ultimately a consensus was reached. With the Commission's increased emphasis on Justice and Home Affairs issues, this alliance was critical. The collective work within international governmental organizations in the last few years has been followed up by analysis, lobbying and support by non-governmental organizations. While initially such groups were primarily active on the disarmament side, their increased interest in and contribution to the discussions was very useful. The British American Security Information Council, and, in Canada, the Coalition for Gun Control, shared their expertise and resources to foster public awareness and education. The Vancouver-based International Centre for Criminal Law Reform and Criminal Justice Policy facilitated a Canadian-hosted workshop on firearms marking prior to the final negotiation session for the *Firearms Protocol* which was extremely helpful.

D. Conclusion

I want to stress the importance of the completion of the *Firearms Protocol* and how it brings together the work that has been accomplished in the various international fora. From different starting points we have arrived at one main conclusion: the problem of firearms is a problem of crime prevention, crime control, including combating illegal trafficking. Combating the illegal flow of firearms necessitates greater transparency in the legal trade—and in legal ownership. Thus the problem has a domestic and an international dimension for all countries involved. ■

sence of any anti-victimization crime policy in the United Nations peacekeeping operations conducted during the 1990s, when their rule-of-law framework was emerging. This framework was markedly absent of victim issues.⁶⁷

Two years later this absence was recognized by an international practitioner, Lord Paddy Ashdown, the UN administrator responsible for the UN peacekeeping operation in Bosnia and Herzegovina (UN-BiH, 1996-2002). He noted then:

*“In hindsight, we should have put the establishment of the rule of law first, for everything depends on it: a functioning economy, a free and fair political system, the development of civil society, public confidence in police and courts.”*⁶⁸

Since that time, the idea of legal protection of the victims of crime became somewhat more viable. However, this has not become viable enough for Member States to be sufficiently sympathetic to elaborate a comprehensive *Convention on Justice and Support for Victims of Crime, Abuse of Power and Terrorism*, as proposed by the International Society of Victimology.⁶⁹

A documented genesis of the impact of *freedom from fear* on the United Nations victimization problematics can be found in the originally somewhat impulsive position of the British Prime Minister Winston Churchill, the co-founder of the *Atlantic Charter*. He regarded Hitler as a gangster – an organized criminal (*“Contemplate that if Hitler falls into our hands we shall certainly put him to death ... This man is the mainspring of evil. Instrument – electric chair, for gangsters ...”*).⁷⁰ He postulated that the United Nations should deal with the Nazi criminals by extra-legal executions.⁷¹

This idea of treating war criminals as organized criminals had not, however, been followed in the United Nations. The idea was lost in its realities and history.⁷² Even so, methodologically speaking, the path development of the idea behind the *United Nations Convention against Transnational Organized Crime* can be traced back to the time of the Second World War. This is possible only now, after the recent opening of the British archives.

Between this original and rather impulsive 1940s idea and a comprehensive 1990s idea of elaborating a United Nations convention against transnational organized crime, lies an entire epoch of international criminal law. It started materializing with the establishment of the Nuremberg Tribunal (1945). This became a legal and institutional reaction to the atrocities committed by Nazi leaders. Later, the four 1949 *Geneva Conventions* set the first standards for international law for humanitarian concerns on the treatment of non-combatants and prisoners of war. In 1993/1994 the universalizing impulse of the Nuremberg and Tokyo trials led to the establishment of the ad hoc tribunals for the former Yugoslavia and Rwanda. Later, in 2002, it led to the entry into force of the statute of the International Criminal Court – the United Nations institution which may not pronounce death penalty verdicts, much less extra-legal executions, nor bring to justice organized criminals, even though such an idea was proposed in the course of negotiating its *Statute*.

Recalling the historical origins of the United Nations convention against transnational organized crime shows three things about the evolution of global criminological thought: how diverse it has been, how it has branched out, and what criminal policy impact it has had until now.

Initially, criminological thought depicted Hitler and his Nazi accomplices as gangsters and not as war criminals. Moreover, Churchill's impulsive fear caused by the atrocities of those criminals initially prompted him to cut corners (by opting for extralegal executions). Soon after the Nuremberg trial and, later, the *International Covenant on Civil and Political Rights* (1966), and finally the *ECOSOC Principles on the Prevention and Investigation of Arbitrary, Summary and Extra-legal Executions* (1989), the international interpretation and regulation of the entire legal problematics of deprivation of life by the State followed a different route than that originally postulated by the British Prime Minister.

⁶⁷ Kreso 2000:29; Terril 2000:29.

⁶⁸ New York Times, 28 October 2002.

⁶⁹ Among the promoters of the idea of the legal protection of victims of crime are the theoreticians Ezzat Fatah (Egypt/Canada), Jan van Dijk (the Netherlands), John Dussich (USA), Brunon Holyst, Lech Falandysz, Krzysztof Poklewski-Kozieł (Poland), Hans Joachim Schneider (the Federal Republic of Germany) and UN practitioners (Irene Melup (Poland/USA)). The contribution of this last-mentioned person is difficult to overestimate. Preserving that memorable contribution is a 700-page book published in her honour (Schmidt 2005).

⁷⁰ CAB 195/1, War Cabinet Minutes, W.M.(42) 47th Meeting – W.M.(42) 155th Meeting : 67-68, http://www.nationalarchives.gov.uk/documents/cab_195_1_transcript.pdf.

⁷¹ Doward 2006.

⁷² Plesch 2008.

II Freedom from want and the criminogenic function of economic inequality

Also the second idea, that of freedom from want (alias freedom from poverty/economic inequality), contained in the *Universal Declaration of Human Rights* has been reinterpreted.

This evergreen postulate arose out of the conviction of the Western countries that poverty breeds crime. Since 1945 they have been engaged in the creation of the welfare state, as an expression of the freedom from want and of social security. These countries began to feel the burden of crime, which continued to grow in its international dimensions.⁷³

The evidence for this was presented in a criminological study by Mannheim (1946). However, the conviction regarding the criminogenic role of poverty had also arisen as a result of the pre-Second World War experience with the Great Depression, which started in 1929 in the USA and ended at different times for different countries during the 1930s or early 1940s.

It was in this light that the allied leaders, particularly the United States, had since 1941 (cf. the *Atlantic Charter*) created the basis for the new economic order. In 1945 the allied countries established the so-called Bretton Woods institutions, including the World Bank and the International Monetary Fund (IMF).

The programmatic goal of these institutions has been to ensure economic security in the world, but their means to achieve that goal have been modest. The goal was originally envisioned to be backed up by the IMF's budget amounting to 50% of total global imports, but at the official launch this had become a mere 1,5%, 33 times lower than the original goal – hardly an engine for allowing the United Nations system to ensure economic security in the world.⁷⁴

Ensuring, in turn, human security (a part of which is the prevention of crime and victimization), has found its way through the *Atlantic Charter* (the sixth principle) into the interpretation of the *Char-*

ter of the United Nations. In its chapter IX on international economic and social cooperation, Member States obliged themselves to “*promote solutions of international economic, social, health, and related problems.*”⁷⁵

One of these social problems was the need to counteract crime through what, at least since 1831,⁷⁶ has been called *social defence*. However, the ideological repertoire for this was developed later by others. This ideological repertoire can be traced to the period of transition of legal thought from the classical to the social (end of the nineteenth – beginning of the twentieth century). During that early transition period, especially between 1830 and 1850, the focus had been on individual responsibility and on the social danger posed by an offender. Children in conflict with the law were treated with more compassion, as individuals who could be endangered by degrading conditions of solitary confinement.⁷⁷

At that time, the criminal law in the Western world had started to broaden its agenda, which had focused on the individual offender. It added to the individualization of criminal responsibility the need to make this individualization socially relevant, by including various classifications of offenders and of the social causes of crime. This coincided with the transformation of legal thought from the classical (formalistic) concept of the family household as an entity regulated by private law (with arbitrary patriarchal powers) into a household subject to increasing interaction with social legislation through which the State wielded its new powers. This public interest legislation started to emerge against the background of modernization, involving the establishment of labour courts, merchant courts, juvenile courts, and social welfare in general. From about 1870 to 1890, there was much focus on the family, within which the welfare of children and juveniles was seen.⁷⁸

Social defence (a term which came into wider use since the turn of the nineteenth and twentieth centuries)⁷⁹ as an organized movement was originally established in 1937 in Liège (Belgium) by an Italian criminal lawyer, Filippo Count Gramatica. But it really took root in 1949 after its first Congress, under

⁷³ See further: Knepper 2010. In that book, the contributions of the intergovernmental organizations to responding to the challenge of the internationalization of crime have been shown to be an echo of British and other Western European and Northern American concerns (1881-1914) about the problems resulting from growing interregional transportation and communication, which facilitated anarchism and white slave traffic, and later on other transnational traffic in crime. Those concerns eventually prompted Governments to mandate the League of Nations (1919-1939) and the United Nations to undertake counter measures.

⁷⁴ Weiss 2008:229.

⁷⁵ Art. 55b; Joyce 1966:23, Sunga 2009 ch. 7.

⁷⁶ Carmignani 1831 quoted by Pasquino 1980:23.

⁷⁷ Pierre & Dupont-Bouchat 2001:427.

⁷⁸ Kennedy 2003a:642-656; Pierre & Dupont Buchat 2001:428.

⁷⁹ Ferri 1892:432; Prins 1910.

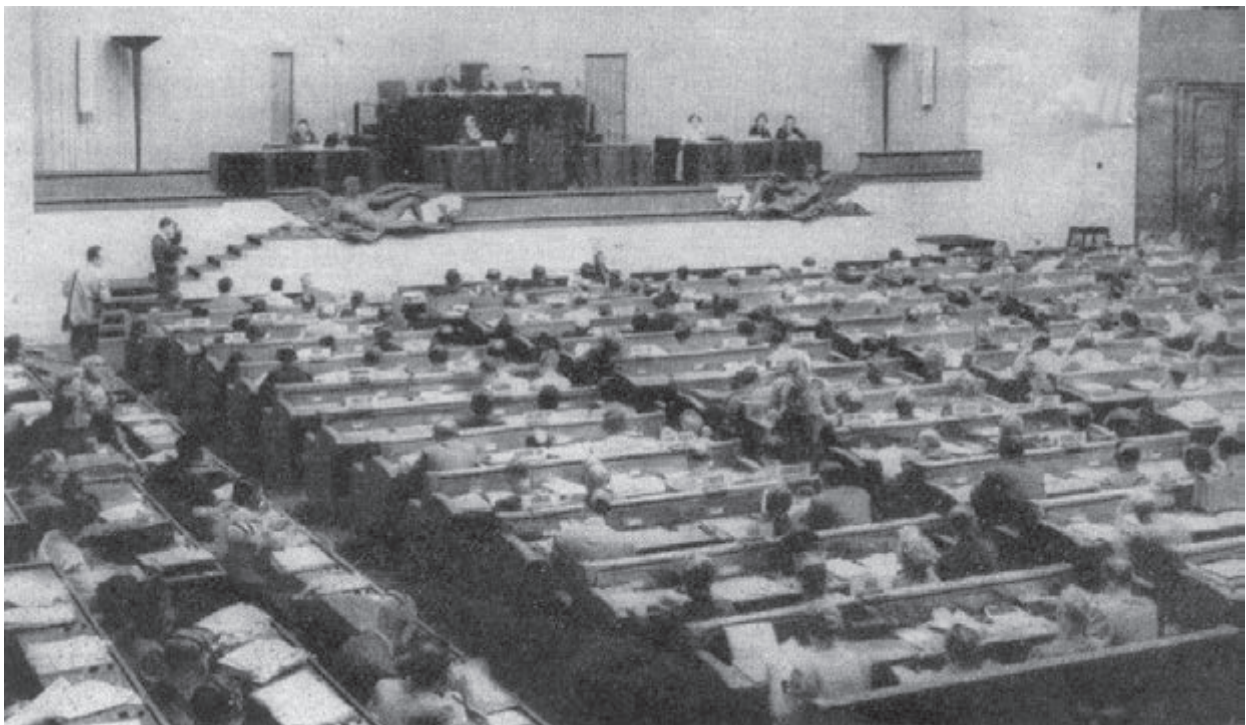
the leadership of Marc Ancel (1902-1990), a French lawyer. By that time, *social defence* had undergone tremendous shifts. It had served as a penological justification in Fascist Italy, Nazi Germany, Tsarist and Communist Russia, socialist countries of Central and Eastern Europe and, in terms that put a greater stress on freedom, in democratic countries of Western Europe.⁸⁰ *Social defence* was to be the timely answer to the call for a worldwide humane and effective response to crime, to which other comparative lawyers could not respond in terms of globally common concepts of criminal law.⁸¹ Up to the present, *social defence* has continued to change its content and direction.⁸²

Ancel, who worked for the UN as a consultant in connection with many criminal policy questions (such as international criminal statistics, and the death penalty), was a member of the founding ad-hoc UN expert group (1950), which was the precursor of the current Commission on Crime Prevention

and Criminal Justice. He had been at the helm of penal reform. His social defence ideas concerning the rehabilitation of prisoners⁸³ and the abolition of the death penalty⁸⁴ found their way into the *Covenant*.⁸⁵

One of the programmatic objectives of the International Society for Social Defence is the resocialization of the offender. Resocialization should involve improvement in the offender's prosocial attitude, thus strengthening the security of society. The offender must realize that committing a crime is not only threatening, but also detrimental to him or her. The social defence movement does not abandon the methods of responding to crime that had been developed in criminal law. However, it postulates far-reaching modifications.

The natural consequence of the primacy of resocialization over other goals of punishment is the postulate to abolish the death penalty (art. 6§6), as a contributing element of the *right to life*. Further, the movement postulated abolishing life imprisonment,



Picture 9. The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Geneva, 1955)

⁸⁰ Ancel 1965.

⁸¹ Riles 2001:10. "In our societies, legislation has ceased to be the only source of law. Moreover considering the essentially national nature of legislation, we are moved to ask whether the international unification of law will not advance more certainly by means of methods other than legislation" (David 1950: sn 3, at 19).

⁸² Radzinowicz 1991:32; Walters 2003:30-31.

⁸³ Ancel 1965:6; Ancel 1976:48.

⁸⁴ Ancel 1962.

⁸⁵ The method of drafting the *Covenant* did not allow for direct cross-referencing of the original source ideas with its provisions. Crediting Ancel's contribution comes from my conversations with the staff members of the UN Social Defence Section.

a goal which for some time was incorporated as official UN criminal policy. But in the 1990s this policy was reviewed in the context of establishing the first UN ad hoc criminal tribunals (which impose it). What remained nonetheless intact has been the goal of the resocialization of other offenders (art.10§3).

The International Society for Social Defence with its ideas had quickly entered the UN arena. There, it contributed to the creation of the United Nations Crime Prevention and Criminal Justice Programme. The Society's ideas powered the UN Secretariat, in which the Social Defence Section was established. With that ideology it was credited⁸⁶ with beginning the post-war criminological studies on poverty.

In the next generation, social defence ideas were prompted by other reformers. Some of them were members of the United Nations Committee on Crime Prevention and Control (see Table 3, DVD):

Johannes Andenaes (Norway), Inkeri Anttila (Finland), Simone Rozes (France) and Adolfo Beria di Argentina (Italy), who was the organizer of the Seventh United Nations Congress (Milan, Italy, 1985).

After the death of Ancel, the Fifteenth Congress of Social Defence (Toledo, 2007), co-organized by the UN Secretariat, discussed the very pertinent question of criminal responsibility of soldiers for common crimes committed in the course of reinstating safety and security through peacekeeping operations in developing countries.⁸⁷ Even though the idea of the social defence movement intellectually radiated through the professional circles of developing and developed countries,⁸⁸ neither Ancel nor the other experts mentioned above, nor their professional associations, went as far as the governments of developing countries had done after the Second World War.

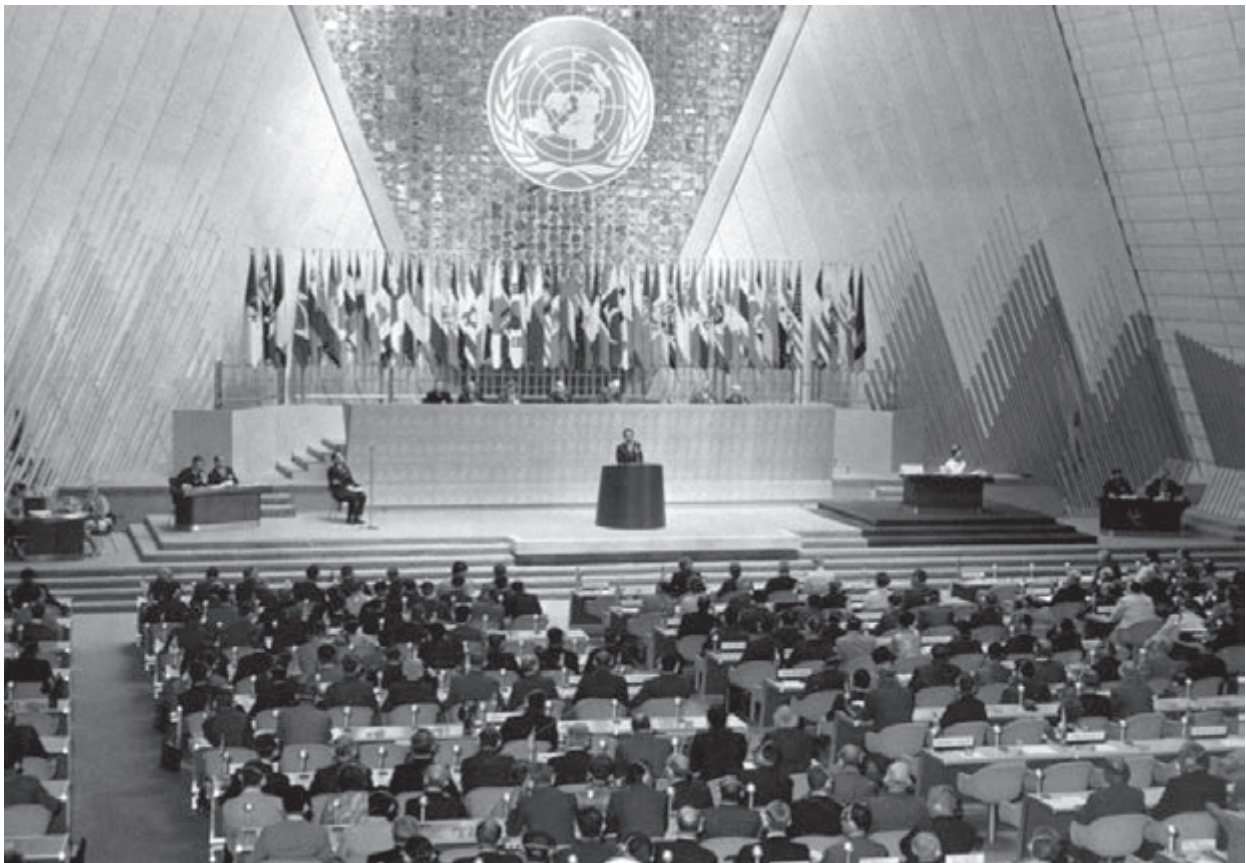


Picture 10. The Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders (London, 1960)

⁸⁶ Mannheim 1965, Vol. II:272.

⁸⁷ As a digression, one can see in this an interrelated academic and UN train of thought, which originated in 2000 with the aforementioned articles by Kreso and Terril.

⁸⁸ UNSDRI 1971; Williams 1974; Chatteraj 1982.



Picture 11. The Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Kyoto, 1970)



Picture 12. The Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Geneva, 1975). Second from the left is Prof. Inkeri Anttila (at the time Minister of Justice of Finland), President of the Fifth Congress, who is greeting Helvi Sipilä, Assistant Secretary-General for Social and Humanitarian Affairs, Representative of the Secretary-General. At the right is Prof. G.O.W. Mueller, Chief of the Crime Prevention and Criminal Justice Branch, Executive Secretary of the Fifth Congress



Picture 13. Opening of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, 1985): Francesco Cossiga, President of Italy (at the rostrum) with Adolpho Beria Di Argentina, Organizer of the Seventh Congress, sitting to his right, Minoru Shikita, the Executive Secretary of the Seventh Congress, Patricio Civili (UN DIESA), the Secretary of the Congress, Mino Martinazzoli, Italian Minister of Justice and Leticia Ramos Shahani, UN Assistant Secretary-General

The idea of *freedom from want* gave a much broader impulse to what was originally an anti-U.S. group of non-aligned countries (later called the Group of 77 and China, presently consisting of about 130 developing countries from South America, Africa and Asia).

Since 1948 they started proposing radical global economic and social changes which in time came to be known collectively as The New International Economic Order (NIEO, 1974-1992). In 1980 (six years after the NIEO was initially presented), the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Caracas, Venezuela) debated the topic – for the first time ever in the history of United Nations congresses and its predecessors, and surely not by a coincidence, in a developing country.

The resulting expertise mandated by the recommendations of the Sixth Congress were written for the United Nations by Professor Alfred Blumstein (who in 2007 was awarded what is known as the “criminological Nobel Prize,” the Stockholm Prize in Criminology) and by Manuel López-Rey de Arroyo, one of the first authors of a book on the United

Nations Crime Prevention and Criminal Justice Programme (1984), and earlier the Chief of the Social Defence Section of the UN Secretariat.

López-Rey de Arroyo was the one who operationalized the principles of *social defence*. For this purpose he enlisted the first government-approved 15 United Nations *social defence* observers across Member States, mostly drawn from the ranks of the International Penal and Penitentiary Commission. They promoted developments in crime prevention and criminal justice – the nucleus of what in the life span of the network (1951-1991) eventually peaked with over 300 national correspondents from 189 countries, including some that were not member states of the United Nations. And it was he who felt that the *social defence* movement had spent its intellectual force in the United Nations Secretariat.

He was also one of the first United Nations criminologists who requested that the publisher of his articles include an obligatory disclaimer that the views contained in his article “do not necessarily represent the views of the United Nations Secretariat”, as was the case with his article published soon after the First United Nations Congress.⁸⁹

⁸⁹ López-Rey 1957:526. This digression is necessary here, because the ideas which the UN officially promotes may happen to differ from those of its expert employees or consultants (as was sometimes the case with the author when he worked in the UN).



Picture 14. Closure of the Eighth United Nations Congress on Crime Prevention and the Treatment of Offenders (Havana, 1990): Fidel Castro, head of state of Cuba (at the rostrum) with Margaret J. Anstee, Under Secretary-General, Director General of UNOV (far right table side) and Henryk Sokalski, Director of the CSDHA (left table side). Behind the left corner desk is Michael Platzer, Chief of Cabinet of the Director-General



Picture 15. The Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Cairo, 1995)

That legal clause permitted him to distance himself from the idea of social defence inscribed in the Section that he headed. He wrote that the term social defence is misleading and rather unfortunate. It certainly should not be used to denote any concrete school of penal or criminological thought. Distancing himself from the roots (the classicism of Cesare Beccaria (1738-1794) and the positivism of Enrico Ferri (1856-1929)), López-Rey merely confirmed a clear fact. Namely, that the UN door stands open to every humanistic and progressive idea and that the domination of any particular school of thought or scientific classification, which is the premise of academic criminology, has no place in the UN programmatic action against crime. From *social defence* the UN was moving towards broader objectives of social change.

It was precisely in this way that the UN Crime Prevention and Criminal Justice Programme, which in its ideological sense emerged from the *social defence* movement, and organizationally was a descendant of the International Penal and Penitentiary Commission, married substance with form. Since that time the substance has been created in cooperation with non-governmental organizations and eminent experts. It has been modified, when called for by the exigencies of the situation.⁹⁰ Finally, the new situation led to the original name *International Society for Social Defence* being supplemented with the words *and Humane Criminal Policy*.

It seems that López-Rey did not see any internal relationship between the *social defence* movement and the ideas of the NIEO on which he expounded⁹¹ and for which he had allies in developing countries.⁹² The criminological culmination of the NIEO (but also the starting point of its gradual fall) came in 1985 when the Seventh United Nations Congress adopted the *Guiding Principles on Crime Prevention and Criminal Justice in the context of the New International Economic Order*. The Congress resolution recommended international cooperation on the basis of sustainable development. It recommended the restructuring of the international economic system,

including “*fair distribution of the benefits*” and the concomitant changes in crime prevention and criminal justice. The General Assembly, to which the report on the Seventh Congress with that resolution was submitted, disregarded it by not annexing it to its own resolution.⁹³ This lowered the legal importance of the *Guiding Principles*. They remained *Guiding Principles* in name only.

The failure of the NIEO agenda at the Seventh Congress was due to increasing suspicions that the United Nations system had become an unfriendly political forum and a potential obstacle to economic liberalism, i.e. to so-called market solutions to problems.⁹⁴

The demise of the NIEO era in the United Nations system came in 1992. Then, the International Law Association, a renowned non-governmental organization with consultative status with the ECOSOC, renamed its NIEO programming committee the Committee on Sustainable Development. This signalled the end of intellectual support for the NIEO.⁹⁵ However, its underlying idea, still supported in developing countries, has nevertheless continued to resurface at various United Nations and regional fora.⁹⁶

A counterforce to these broader, politically very contentious principles of the NIEO that were designed to introduce a more just social system for the impoverished, emerged during the 1970s in Western countries (primarily in the United Kingdom, Italy, the Federal Republic of Germany and the United States) and also in South America (Venezuela): so-called new or radical criminology, which in an earlier guise (at the end of the nineteenth century) had been known as socialist or utopian criminology. Two Latin American criminologists who had recently been involved in it deserve mention: Lola Aniyar de Castro (1990) and Juan Manuel Mayorca, member of the United Nations Committee on Crime Prevention and Control (1982-1984).⁹⁷ The rise of new Latin American criminology was in response to the failure of the program of the United Nations Economic Commission for Latin America (ECLA). During

⁹⁰ López-Rey 1974:500.

⁹¹ López-Rey 1984.

⁹² For example, in 1983 representatives of developing countries fought for the establishment of NIEO in the United Nations Commission on Human Rights. Among those speaking in favour was the Egyptian member of the United Nations Committee on Crime Prevention and Control, Ahmad Khalifa (1965-1974), who had served as the Executive Secretary of the Third United Nations Congress (1965, Stockholm). The Commission knew very well at the time that, in that fight, so far “not much has been achieved” (E/CN.4/Sub.2/1983/24/Rev.1, §§ 164-165 & 295).

⁹³ GA resolution 40/32 of 29 November 1985.

⁹⁴ Schechter 2005:78.

⁹⁵ Ginther & de Waart 1995:6-7.

⁹⁶ Brems 2001: 62, 98, 105-106, 450-451, 457.

⁹⁷ Their works most clearly represented a break from modernization theory, in the form of “dependency theory” (see the Glossary).

the late 1950s the ECLA had recommended a disconnection of the economy of poor countries from rich countries, since the former were not earning enough from their exported raw materials to pay for the imported products manufactured from these by the latter. Import substitution and import protectionist policy was the answer. This first resulted in brief economic expansion, followed by economic stagnation (unemployment, inflation, declining terms of trade, etc.) caused by the policy of import protectionism.⁹⁸

The new criminologists found most of their arguments regarding the criminogenic function of inequality in the works of Friedrich Engels (1820-1885) and Karl Marx (1818-1883), starting with their *Communist Manifesto* (1848). As Lewis Mumford⁹⁹ noted, in the year when Engels was born, about 75% of the population of the world lived below the equivalent of US\$1 a day.¹⁰⁰ Undoubtedly then for Engels and Marx it was inequality that bred crime, which was committed by the exploited and demoralized perpetrators recruited from the underclass, the so-called *lumpenproletariat*.

Since the time of Engels and Marx, with different modifications, the criminogenic function of economic inequality has been reinterpreted and verified in theory and practice in various ways, starting by treating it as a *cause* of crime, but now as a *factor* contributing to crime.

Those Western criminologists who were conceptually and historically closest to this Marxist philosophy, such as, for instance, the Dutchman Willem Bongers¹⁰¹ argued that, basically, crime is motivated by the exploitation (victimization) of its perpetrator by the capitalist state. The victimized persons strive to secure their existence. They are unable to do so legally because the profits of their work are taken away from them by the owner of the means of production. The owner does not feel any need to share these profits with the crime perpetrator, because altruism is no longer possible, as had been the case in early primitive societies where goods were shared equally. The owner in turn becomes greedy and criminal, because his egoism and greed have no limitations, as bourgeois capitalism sets none. However, Bongers added, it is not only egoism but also the poor cultural upbringing and

education of the lower strata of society and its alcoholism that become factors.

This most orthodox (but still somewhat eclectic) interpretation has changed over time. At the time that NIEO was in vogue, more sophisticated interpretations appeared in U.S. radical criminology. Three of them deserve a short presentation here.

The first interpretation comes from the early 1970s. In a well-known article by David M. Gordon on *Capitalism, classes and crime in America* (1973), he argued that almost any type of crime in the USA can be explained as a fully rational reaction to the existence of the structure of capitalistic institutions.

Exemplifying this general thesis, the author argued that such seemingly different types of crimes such as those committed in the ghettos, by organized crime groups and by *white collar* criminals have a common denominator. These are inequality, existential insecurity and competition. They force people to be more efficient, but when there are no more legal means to make a living, the same factors explain why someone resorts to crime. The ghetto dwellers, particularly young Afro-Americans, have no choice when it comes to getting jobs. The jobs which are offered to them are usually low-paid, boring and short-term. Committing crime is more attractive and promising for stable and better living in terms of higher income. Imprisonment in such poor living conditions may have no deterrent effect because life outside prison is no less difficult.

It was much the same with organized crime: it responds to social demand, for example for drugs or sexual services. Keeping to the first example, the illicit trade in heroin is very similar to that in tobacco or alcohol. The only difference is that the heroin trade is prohibited. Again this is similar to *white collar* crime. Any way of making a profit is good. Corporations break the law by fixing prices, making consumers pay more, or by lowering prices, preventing smaller companies from competing with them on the market.

The second interpretation was given in 1981 by two other radical U.S. criminologists: Reiman and Headlee (1981). According to them, crime in capitalism is not only a rational reply resulting from the conditions of competition, existential insecurity and inequality, but a particularly suitable answer to eco-

⁹⁸ M. Keet, Neo-Marxist Dependency Theories, Dependency and Underdevelopment in Third World Countries, <http://www.metreck.org/dependency.html>.

⁹⁹ Lewis Mumford (1895-1990), an American historian and philosopher of technology and science, particularly noted for his study of cities and urban architecture.

¹⁰⁰ Mumford 1961:218-219.

¹⁰¹ Bongers 1916.

conomic crisis, the unfavourable conditions of which increase the pressure to commit crime. It is not only a rational reply to the lack of social security. It is also one of the forms of competition in the face of growing existential insecurity.

The same criminologists emphasized that at the heart of social and economic inequalities lies the private ownership of the means of production and inherent to it the class division of capitalist society. That division has led to the exploitation of workers by the bourgeoisie, but, at the same time, to a great material development of capitalism. Socio-economic inequalities are particularly acutely felt by the people from the reserve labour market and the *lumpenproletariat*. They are in a particularly difficult life situation when striving to secure their existential needs which is the form of competition for access to material goods. It intensifies in a period of cyclical economic crises, in the context of which both common and *white collar* crime show themselves as a form of competition.

The other forms of lawbreaking are perhaps not called crimes, but only because the capitalist power holders manipulate the law in their interest. Among the *white collar* crimes we can identify those that are of a plebeian character, such as pilfering and small embezzlement, and corporate crime. Such forms of *white collar* crime will increase under capitalism. But there will also be better law enforcement, and so the increase will be controlled. Despite the expected stabilization of *white collar* crime, corporate profits will grow, since there will be different forms of income distribution.

The third and probably the most interesting criminological interpretation of the influence of inequality on crime was carried out with the help of statistical analysis. Two radical U.S. criminologists, Don Wallace and Drew Humphries, (1980) analyzed the impact of modernization, i.e., urbanization and industrialization on crime in the United States from 1950 to 1971. They studied the relationships between capital expenditures on industry in certain major U.S. urban agglomerations and the level of reported crime.

They selected five independent variables: the size of the labour force involved in production, the city hardship index (in comparison with life in the suburbs), the geographical location of the city in the U.S., its population density, and the size of its police force. Of these five, the first variable was most strongly negatively correlated with the reported level of car thefts and burglaries. The smaller the labour force that was involved in production, the higher the

rates of those crimes (.78 for car thefts and .46 for burglaries).

The city hardship index was most strongly positively correlated with car thefts (.51) and homicide (.35), but also with robberies (.51) and armed burglaries (.37). As a result, the more intensively industry was relocated from the city to the suburbs, the more crimes were reported against person and property. Robberies (.39), car thefts (.75), burglaries (.36) and other thefts (.41) were reported less often in the cities with a larger police force. The role of other variables was regarded as secondary or doubtful.

The authors suggested that these results may be interpreted as confirming the thesis that the lowering of the level of investment leads to an increase in interpersonal conflicts and property theft. More precisely, the transfer of capital leads to class conflict arising out of the unequal access to shrinking material resources. The more difficult city life becomes, the more it involves individual destructive behaviours. In a class society these take the forms of personal and property crimes. The longer this process lasts, the more the working class is marginalized, and hence the higher the level of reported crime.

David Greenberg (1981), who commented on the above findings, argued that the movement of capital from one place to another is the result of the successful struggle of the working class against capitalists. If the living conditions of the working class are improved through higher wages and social security, then the capitalists, in order to secure the desired profit margin, must move to other locations where such payments are lower. This paradox will remain as long as there is no overall political control in the U.S., and as far as transnational corporations are concerned, as long as there is no overall political control at the international level – a remark similar to the postulates of the adherents of the NIEO.

These radical criminology findings and the arguments about profit margins have proved to be only partly correct, due to deregulation. Deregulation has led to the lowering of prices for various economic services. On a broader scale, radical criminology could not corroborate its thesis of growing inequality and crime.

Moreover, no one foresaw the fall of the countries of the socialist block in Central and Eastern Europe. Their chronically inefficient *economy of deficit* (ideologically based on the principle of egalitarianism) led to new insights on the criminogenic function of inequality.

Two Polish authors, independently of one another, contributed to that reinterpretation. The first was

Sir Leon Radzinowicz (1906-1999), a British criminologist of Polish origin. Already at the Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders (London, 1960)¹⁰² he appealed to Member States and the other participants at the Congress to not dogmatize criminology. He emphasized that criminology should discontinue its search for the causes of crime, since it was doubtful whether that search could bring any enlightenment.

The second Polish criminologist was Leszek Lernell (1906-1981). As a dogmatic Marxist heavily entangled during his early career in explaining the class aetiology of crime, he had later become increasingly critical of it in the context of so-called *real socialism*. He saw that it had tamed development by an overly ideological policy of economic egalitarianism. Against this background, he remarked in 1973 that from the mid-nineteenth century through the second half of the twentieth century, the United States and the capitalist European countries had experienced an increase in crime. But this could not be explained by the falling living standards of their populations, as the ideologists of socialist countries had portrayed the West. At that time those Western countries developed economically and their GDP grew considerably.¹⁰³

The above statement was based more on intuition than on an assessment of comparative crime trends (at that time, very little was known about crime trends in Poland and other Central and Eastern European countries, and even less about comparative crime trends among them). Moreover, in these latter countries, econometric analyses of crime trends were unwelcome, since they complicated the class analysis of crime.¹⁰⁴ Nonetheless, Lernell's largely intuitive statement inscribed itself well into the discussion which in the West involved the new problematic of the distribution of national income.

That debate began during the second half of the 1960s by two non-Marxist U.S. econometricists.¹⁰⁵ Its essence was best expressed by Professor Gary Becker, a winner of the Nobel Prize (1992). In his lecture

The economic way of looking at behaviour he stated that "Some individuals become criminals because of the financial and other rewards from crime compared to legal work, taking account of the likelihood of apprehension and conviction, and the severity of punishment."¹⁰⁶ Those rewards are related to the pattern of national income distribution.

In the global criminology of that time (1966-1990) there was no advanced econometric research that could prove that this had been the case in political economy. However, as shown for example by the earlier work of Bonger (1916), the thesis of the economic conditioning of criminal behaviour is not new at all. More incisive research findings with criminological connotations have started to emerge in earnest at the beginning of the 1990s, when the globalization process sped up.

Initially, at least in United Nations research (2001), it has been emphasized that extreme inequality leads to the weakening of social bonds, social unrest and conflicts and to insecurity of property rights. Extreme egalitarianism involves high system costs, including corruption-related costs in income distribution.

The United Nations study cited above analyzed GNP data (1950-1990) from 73 countries. It found that poor countries had a significant spread of internal income distribution. At the end of the 1990s it ranged from 0,25 to 0,71 (the bottom value means that 25 % of society had at its disposal 80% of income, the top value means that 71% of the society had only 20 % of income at its disposal). The coefficient of the income concentration in rich countries generally had a value below 0,4. This means that over 1/3 of society had at its disposal 80% of income. The recommended value for a just income distribution would have been between 0,25 (which is typical for Northern Europe) and 0,4 (the U.S., China).

A later United Nations survey (2006) used GDP data, that is the market value of all the goods and services produced by labour and property minus the net inflow of labour and property incomes from abroad.

¹⁰² A/CONF.17/20, §§ 496-498.

¹⁰³ Lernell 1973:240.

¹⁰⁴ The above is also an example of the idiosyncrasy of academic thought, which is mentioned in general in the preface. Within one criminological school (conflict/new/radical/Marxist) there have been considerable conceptual and methodological differences regarding how to present the crime problem. While Western Marxists tried to be very conceptually/ideologically engaged (e.g., Gordon) and/or methodologically sophisticated (e.g., Greenberg, Wallace and Humphries), socialist criminologists were only conceptually/ideologically engaged (e.g., Bafia, to a lesser extent Lernell in his later works), but methodologically lagging behind their Western counterparts. This is because their academic thought and output had been politically conditioned to a much greater extent than that of Western Marxists. Moreover, in the socialist countries there had been very little statistical data available (the rest was confidential) for the purpose of making any econometric analysis, let alone a longitudinal or even simpler statistical analysis of crime patterns and dynamics. Otherwise criminology would have not existed there at all.

¹⁰⁵ Fleisher 1966; Becker 1968.

¹⁰⁶ Becker 1993:390.

The survey showed that in 2000 in countries which together accounted for 56% of the world's population, 2% of people owned more than 50% of the world's wealth. Therefore, the coefficients of wealth distribution were even less desired (just) from the postulated ones, namely 0,89, and even higher than in 1998 (0,79).

Against this background finally emerged the criminological thesis that the lower the coefficient of wealth distribution, the more there is reported crime. Using data on reported homicide and robbery (from the periodical United Nations surveys of crime trends and operations of criminal justice systems, 1970-1994) from 34 developing and developed countries, a World Bank 2002 multiregression study found that the higher the Gini coefficient, the higher the level of reported homicide and robbery. Moreover, the more just the redistribution of the national income through transfers to the 20% of the population that earned the least, the lower the level reported among them of homicide and robbery.

The above pattern had exceptions. For example, no such relationship was observed in the case of Central Asian countries. These exceptions undermine the explanatory power of the criminogenic function of economic inequality. The World Bank study did not reveal the influence of economic inequality on reported crime, probably because other factors prevented that inequality from expressing itself through crime. Such a general interpretation, i.e., emphasizing the socializing function of a just distribution of the national income, may be indirectly drawn from a study published by the International Labour Organization (2004). This study involved only 20 developing countries. It directly suggests that a just distribution of national income, which grows 7% annually because of an increase in employment (6% of current job seekers and no less than 1% of previous-years applicants), leads to general welfare improvement. Consequently, and assuming that unemployment has a criminogenic function, an indirect conclusion is that certain forms of crime, e.g., street and property crime, may have a declining tendency, because those who became employed no longer earn their living through urban crime.

But this is yet one more side of the problem, and by far incomplete. The above ILO research findings disregard the possibility that the 7% increase in employment may lead to an increase in drug criminality. This may be not only because of the increase in the

purchasing power of the consumer market, but also because organized criminals may modify their strategy. If a country that they had used as a transit territory for drug trafficking begins to show an emerging local consumer market which raises the demand for drugs, they may begin to use it as a drug destination country. Central Asian countries may serve as a good example of this changing strategy. Between 1990 and 2000, there was a seven-fold increase in the number of drug takers in these countries.¹⁰⁷ The notion of *justly distributed income* should incorporate *crime prevention*, as the first imperative of justice, something which surely is not in place in most countries in the world. Moreover, this and many other econometric studies show too little influence of other factors on crime. For example, not every kind of work has the same socializing potential.

Economists say little about other than economic factors influencing crime. In his critique of the above United Nations findings as oversimplified, Gary Becker has refined his earlier argument. He has recently stated that inequality and the per capita income distribution between the lowest and highest earnings, can be better understood in a broader context of earnings as a part of so-called *human capital*. This capital includes the general level of education, vocational training and professional specialization, nutrition, and investment in health. In other words, these are components that contribute to personal welfare and to the quality of life. This multi-part capital is approximately three times bigger than the value of all wealth in the form of types of fixed assets.¹⁰⁸

This human capital gives inequality a deeper, more subtle (soft) and nuanced, but also more pronounced sense. In criminology, in addition to the already mentioned perception of the punitiveness of punishment, one includes a broader sense of relative deprivation, which is a perception-based feeling of depriving someone of a particular economic, social or cultural opportunity, as a result of which one seeks to level it off by crime (the topic to which we now turn).

This dimension was emphasized by the Sixth Congress. It took place under the general theme of *Crime Prevention and Quality of Life*, formally proposed by its Executive Secretary, Professor G.O.W. Mueller, a U.S. criminologist of German origin. This could be the effect of a growing debate on the criminogenic function of relative deprivation. It started

¹⁰⁷ UNODC 2007.

¹⁰⁸ Becker 2007.

decades earlier with the anomie theory revisited by Robert Merton (1939). He argued that social deviance may be a result of the deprivation of institutional means to achieve culturally accepted goals.

In their own way, the importance of relative deprivation was emphasized in the United States by two other researchers, the sociologist Walter C. Reckless¹⁰⁹ and the political scientist Ted Robert Gurr.¹¹⁰ In Poland this was done by Lernell, who corresponded with G.O.W. Mueller.

Reckless and his staff studied the self-assessment of youth. Those youth who did not enter into conflict with the law had a better self-image than did those who were in conflict. Reckless concluded that there are factors that can influence youth not to commit crimes. Gurr generalized the opinion about the criminogenic role of relative deprivation. He argued that it is a potential factor in social tensions and deviance, and in extreme circumstances of riots, civil wars and terrorism. Lernell recalled Marx's view that "*A house may be large or small; as long as the surrounding houses are equally small it satisfies all social demands for a dwelling. But let a palace arise beside the little house, and it shrinks from a little house to a hut.*"¹¹¹ Consequently, Lernell argued that it is not relative impoverishment, i.e., that it is not the comparison between the bottom and top level earners, but rather the disproportion in the quality of life (fulfilling consumer needs) in a dynamic confrontation in the closest surrounding, that is very instructive for the aetiology of crime.¹¹²

In the context of the above interpretations that broaden the understanding of the criminogenic function of inequality, conceptions of *want*, *poverty* or *unemployment* are at the root of crime. Property and personal crime may be committed in the feeling of inequality of life chances or, perhaps, because of other motivations only remotely correlated, perhaps quite coincidentally, with inequality that may be felt in so many ways. The borders of relative deprivation seem to be transcendental rather than real and may be expressed through different motivations. For *homo economicus* the motive of hedonism may be likewise important for taking cocaine or joy riding (the theft of a car), in any case social deviant acts, and a crime in the latter case. This adds to the body of knowledge which treated with suspicion any the-

ories that related poverty to crime – theories still advocated in populist interpretations, also in the United Nations. But absolute poverty is not a *primum mobile* of crime, even if it may be for human insecurity.¹¹³

Rather, it is the almost omnipotent presence of relative deprivation. From it one may draw the conclusion about the genesis and eternity of crime, hence about the need to revisit the theories on the aetiology of crime envisioning its disappearance as a massive phenomenon. This is obvious today, but surely was not at the time of Jerzy Bafia (1926-1991), another Polish Marxist criminologist. For him, views such as those of Lernell were only the beginning new phases of the development of criminology, which only managed to skim over the issue of an alienated person in the process of socialization.

Bafia maintained that the faster one goes through those phases and starts formulating general tendencies of development of crime and criminality, the sooner one will reach its end, and arrive at a new epoch of organization of social life of people, read: communism, which will eliminate alienation and crime. In this perspective, he proposed his own theory of a criminogenic situation. It maintains that "*as a result of dialectic complexities, modifications and multilayers in the context of which occurs human behaviour, crime and criminality, in the genetic and dynamic sense, emerge in effect of the collision of factors occurring in the first place in the social environment, in the emerging subcultures, in personality of human beings, in the presentation of social attitudes.*"¹¹⁴

The fall of communism in Europe which started in 1989 as the "Autumn of Nations", allows us to classify this and similar relic theories to the epigonic development of Marxist criminology, until that year rather very vigorously propagated and modified. Between 1920 and 1980 Marxist criminology had been very popular in Soviet (A.A. Piontkovski (1924), W. N. Kudriavcev (1960), A.A. Gercenzon (1962), M. D. Sharogrodsky (1968), N. F. Kuzniecova (1969)), East German (E. Buchholz et al. (1971)) and Czechoslovak science (J. Nezkusil et al. (1978)).

One may compare the dogmatism of Bafia and the Czechoslovak, East German and Soviet criminologists mentioned above with their predecessors

¹⁰⁹ Reckless 1940; Reckless 1961.

¹¹⁰ Gurr 1970.

¹¹¹ Lernell 1973:181.

¹¹² Ibid.

¹¹³ Sunga 2009.

¹¹⁴ Bafia 1978:69.

one hundred years earlier: the Italian Enrico Ferri and the Spaniard Bernaldo de Quirós. Both maintained that nobody should question the belief that crime will disappear (even if we do not really know how) for the same reason that nobody questions the Catholic belief in life after death, even though nobody knows what it looks like.¹¹⁵

Indeed, nobody questions this dogma in Christianity. But the Brazilian clergyman Leonardo Boff, a Catholic theologian of liberation, argued a thesis that is equally difficult to prove, that “*The opposite of poverty is not wealth – it is justice ... And the objective of liberation theology is to create a more just society, not necessarily a wealthier one. And the great question is, how do we do this ... Our task is not to create sustainable development, but a sustainable society – human beings and nature together.*”¹¹⁶

Even if the latter *dictum* is dated,¹¹⁷ the entire question is not solely rhetorical. In South America the socializing and communist and populist political movements find their support among the population, far more than currently in the former socialist block in Eastern Europe. The creeping global crisis may strengthen these movements and facilitate the return of Marxist ideology in Europe and elsewhere. The renewed pertinence of the question of the criminogenic function of inequality can become more pronounced than now. Earlier criminological research on crime and economic crisis, which had also been a part of the United Nations work at UNSDRI,¹¹⁸ and later UNICRI,¹¹⁹ may be revisited and updated. In the academic world this is already taking place in the analytical context of transnational organized crime. Acknowledging the international legal origin of this concept in the United Nations, and researching it further from the perspective of the Orient and the Occident, one U.S. criminologist,¹²⁰ apparently struck by Marx’s foresight, prefaced his article with the following motto from his “*Poverty of Philosophy*”:

“*Finally, there came a time when everything that men had considered as inalienable became an object*

of exchange, of traffic and could be alienated. This is the time when the very things that till then had been communicated, but never exchanged; given, but never sold; acquired, but never bought – virtue, love, conviction, knowledge, conscience, etc. -- when finally passed into commerce. It is the time of general corruption, of universal venality, or, to speak in terms of political economy, the time when everything moral or physical, having become a marketable value, is brought to the market to be assessed at its truest value”.

Marxist criminology now only marginally interacts with the United Nations crime mandate. But it has not yet said its last word. The failed experience with socialist criminology (1920-1989) strongly suggests that Marxist ideology had been introduced by force, with disregard to the negative influence of economic egalitarianism rather than by a true and lasting popular conviction, informed and evidence-driven policies, genuinely shared intergenerationally and internationally.

At the Twelfth United Nations Congress, it was not economic but social and legal egalitarianism that received much support. It was credited in Finland with a significant reduction of the prison population, now the lowest in the European Union. Generally (and contrary to the popular perception), research demonstrated that there was no correlation between increasing crime rates and falling prison population rates. Growing prison rates seemed to be more driven by the heightened public fear of crime (a finding about which more below) than other factors.

Falling prison rates were attributed to social egalitarianism (social welfare through investing in the rehabilitation of prisoners) and legal egalitarianism (humanization of conditions of imprisonment), both at the heart of United Nations criminal policy since its inception. The conclusion of the Congress debate was succinctly put in journalistic parlance by the UNIS: “One should not be jailed for being poor.”¹²¹

¹¹⁵ de Quirós 1912:72. For contemporary perspectives of Catholicism on crime and criminal justice, see: Oliver 2008 and Skotnicki 2007. Official Catholic doctrine does not relate itself with a socialist egalitarian or any other secular criminological interpretation. However, its partisan strand of the *theology of liberation* as an ideological justification for economic egalitarian policy in Latin America, if applied to pre-1989 Eastern Europe, would have only sped up the agony of socialism there.

¹¹⁶ Boff 1999:32.

¹¹⁷ See below how *development* and *society* have both been amalgamated between 1952 and 1969 into *sustained development*.

¹¹⁸ UNSDRI 1974.

¹¹⁹ UNICRI 1990.

¹²⁰ Shpetycki 2007.

¹²¹ UNIS/CP/609E, 16 April 2010.

III Sustainable development and its impact on crime and crime prevention

Neither Marxists nor neo-Marxists have been able to answer successfully the above question on how to attain justice in the world, especially for the poor. It was not the representatives of this now marginal philosophical current, but the positivist interpretations, such as those of Radzinowicz, that put criminology into the mainstream of political life throughout the world. In fact, these positive interpretations may now be regarded as non-partisan. As such they have been quoted by the UNODC (*“However calculated, official crime rates are almost always higher among the poor, and poor people are more likely to be arrested and convicted for a wide variety of offences”*).¹²² They have a strong interplay with social welfare and reintegration policies for offenders, drug abusers and persons infected with HIV/AIDS.

Thanks to these interpretations, instead of looking only at the relationships between *poverty* and *crime*, which – as noted before – had had its ideological appeal, at the end of 1980s the United Nations started discussing the issue of sustainable development. This is the key concept in opening the way for relations in the world that are more just economically and socially.

The essence of *sustainable development* is the right to fulfil the aspirations of the present generation without limiting the developmental rights of future generations. *Sustainable development* in its original sense communicates only that in the interest of the right to development of future generations, the development of economy and civilization should not be pursued at the cost of exhausting non-renewable natural resources and of the destruction of environment.

In 1987, this original intellectual content of sustainable development was shared with the United Nations General Assembly by the World Commis-



Picture 16. At the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Vienna, 2000)

¹²² Governor's Juvenile Justice Advisory Committee (GJJAC) Policy Brief (January 2008): Community-Based Gang Prevention and Intervention, quoted in: Sustainable Livelihood. A broader vision. Social Support and Integration to Prevent Illicit Drug Use, HIV/AIDS and Crime. Discussion Paper, UNODC, Vienna 2010:11.

sion on Environment and Development,¹²³ chaired by Gro Harlem Brundtland, at the time the Prime Minister of Norway. It replaced the ideologically defeated concept of the New International Economic Order.

The concept of sustainable development also includes a self-generating, creative, albeit also conflicting, mechanism. This is geared toward the renewal, multiplication and broadening by mankind of its own human intergenerational capital in all creative areas, including science.

According to some international lawyers, sustainable development is one of the oldest ideas in human heritage.¹²⁴ Other international lawyers¹²⁵ suggest that the origin of the concept of sustainable development can be traced to the preamble in the United Nations Charter. This was the first UN document to refer to future generations (“to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind”). They add¹²⁶ that already the Atlantic Charter contained a reference to the idea of sustainable development. That Charter speaks of the commitment of its signatories to “endeavour, with due respect for their existing obligations, to further the enjoyment by all States, great or small, victor and vanquished, of access on equal terms, to the trade and the raw materials of the world which are needed for their economic prosperity”.

Political scientists,¹²⁷ analyzing the genesis of the idea of sustainable development, trace its origin to another provision of the UN Charter, namely to the second part of art. 55(a) (quoted in full above), which is the same provision that sets out the mandate for the UN crime programme. According to this provision, “the United Nations shall promote ... higher standards of living, full employment, and conditions of economic and social progress and development”.

NGO historians would add that the concept of “succeeding generations” is an echo of “rising generations”, a concept promoted by NGOs involved since the mid-1920s in the work of the League of Nations in promoting child welfare.¹²⁸

There is no doubt that the concept of sustainable development is a historical and political compromise between developed and developing countries, and that officially its idea (“*sound self-sustaining economic development*”) for the first time emerged in the United Nations General Assembly. In 1961 the General Assembly declared its First Development Decade.¹²⁹ In 1970, at the beginning of the Second Development Decade¹³⁰ the General Assembly agreed to 0,7 percent of the GNP of member states as a target for their annual official development assistance (ODA).¹³¹ Sustainable development, a very hopeful and promising concept, has started its global journey with a likewise optimistic financial ODA benchmark.

When the concept of sustainable development matured, it considerably dampened the conflict which had emerged between developed and developing countries soon after the adoption of the Charter of the United Nations. The concept began to be interpreted by the developing countries to mean not only that development entails economic growth, but that a country has the right to decide by itself about its economy and natural resources.

Political scientists noted gradually differentiating paths of development for developing and developed countries. In 1948, shortly after the Second World War, and at the time of reconstruction in the West, developing countries started to re-emphasize their right to the sovereign disposal of their own natural resources (a part of the “right to self-determination”) which had been the precursor of the “right to development”.¹³²

In that early phase of post-colonial development (1948-1961), however, another view had been dominant. According to this view, it was solely economic growth that was responsible for reducing poverty and the other social problems related to poverty, including crime. One of the recommended means to foster that growth was foreign capital investments.

Consequently, the right to self-determine the use of natural resources “in the interest of economic development of the under-developed countries” –

¹²³ A/42/187.

¹²⁴ Weeramantery 1997:110.

¹²⁵ Commentary 2002, Vol. I:34.

¹²⁶ Schrijver 2007:593-594.

¹²⁷ Matsui 1995: 53-71.

¹²⁸ Charnovitz 1997:247.

¹²⁹ GA resolution 1710 (XVI) of 19 December 1961.

¹³⁰ GA resolution 2626 (XXV) of 24 October 1970, § 4.3.

¹³¹ 80-85 % of ODA comes from 22 developed countries of the OECD, and the rest primarily from NGOs and private charities. The ODA target has not yet been reached (http://en.wikipedia.org/wiki/Development_aid).

¹³² Matsui 1993:64.

“one of the fundamental requisites of strengthening the universal peace”, was qualified by “the need for maintaining the flow of capital, in conditions of security, mutual confidence, and economic co-operation among nations”.¹³³ The 1961 GA that declared the first Development Decade confirmed this basic course of action. It recommended that national income of the least developing countries expand by 5 % annually.¹³⁴ It also recommended steps to “accelerate the elimination of illiteracy, hunger and disease”, but only in order to increase individual productivity.¹³⁵

However, already at the time of that first decade, the United Nations General Assembly (which in 1960 accepted 16 newly independent developing African countries as members) had started to speak more expressively in the new language of the *right to self-determination*. In that year the Assembly adopted the “*Declaration on granting the independence to colonial countries and peoples*”¹³⁶ – a landmark in the history of the right to self-determination. In 1966, after 11 years of negotiations, the General Assembly adopted a common article 1 setting out the right to self-determination, in the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. But already in 1962, at the initiative of newly accepted Asian and African States, the General Assembly adopted a resolution on permanent sovereignty over natural resources.¹³⁷ It extended that permanent sovereignty, earlier interpreted only as legal equality of States, to equality over the natural resources in their territories.

Slowly a conflict has started to emerge between the question of the protection of natural resources and the protection of human rights. That conflict was ignited by the above resolution. It was interpreted as the legalization of the nationalization of foreign investments into the natural resources of countries.

Originally, those investments, understood in the terms of the 1952 GA resolution, were legally protected. Expropriation was not accepted. However, in many new States, some elites found in the concept of the right to self-determination a source not only for strengthening statehood, but also for enriching their private bank accounts, by looting natural resources in their own countries. In this criminological context a dilemma emerged. What should be a first priority for a State, its development or human rights? “*Loot or justice*”?

One of the next GA resolutions sought to solve this dilemma. In 1969 the GA adopted the *Declaration on social progress and development*.¹³⁸ That resolution placed the “*human person*”¹³⁹ in the centre of *development*. Development had to be not only economic, but also progressively social, giving the right to benefit from development. Declaring the main goal of development to be “*the creation of conditions for rapid and sustained social and economic development*” with “*new and effective methods of international cooperation in which equality of opportunity should be as much a prerogative of nations as of individuals in nations*” (art. 12(a)), the resolution, as if once more, announced the emergence of the “*right to development*”. Nominally and finally, this took place in the context of a resolution of the United Nations Commission on Human Rights,¹⁴⁰ and at the General Assembly through the adoption of the *Declaration on the right to development*,¹⁴¹ recognizing it as a human right (art. 1). Nonetheless, it still continues to be understood as a legal claim of developing countries for transfer of resources from developed countries.

This working definition of *development* had less in common with the earlier definition of development as economic growth and more in common with the academic definition of development as a gradual, qualitative transition from less to more complex social forms.¹⁴²

¹³³ GA resolution 626 (VII) of 21 December 1952.

¹³⁴ This is 2% less than the contemporary ILO benchmark suggests for all developing countries

¹³⁵ GA resolution 1710 (XVI) of 19 December 1961.

¹³⁶ GA resolution 1514 (XV) of 14 December 1960.

¹³⁷ GA resolution 1803 (XVII) of 14 December 1962.

¹³⁸ GA resolution 2542 (XXIV) of 11 November 1969.

¹³⁹ This is probably the first official departure from the “he” language used in the United Nations documents, and a declaration of the need for a new gender policy. The ICCPR (1966) uses that “he” language. During the 1980s women issues have become more fully recognized by the United Nations in development policies and the technical assistance programmes, as their actors and beneficiaries. With the adoption of the General Assembly resolution on “UN Women” (A/64/289), gender mainstreaming has become a central policy issue in the United Nations.

¹⁴⁰ Resolution 4 (XXXV) of 10 March 1979. However, in 1972 the idea of the right to development as a human right was launched by Keba M’Baye, then Chief Justice of Senegal, in his inaugural lecture on that subject at the study session of the International Institute on Human Rights in Strasbourg. He was encouraged in this endeavour by the Institute’s director, Karel Vasak, the promoter of a “third generation” of human rights (see: Brems 2001:451, and ch. XI).

¹⁴¹ GA resolution 41/128, Annex, 4 December 1986.

¹⁴² Portes 1976; Smelser 1966; Wallerstein 1979.

Despite these developments, between 1 May and 12 December 1974 during the Second Developmental Debate (1971-1980) mitigating the political and substantive differences, the United Nations General Assembly separately in three other resolutions, *nomen omen*, declared the introduction of the New International Economic Order (NIEO).

The concept of *development* started gaining the NIEO connotation, departing from *development* stipulated by the covenants (1966), or declared by the resolutions of the Commission on Human Rights (1979) and the General Assembly (1986). This led to criticism from developed countries, particularly the United States. It saw the NIEO as a threat to the protection of human rights because of its overemphasis on the role of States and not their citizens. Everything that had been connected at the General Assembly to the NIEO, had started to be opposed by the developed countries.

They argued that the problematics of the protection of the human environment has, first of all, a global human dimension. The afore-mentioned World Commission on Environment and Development was tasked with the assessment of that dimension. The Commission re-focused the attention of the international community away from the NIEO, emphasizing the more central question of securing for future generations their access to the natural resources of the Earth. This also deflected attention away from discussions on the *right to development*. As a result, a new compromise understanding of *sustainable development* was adopted as a central guiding principle¹⁴³ (and not as a legal principle).¹⁴⁴

Because of its centrality, this principle became a part of a new scientific discipline, inter alia developed by the United Nations University, at the recommendation of the G8. Its goal is to understand the relationships between global social and human systems and the coexisting risks for the welfare of humans and their security. This is a discipline orientated on problem methods and visions of their restoration.¹⁴⁵

Sustainable development coexists with the *right to development*. Since the relationship between the

two in United Nations resolutions is unclear, this leaves space for ad hoc interpretations in various other programmatic documents of the United Nations Secretariat and its agencies, even though these do not carry the authority of United Nations resolutions.

Moreover, wherever those resolutions speak about the second and third development decade (1981-1990 / 1971-1980), they prefer the concept of *sustainable development* rather than the *right to development*, at least since the adoption of General Assembly resolution 42/187 of 11 December 1987. It should be recalled that also the Seventh United Nations Congress contributed to this confusion. It adopted its own resolution on the NIEO in which it included a reference to *sustainable development* – a real hybrid.

In 1997 the General Assembly resolution on *The right to development*, adopted by a majority of votes, recognized that right as “*fundamental*”.¹⁴⁶ However, because of several votes against that recognition and additional abstentions by some developed countries, that legal feature had not had any impact in *Realpolitik*. It has not been operationalized in the UN crime mandate. It is sustainable development that is fundamental in the UN crime mandate. The preambular paragraph of the above titled 1997 GA, in fact, uses the expression *social and peoples’-centred sustainable development*”.

The main topic of the Twelfth United Nations Congress, *Comprehensive strategies for global challenges: crime prevention and criminal justice systems and their development in a changing world*, initially offered for some Member States a window of opportunity to continue with the heated exchanges on the right to development,¹⁴⁷ but eventually this did not happen. It is remarkable to note that Member States preferred to stay away from engaging in the “development question” of the sort described above. With very little substantive discussion over it during the Twelfth Congress negotiations, its Salvador Declaration stated that “*We consider that international cooperation and technical assistance can play an important role in achieving sustainable and long-lasting results in the prevention, prosecution and punish-*

¹⁴³ GA resolution 42/187 of 11 December 1987.

¹⁴⁴ In the scholarly literature, discussions still continue on the positioning of the concept of sustainable development in the normative hierarchy. A Western legal commentator argues that it is not a legal rule, and sees the concept merely as a political axiom, a non-legal rule “with a life of its own outside the law” (Lowe 2007:99). From the Eastern legal (Islamic) perspective, even if the concept of sustainable development has been enshrined in United Nations General Assembly resolutions, such resolutions “cannot be compared with the rights sanctioned by God ... an integral part of the Islamic faith ... which suggest that Shari’ah norms prevail in the event of any normative conflict” (Samuel 2010:115).

¹⁴⁵ UNU 2008.

¹⁴⁶ GA resolution 52/136 of 12 December 1997.

¹⁴⁷ Especially from the “rights-perspective”.

ment of crime, in particular by building, modernizing and strengthening our criminal justice systems and promoting the rule of law" (§ 8).

One can see that that the UN crime prevention and criminal justice programme has gone a long way to develop and strengthen its professional and technical ingredients rather than open itself to politicizing them.

In all of the above, one can also see the absence of a consolidated approach to the question of development, the approach which would incrementally build upon previous agreements and accomplishments, thus avoiding considerable conceptual confusion. But this is the nature of international politics and also evidence of a difference between praxis and science which adheres to more rigorous conceptual regime.

In sum, even though the development debate in the United Nations remains diversified, it has nevertheless contributed immensely to the materialization of the right to development. There have been many research publications analyzing *development and crime*, not only in the context of the modernization theory, but also more generally. The United Nations Social Defence Research Institute (now the United Nations Interregional Crime and Justice Research Institute), had been a leader in this.¹⁴⁸

From such a genetically interpreted concept of *sustainable development* for criminology and other social science disciplines, the following seven points emerge.

First, natural resources are a common good of mankind. Their protection under criminal law is as important as the protection of other common rights and freedoms, including one of the four original rights, the right of freedom from fear of crime. In accordance with the classification of those rights proposed in 1977 by Karel Vlasak, Czech/French lawyer and scientist, all these rights and freedoms belong to the so-called three generations of human rights (*liberté, égalité, fraternité*), initially formulated during the French Revolution (1790).

The first-generation rights (*liberté*) include the rights providing protection against the abuse of power by the State, for example the right to a judicial review of an arrest warrant, the right to a fair trial and the right to a person's privacy, all formulated after the Second World War in the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966). The origins of the idea of freedom from fear

and want may be located in the context of first-generation rights.

The second-generation rights (*égalité*) are the sociocultural rights and freedoms, for example the right to work, to livelihood, to housing and to health protection, initially formulated after the First World War, and accepted by the United Nations in the *International Covenant on Economic, Social and Cultural Rights* (1966).

The third-generation rights (*fraternité*) are the collective rights, for instance the right to social development, to the protection of the environment, and to collective protection of data and information, declared in the 1970s and 1980s by various United Nations conferences and gradually included in the above academic classification.

Second, the question of the exploitation of natural resources is or may be connected with different forms of inappropriate exploitation of natural resources (environmental crime) and of the distribution of profits from their sale or, indirectly, it may have an impact on the ecological balance (the greenhouse effect). This effect may lead to the redistribution of the budget between State economic and social sectors (ministries of interior and justice), from which the resources to respond to crime are drawn, e.g. for responding to trafficking in people. Environmental hardship is an important push factor in migration. Moreover, unsustainable use of natural resources may involve forms of organized crime and corruption, other than trafficking in human beings. The idea of introducing into the United Nations conventions against transnational organized crime (2000) and corruption (2003) the provisions designed to respond to money laundering must have been prompted by the awareness of the embezzling of State funds by its elites, illegally enriching themselves through unsustainable use of natural resources (*loot over justice*).

Third, an important interdisciplinary element of sustainable development is good governance.

Fourth, a necessary step in promoting sustainable development in the world is the mobilization of the private sector for this purpose. Property relations change. With these come changes in the structure and dynamics of crime, especially against property. Since 1989 (the beginning of the erosion of the socialist system with its legal system favouring criminal law protection of State property over private property) when privatization in the global economy accelerated, there has been a parallel emphasis

¹⁴⁸ E.g., UNSDRI 1976.

on increasing the social responsibilities of the private sector, including those elements which originally belonged to a State. The *Global Compact* initiative, which was established between 1999 and 2004 under United Nations auspices, is the biggest arrangement in the world in this sector, with more than 8700 corporate participants and other stakeholders from over 130 countries, committing themselves to ethical conduct and social responsibility.

In addition to implementing those responsibilities in the companies that joined the arrangement (and they involve environmental protection and respect for human rights, as embodied by the 1948 *Declaration of Human Rights*) and the rights of employees, members of the Global Compact committed themselves to responding to corruption in private business through the realization of concrete civic and public initiatives, including sharing publicly their own anti-corruption experience. In this way, the cross-disciplinary idea of responding to corruption emerged for the first time within the framework of the United Nations in the sustainable development process, a development which has an institutional framework and practical ramifications.

Fifth, in the interest of broader practical and theoretical pursuit of the concept of sustainable development, one may argue that security, the rule of law, the administration of criminal justice administration, and crime prevention should be treated as renewable resources. Their vital energy is social energy. That energy is not only produced by each generation for its own use, but also transmitted intergenerationally. Intergenerational transmission of cultural patterns of behaviour, whether positive or negative (crime and violence), is a part of the question of social, people-centred sustainable development and the energy it releases that should drive crime prevention, as re-emphasized in its own way by the *UN Guidelines for the Prevention of Crime* (2002).

This broader interpretation of sustainable development which goes beyond its literal sense of energy drawn from non-renewable natural resources of the Earth, gradually becomes the source of inspiration in the world for responding to crime. For instance, if we agree that it is very difficult to alter the personal dispositions of offenders,¹⁴⁹ would this not then be a reason to seek to modify their behaviour by changing the social and situational risk factors related to how they act, and their perceptions of those factors (social and situational crime prevention)? How can one better motivate communities than by assisting them

in developing and pursuing legitimate ownership of certain crime prevention activities, and by encouraging them to increase their own resilience, so this can create an investment climate for future prosperity? If they fail, who else could succeed? From the Chicago ecological school of the 1920s until now (*“Broken windows”*), criminology is replete with evidence of community dwellers moving from one residential area to another due to a lack of sustainable crime prevention capacities that would enable them to reclaim and rejuvenate degenerated residential areas.

Sixth, and consequently, this inspiration will be a basis for a critical and multidimensional analysis of the relevance of criminological theories, both from their aetiological and preventive side, and a basis for developing new theories. This is a global and universal idea of such a high rank that it breaks all intellectual clichés. It opens a path towards broader reconceptualization and verification of the suitability of criminological ideas, especially the older ones.

Some of them would be invincible, others would not. Basically, several sociological theories, most particularly those belonging to social learning theories, would initially qualify for reinterpretation and verification, if and when they emphasize the importance of equal life chances in making rational behavioural choices (*“rational choice theory”*, balance of chances). But also the aetiological theory of relative deprivation would retain its scientific and practical relevance at the present stage of global socio-economic development because its imbalances (sharp inequalities) undermine sustainable development. Uneven socio-economic development is regarded as a criminogenic factor. Consequently, that part of sociological theories which addresses such issues could be reclassified as belonging to criminological theories relevant to sustainable development.

Finally, the concept of sustainable development may be instrumentalized and operationalized in terms of responding to particular forms of crime. So far, the sister term of alternative development has been practically applied in order to respond to illicit drug cultivation. According to its definition, agreed by the United Nations General Assembly, this is *“a process to prevent and eliminate the illicit cultivation of plants containing narcotic drugs and psychotropic substances through specifically designed rural development measures in the context of sustained national economic growth and sustainable development efforts in countries taking action against drugs, recognizing the particular socio-cultural characteris-*

¹⁴⁹ Knutsson 2009:9.

tics of the target communities and groups, within the framework of a comprehensive and permanent solution to the problem of illicit drugs” (1998).

In this context, the example of the 2008 ECOSOC resolution on *Promoting sustainability and integrity in alternative development* is unique and a kind of study in itself. This resolution is an important part of drug control strategy in States where illicit crops are grown to produce drugs.¹⁵⁰ Contrary to other General Assembly programmatic resolutions, this resolution very precisely describes the technical instruments for alternative development chosen by Thailand. Some of them may not necessarily be directly applicable to a broader group of countries, especially those with more Western-oriented concepts of market economy and society,¹⁵¹ but certainly there are several other instruments listed in the resolution that are applicable to very many countries across the world. The *sine qua non* condition across their spectrum is that alternative development can be successful only if pursued in a peaceful country.

Military conflicts or civil wars render its application futile. Individuals and communities are forced into various forms of organized crime in order to make a living, as is the case in Afghanistan or Colombia, the world’s major producers of illicit drugs. In such countries there are no conditions to opt voluntarily for an alternative, better choice.

Assisting States whose governance apparatus has failed (“*failed States*”) is difficult, but not impossible, and is certainly expensive. Such States, used as transit areas for illicit drug trafficking (e.g., Belize and Guinea Bissau), are vulnerable to trafficking in human beings as source States. They have been the target of transnational organized crime groups which corrupt their officials and gradually take control of their governance. The UNODC is actively involved in rendering technical assistance to such countries. Thus crime prevention and criminal justice are inscribed into a bigger picture of law and order in the world and of global security.

Under the surface of the same problem of lawlessness, there is one common denominator: poverty. Underneath poverty, in turn, are a multitude of other factors specific to a country, requiring various instruments in order to introduce sustainable development. But in the global practice of responding to forms of organized crime other than illicit drug cul-

tivation in ways that meet the condition of peaceful development, there is an evident lack of concrete and evaluated sustainable development projects which could parallel alternative development illicit crop cultivation projects. At this point, the interest in pursuing a similar approach is rather nominal.

This can be seen in the General Assembly resolution on Human Rights in the Administration of Justice,¹⁵² where the term *sustainable development* had first been invoked in the context of crime prevention and criminal justice. That resolution not only addressed the precarious position of children and juveniles in detention. It also acknowledged that the administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, is essential to the full and non-discriminatory realization of human rights and indispensable to democratization processes and sustainable development. With these formulations, the General Assembly resolution factored the concept of sustainable development into the human rights context, probably for the first time ever, since in its 1986 *Declaration* on the right to development it spoke about the related concept. However, and more importantly, the concept of sustainable development was explicitly linked with the role of the administration of criminal justice. Recalling here that that role was precarious in solving the dilemma between “*loot or justice*”, the General Assembly has demonstrated the relevance of a criminological perspective in United Nations crime prevention and criminal justice policy.

Since then the concept has been repeated in other General Assembly resolutions on crime prevention and criminal justice, and also in resolutions of the Economic and Social Council.¹⁵³ On both levels this rhetoric sounds strong because it sets out ambitious and attractive future objectives. However, in operational terms, that objective has not yet received sufficient attention through technical assistance projects.

The time between working out the definition of sustainable development (1987) until now, has been too short indeed for this concept to take root and to influence seriously criminological thought and action. That only happened in the case of the nascent

¹⁵⁰ This resolution was recommended by the Commission on Narcotic Drugs, initially at the initiative of Thailand - a country which successfully solved the problem of illicit opium cultivation (ECOSOC resolution 2008/26, Annex, 24 June 2008).

¹⁵¹ The resolution is in this sense politically country-specific.

¹⁵² GA resolution 50/181 of 22 December 1995.

¹⁵³ E.g., ECOSOC resolutions 2004/31 and 2005/22.

restorative justice movement. Works by the Norwegian Nils Christie (*Conflicts as Property*, 1977), a member of the United Nations Committee on Crime Prevention and Control in 1976-1978, and by two United States researchers,¹⁵⁴ are particularly noteworthy in this context. Likewise, one more publication on the influence of sustainable development on the functioning of the criminal justice system should be mentioned,¹⁵⁵ even though it is limited to the context of environmental crime.

Theoretically, there has been a proposal to define the relationship between sustainable development and the rule of law by a United Nations declaration,¹⁵⁶ but there is still insufficient weight in criminology and praxis to be more general than with regard to restorative justice and environmental crime. That weight has, however, been appreciated elsewhere in the United Nations. In 1992, its Committee for Development Planning, initially seized by the problem of environmental and poverty-related crime and the principles of responding to these, went further and identified good governance as a general component of sustainable development facilitating modernization of public administration, hence the humanization and efficiency of criminal justice administration.¹⁵⁷

Gradually, over time, the concept of good governance has become very popular in democratic societies. After the establishment of the Commission on Crime Prevention and Criminal Justice (1992), the concept was hotly debated by it. The debate involves the comparison of one model of good governance with another, and hence "goodness" is relative, and so is "governance". But one of its elements, access to justice (an element which in fact predates the concept of good governance), has received unqualified support worldwide in research and practice. It is now one of the United Nations programme concepts, but has not been defined by any official documentation (e.g., resolution, report of the Secretary-General). For this reason it freely relates to other legal, political science and developmental concepts (e.g., the rule of law, transparency, accountability), at the individual or institutional discretion of programme or project text drafters. This again shows how criminological ideas under one or another name move through mutually penetrable and permeable academic and bureaucratic worlds,

and enrich the two worlds when and if a cross-fertilization is acceptable to both.

Access to justice and restorative justice have become in theory and practice concrete examples of criminological and criminal policy contributions to sustainable development. Restorative justice, as a part of conflict theory, thus stands in opposition to the positivist school of criminology. According to the latter, nothing is able to restore the situation before the commission of an offence. And the only positive (hence the adjective), that is the real objective of criminal law, may be to prevent future crimes by the same offender through his or her resocialization or elimination.

The innovative concept of sustainable development cuts across traditional intellectual boundaries, and forces us to regroup the criminological schools of thought. In fact, under its guidance not only that thought but also the United Nations ideas of freedom from fear and want mentioned earlier require a new appraisal. In essence, freedom from want is nothing else than a need, if not a necessity of sustainable development, and freedom from fear involves a necessity of law and order, in short of the rule of law, in communities, cities and countries across the world. Fear of crime may be a consequence of inadequate meeting of security needs neglected in the course of unbalanced socio-economic development.

While this thesis on the possible relationship between the fear of crime and unbalanced development should be put to test, worrisome estimates indirectly suggest that it may indeed be correct. The World Health Organization estimates that between 2004 and 2030 homicide, the most fearsome crime, will move up in the ranking list of the causes of death, from 16th to 12th place.¹⁵⁸ Indirectly likewise, the thesis that the feeling of insecurity has worsened over time has been delivered in the Brundtland report. This report estimated that social and community urban infrastructure meets only 65% of the needs of inhabitants, including the need for security. As a result of rapid urbanization in developing countries, the law enforcement, crime prevention and criminal justice apparatus do not possess the capacity to contribute adequately to the sense of justice and to a safer world, and to forming the adequate perception of justice, safety and order.

¹⁵⁴ Zehr & Mika 1998.

¹⁵⁵ Hoffman 2000.

¹⁵⁶ Bouloukos & Dakin 2001.

¹⁵⁷ ST/ESA/234, sec. 5.

¹⁵⁸ WHO 2004:4.

BOX 2

Vincent Del Buono

Building Sustainable Access to Justice in the Developing World

Justice is an inherent human need. Access to justice is a human right.

Introduction

Since 1960s reformers have called upon governments to make changes in national legal systems in order to enhance “access to justice” for disadvantaged groups and citizens at large. The concept arose in the welfare state era when there was a growing consciousness of one’s rights, and was usually identified with committing the State to increase social services and widen opportunities for dispute resolution.¹

A. Four generations of access to justice

The reformers’ call was heard in the United Nations. There have been four successive generations of initiatives promoting access to justice. The first, which ended in the mid-1960s, focused on reform of bureaucratic machinery with some support for the judiciary. The criminal justice component of it was hardly recognized. The second, the “law and development” movement of the 1970s, emphasized legal education for civil service lawyers. There were criminal law elements in that education. The third, in the 1980s, limited its scope to legal institutions per se.² The United Nations Crime Prevention and Criminal Justice Programme’s contribution of various instruments (e.g., *Basic Principles on the Independence of Judiciary* (1985), *Basic Principles on the Role of Lawyers* (1990), *Guidelines on the Role of Prosecutors* (1990)) occurred in this generation.

With the adoption in 2000 of the *United Nations Millennium Declaration*³ which not only set out the international community’s development goals, but also its goals with regard to human rights, good gov-

ernance and democracy, the UN’s Crime Prevention and Criminal Justice Programme began its full-fledged contribution to the fourth generation of access to justice initiatives. In the Declaration, the international community stated that “We will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development” (part V, para. 24).

B. Lessons learned

Soon thereafter the Secretary-General of the United Nations stated that the Organization “has learned that the rule of law is not a luxury and that justice is not a side issue. We have seen people lose faith in a peace process when they do not feel safe from crime. We have seen that without a credible machinery to enforce the law and resolve disputes, people resorted to violence and illegal means. And we have seen that elections held when the rule of law is too fragile seldom lead to lasting democratic governance. We have learned that the rule of law delayed is lasting peace denied, and that justice is a handmaiden of true peace. We must take a comprehensive approach to Justice and the Rule of Law. It should encompass the entire criminal justice chain, not only police, but lawyers, prosecutors, judges and prison officers, as well as many issues beyond the criminal justice system. But a “one-size-fits-all” does not work. Local actors must be involved from the start. The aim must be to leave behind strong local institutions when we depart”.⁴

The World Bank in its ground-breaking 2006 study “Where is the Wealth of Nations: Measuring Capital for the 21st Century” determined that an effective justice system forms a large part of the intangible capital of a society and is a key asset in generating well-being



¹ M. Capelletti and B. Garth, Access to justice and the welfare state. An introduction, pp. 4-7; Lawrence Friedman, Claims, disputes, conflicts and the modern welfare state, both (in:) M. Capeletti (ed.), *Access to Justice and the Welfare State*, European University Institute, Firenze, Sijthoff/Brill 1981:251-254.

² A. Hurwitz, Civil War and the Rule of Law: Toward Security, Development and Human Rights, (in:) A. Hurwitz with R. Huang, *War and the Rule of Law. Security, Development, Human Rights*, London, Boulder, Lynne Rienner Publishers 2008: 6-7.

³ <http://www.un.org/millennium/declaration/ares552e.pdf>

⁴ Kofi Annan, Secretary-General of the United Nations, doc. SC/7880, Press release of 24 September 2003, Security Council calls on Member States to help enhance UN role in establishing justice, rule of law in post-conflict States.

in a society.⁵ Without an efficient, fair and effective justice system, development will be retarded. However, the experience to date is that “Rule of Law” programs have rarely achieved their nominal objectives of delivering human rights, security or development. There is much anecdotal evidence to indicate that they do not do so because they fail to adequately integrate an analysis of conflict and unfortunately rely on “template” strategies for solutions rather than be founded on a thorough understanding of the political, social and economic situation in a country.⁶

C. New standards and norms

The most significant recent UN Crime Prevention and Criminal Justice Programme developments which have advanced access to justice by enhancing the public’s confidence in it have been several new standards and norms: *The Bangalore Principles of Judicial Conduct* (2002), *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (2002) and *Guidelines on Justice Matters involving Child Victims and Witnesses of Crime* (2005) and the major conventions against transnational organized crime (2000) and corruption (2003). The new standards and norms have been operationalized in UNODC field projects such as those in Africa. Access to justice has also been enhanced through the creation and operations of the ad-hoc and permanent international criminal tribunals (1993-2009) which in their substantive and criminal procedure codes represent the highest and most general expression of United Nations human rights and standards and norms in criminal justice.

Although great strides have been made in enhancing access to justice with regard to the criminal law especially by removing impunity for those who commit genocide, crimes against humanity and war crimes, far less progress has been made domestically providing access to justice for the poor in civil and family law matters. Core justice institutions both in developed and developing world are notoriously under-funded, and where they work at all, they are over-crowded and give priority to criminal matters. The emerging global financial crisis has complicated progressive justice reform.

D. Conditions for sustainable access to justice

What are the conditions to continue making access to justice sustainable in the developing world? **First**, as already emphasized, strengthening the “core” local justice institutions will be essential: the judiciary including customary justice mechanisms, prosecutors’ offices, bar associations and correctional institutions. The “Justice institutions” that need to be strengthened also include a wider circle: the legislature, ministries of justice and interior, local authorities, law reform commissions, law faculties, judicial training institutes, research centres, the police and other law enforcement bodies and forensic offices. A yet wider circle includes institutions which provide a context for success, for example, the media, the military and insurgent groups.⁷ Media reporting for instance can inform a considered and measured response to incidents of crime or instead whip up an exaggerated fear of crime. Where members of the military or members of insurgent groups are not arrested and punished when they commit ordinary crimes, citizens become cynical about the fairness and effectiveness of the legal system.

Second, the core institutions of justice must be adequately funded. In Nigeria for example, since the return of civilian government in 1999, the Constitution guarantees the federal judiciary adequate levels of funding and its financial independence from the Executive. As a consequence, it has thrived, enjoying greater public confidence especially as the National Judicial Council has successfully tackled judicial corruption. The Nigeria Police on the other hand, which has been chronically under-funded, under-equipped and under-resourced, is still valiantly struggling to free itself out from under the dead hand of corruption.

Third, the network of legal advice and legal assistance centres for the poor and low-income members of society needs to be expanded. To avoid small grievances festering into major conflicts, poor people must have access to forums where they can have disputes resolved on the basis of their rights and the law rather than be left with the feeling that they can never successfully challenge the exercise of naked power or



⁵ <http://siteresources.worldbank.org/INTEEI/214578-1110886258964/20744844/Introduction.pdf> at p. xviii “For example, if an economy has a very efficient judicial system, clear property rights, and an effective government, the effects will result in a higher total wealth and thus a higher *intangible capital* residual. The regression analysis in this chapter shows that human capital and rule of law account for the majority of the variation in the residual. Investments in education, the functioning of the justice system, and policies aimed at attracting remittances are the most important means of increasing the intangible components of total wealth.”

⁶ Hurwitz, op. cit.

⁷ Ibid.

brute force. Delivery mechanisms for providing such advice may vary from place to place: legal aid provided by the private bar; citizen's rights centres; dispute resolution mechanisms and training; or paralegals. Given that the developing world's needs are so great, almost all efforts are useful.

Fourth, the poor, especially women, need to know their rights and know the law. Given that the poor, especially women, seldom if ever control the levers of power in any society, arming them with knowledge of the law and of their rights will enable them to seek justice in the face of predatory exercises of power. Knowing one's rights is an essential first step to exercising them. In societies with high levels of illiteracy, radio and radio drama are highly effective in "public enlightenment". A major 2005-2007 public education and mobilization campaign "Promoting Women's Rights through Shari'a in Northern Nigeria"⁸ was very successful in using radio

dramas to inform people of their rights and changed both attitudes and behaviour towards a greater respect and observance of women's and girls' rights.

E. Conclusion

The unwillingness or inability to provide free or affordable legal services to the poor everywhere threatens to make "access to justice" just empty rhetoric. Without massive "public enlightenment" and a substantial strengthening of legal aid for the poor,⁹ the "Rule of Law" will be limited to those who can afford it. Thus, one of the fundamental values underpinning the United Nations Millennium Declaration, "to uphold the principles of human dignity, equality and equity at the global level", will go unrealized. While justice will continue to be an inherent human need, access to it as a human right will have been denied. ■

⁸ <http://www.dfid.gov.uk/pubs/files/promoting-women-sharia.pdf>

⁹ See E. Skinnider. "The Responsibility of States to Provide Legal Aid" <http://www.icclr.law.ubc.ca/Publications/Reports/beijing.pdf>. Also see, The Kyiv Declaration on the Right to Legal Aid, http://dihr.org/legalaid/index.php?option=com_content&task=view&id=36&Itemid=1, Examples of such strengthening in developing countries can be found in the work of the Open Society's Justice initiative at <http://www.justiceinitiative.org/activities/ncjr/atj>

Since the time of its publication, the word *sustainability* has become the dominant term in the field, and operative questions such as those of management and urbanization have moved to the forefront of interest.¹⁵⁹

Providing protection is more often put to the test in urban areas than in the countryside, simply because homicide is more often committed in cities than elsewhere. This is a well established fact, confirmed for example through an analysis of reported homicides in 24 cities across the developing and developed world (1966-1970).¹⁶⁰

As the result of the deficit of such State functions, there has been a dramatic growth of private security forces and of the promotion of the "architecture of fear",¹⁶¹ as exemplified by walled and monitored residential areas. There has also been a growing demand for firearms for civilian self-protection. Some of the firearms wanted by civilians come from

military stockpiles. Between 1987 (the date of the publication of the Brundtland report), and 2001 they have been estimated to have grown by 15%.¹⁶²

From what is currently known, about 8 million firearm pieces are produced annually, out of which only 10% are deactivated.¹⁶³ The re-transfer of second-hand weapons has the greatest effect on the global distribution of guns.¹⁶⁴ Apparently 55-60% of these re-transferred weapons end up in private hands.¹⁶⁵ UNODC analysis of the homicide statistics obtained through the periodic United Nations surveys of crime trends and operations of criminal justice systems suggests that about 60 % of homicides are committed with firearms in the hands of residents of five sub-regions of the world (Central America, South America, the Caribbean, South-West Asia and Western Europe). In Central America the figure may be as high as 77 %, but in Western Europe only 19%.¹⁶⁶

¹⁵⁹ Schubert & Láng 2005.

¹⁶⁰ Archer & Gartner 1984:105.

¹⁶¹ Angbola 1997:5.

¹⁶² SASR 2002:76.

¹⁶³ IANSA 2007:4-5.

¹⁶⁴ SASR 2002:103.

¹⁶⁵ SASR 2001:86; SASR 2002:103.

¹⁶⁶ Global Report 2008:5 & 55.

Yvon Dandurand

Integrating Restorative Approaches in the Criminal Justice Process: From Slow Progress to Cautious Optimism



Introduction

Various attempts and projects to explore the integration of mediation and restorative justice principles into the field of criminal law took place throughout the 1980s and 90s in Canada, the United States, and various European countries.¹ It is fair to say that the potential appeal and transformative value of these ideas were recognized very slowly. The endorsement by the United Nations of restorative approaches in criminal matters was initially modest, but it could not be any faster taking into account its large membership. At the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1995) there were several questions involving crime victims and restorative justice, but this had little effect on its general debate and action.² As a result, a group participating in the NGO Alliance on Crime Prevention and Criminal Justice (New York, USA) decided to form a Working Party on Restorative Justice to advance this question for the United Nations Crime Prevention and Criminal Justice Programme.

Five years later, when the question was once more put on the intergovernmental agenda at the Tenth Congress (2000),³ its general declaration encouraged “the development of restorative justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities, and all other parties”.⁴ Another five years later, at the conclusion of the Eleventh Congress (2005), another general resolution urged Member

States to recognize the importance of further developing restorative approaches that include alternatives to prosecution.⁵ At the most, a dozen or so North American and European countries (and also New Zealand) actively promoted the adoption of these brief official statements; other countries just went along. African countries in particular saw in these pronouncements a way to highlight the important role traditional conflict resolution mechanisms played in their society and how they applied to crime. That was about as far as the United Nations has gone in order to actually promote restorative justice approaches either as a complement to the criminal justice process or an alternative to it.

When the United Nations visited the question more specifically, it was not so much to promote the use of restorative justice responses to crime, but rather to set reasonable limits on its use and offer guidance to ensure that restorative justice programmes and processes comply with human rights and criminal justice standards and norms. As a result, in 2002, the United Nations Economic and Social Council adopted a resolution calling upon Member States that are implementing restorative justice program to be guided by a set of *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*. The resolution simply noted that restorative justice was an “evolving response to crime”, with some unique benefits, and that there was a significant growth of restorative initiatives, sometimes drawing on traditional and indigenous forms of justice. It stopped short of recommending the greater use of



¹ See further: D. Miers, *An International Review of Restorative Justice*, Crime Reduction Research Series Paper 10, Home Office, London 2001.

² By contrast, just about the time of the Ninth Congress, the Council of Europe appointed an Expert Committee to evaluate and assess the use of mediation in criminal proceedings within Europe, and in 1999, the Committee of Ministers adopted the recommendation on “mediation” and offered 34 principles for member states of the Council of Europe to consider when using it in criminal justice. In 2001, the European Union issued a framework decision stating that Member States had to promote mediation in criminal cases and bring into force their legal instruments by 2006. Victim-offender mediation is the type of restorative programme favoured by most European countries. In many cases it is used as an alternative to formal criminal justice proceedings. The model often risks reducing crime to little more than a subject for private law, with some arbitration and facilitation by the State. All over Europe, the implementation of simple victim-offender mediation programmes has continued since, aided by the solid work of civil society organizations such as the European Forum for Criminal Justice (European Union Council Framework decision of 15 March 2011 on the Standing of Victims in Criminal Proceedings, Article 10; <http://www.euforumj.org/About/background.htm>).

³ See in this context: A/CONF.187/NGO/7, Statement of the Alliance of Non-governmental Organizations in Crime Prevention and Criminal Justice: *Restorative Justice Handbook*, Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 10 April, 2000.

⁴ A/RES/55/59, *The Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century*, The Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000, § 29.

⁵ A/RES/60/177, *The Bangkok Declaration – Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice*, The Eleventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Bangkok, 18-25 April, 2005, § 32.

that approach. The *Basic Principles* simply suggest that Member States “should consider the formulation of national strategies and policies aimed at the development of restorative justice”.⁶

A. Slow progress

In many European countries, victim-offender mediation has become a well-founded practice. Although the focus of victim-offender mediation is often still predominantly on juvenile offenders, the idea of applying it more broadly and at various stages of the criminal justice process (including after sentencing) is slowly gaining acceptance.

Outside of Europe, the implementation of restorative justice programmes remains relatively limited. In the United States, where the proponents of this approach initially justified their advocacy efforts on a resounding critique of the mainstream justice response to crime, these programmes remain relatively marginal. In Canada, where some victim-offender reconciliation programmes have existed since the mid-1970s, restorative programmes remain very limited, formulaic, poorly funded and evaluated.⁷ Whereas such programmes were first proposed as a means to put the concerns and issues of victims at the centre of the response to crime,⁸ they are now being valued mostly for their participatory characteristics⁹ and their ability to involve the community and various stakeholders in finding an appropriate response to individual crimes. Conferencing, which is the prime example of participatory mechanisms, is used extensively in Australia, Canada and New Zealand, mostly for juvenile offenders, and this particular approach is generating a lot of interest in Europe and other parts of the world.

Throughout the world and to different extents, countries have experimented with various types of restorative programmes. Some of these initiatives were quite innovative. However, in most instances, restorative practices in criminal matters are rarely im-

plemented on a broad scale. Furthermore, there are large and very noticeable gaps everywhere between restorative justice theory and practice, between the normative restorative justice concept and the way in which restorative justice is currently applied.¹⁰

B. Restorative approaches

Restorative justice refers to a process for resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict. Participation of the parties is an essential part of the process that emphasizes relationship building, reconciliation and the development of agreements around a desired outcome between victims and offender. Restorative justice processes can be adapted to various cultural contexts and the needs of different communities.

Restorative justice programmes are based on the belief that parties to a conflict ought to be actively involved in resolving it and mitigating its negative consequences. They are also based, in some instances, on a will to return to local decision-making and community building.

In many countries, the idea of community involvement enjoys a lot of support. New and established forms of restorative justice offer communities some welcome means of resolving conflicts. The participation of the community in the process is no longer abstract, but rather very direct and concrete. In many developing countries, restorative justice practices are applied through traditional practices and customary law. In doing so, these approaches may serve to strengthen the capacity of the existing justice system. A fundamental challenge for participatory justice is, however, to find ways to effectively mobilize the involvement of civil society, while at the same time protecting the rights and interests of victims and offenders.



⁶ United Nations *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, ECOSOC resolution 2002/14 of 24 July 2002, § 20.

⁷ J. Latimer, C. Dowden and D. Muise, *The Effectiveness of Restorative Justice Practices: A Meta-Analysis*, Department of Justice, Canada 2001:23; see also: Special issue: Practice, performance and prospects for restorative justice, *British Journal of Criminology*, Vol. 42, No 3, Summer 2002.

⁸ Many proponents of restorative justice approaches see the centrality of the victim's concerns as their main defining characteristics. See: D. Van Ness, K. Heetderks Strong, *Restoring Justice – Third Edition*. Anderson Publishing (2006): 141.

⁹ See the excellent document of the Law Commission of Canada, *Transforming Relationships Through Participatory Justice*. Ottawa: Law Commission of Canada (2003).

¹⁰ For an excellent discussion of and some empirical research on that question, see: T. Gavrielides, *Restorative Justice Theory and Practice: Addressing the Discrepancy*, HEUNI, Helsinki 2007.

C. Promising developments

UNICEF and UNODC have provided technical assistance, training and practical tools to assist countries wishing to explore the full potential of restorative justice approaches. UNODC, for example, published a *Handbook on Restorative Justice Programmes*¹¹ which is quite widely used.

Restorative justice programmes have been found particularly useful for dealing with young offenders. They have been actively promoted by UNICEF in numerous countries, mostly as a form of diversion. Article 40 (3) of the *Convention on the Rights of the Child* requires States parties to seek to promote measures for children in conflict with the law without resorting to judicial proceedings, whenever appropriate and desirable.¹² Restorative programmes are perceived as an ideal diversion mechanism for children in conflict with the law and dozens of countries have experimented with this approach. Few of these countries have managed to provide such a diversion alternative on a national scale. Existing programmes rarely achieve the required level of public acceptance required for their implementation on a very broad scale, and criminal justice resources tend to continue to be channelled towards more traditional criminal justice response mechanisms. The so-called “pilot projects” tend to remain isolated demonstration projects, if they do not fade away completely. What is generally still missing are more comprehensive criminal justice reform policies that mandate the use of restorative justice programmes. Comprehensive criminal justice reforms are politically risky and slow to materialize, but the idea of a “restorative” alternative to the existing system is persistent and still quite powerful.

The real challenge in many countries is to find restorative justice applications that are congruent with local culture, compatible with the legal system and, if possible, building on the existing strengths of that system. A basic restorative justice approach can find many different expressions if proper care is taken to adapt it to the local context. For example, Thailand,

using the concept of “social harmony”, has known a lot of success in using the concept to reshape its response to juvenile crime. Vietnam is currently moving forward with an innovative way of building on the existing strengths of its community-level mechanisms for responding to juvenile crime and creating more opportunities for genuine victim participation in the process.

Some of the most fascinating restorative justice developments are found in various parts of Africa where local traditional processes based on various forms of customary law are being transformed slowly and used as a basis for new victim-focused participatory resolution mechanisms. Whereas many of these traditional mechanisms may have traditionally used victim compensation to resolve conflicts, they were usually based on various forms of arbitration and were not particularly preoccupied with protecting the individual rights of the people involved. In many countries, these traditional mechanisms are still responsible for responding to the bulk of criminal incidents occurring outside the cities. As these traditional practices are slowly being reconciled with modern criminal justice approaches, restorative justice principles offer a blueprint for their modernization.

In a recent and yet unpublished report, one expert notes that in most African countries, the process of reforming the justice sector often equates “traditional” with “backward”, and “modern” with “advanced”. As a result traditional dispute settlement mechanisms are still often regarded as obstacles to development. Many justice sector experts are apparently prepared to assume that traditional justice forums will eventually die out. However, as has been evidenced in Ethiopia and in the rest of Africa, traditional justice systems remain as popular as ever. Despite the fact that justice sector reform initiatives tend to focus on improving the formal justice systems, traditional justice systems are still favoured by the majority of the population of these countries.¹³

In Ethiopia, for example, where modern and traditional justice systems coexist, a project to link the



¹¹ UNODC, *Handbook on Restorative Justice Programmes*, New York, United Nations 2006.

¹² See also: Committee on the Rights of the Child, *General Comment No. 10 (2007) - Children's rights in juvenile justice*, Forty-fourth session, Geneva, 15 January-2 February 2007.

¹³ E. Kebede, (2010), *Traditional Dispute Settlement Mechanisms in Ethiopia and their Roles in Handling Criminal Cases*, Addis Ababa, unpublished.

formal and informal systems in six *woredas* of the Oromia region revealed some of the obvious obstacles to these linkages, but also emphasized some of their respective strengths. Whereas the formal system may offer greater due process guarantees than the traditional system to the rights of marginalized groups like women and children, the traditional mechanism are very effective in ensuring that the victim is restored or compensated, the offender is reintegrated and the families and the community are brought together in celebrating the peace and reconciliation that has taken place.¹⁴

¹⁴ E. Kebede, (2010), Linking the Formal and Informal Justice System in the Handling of Criminal Cases, The Oromia Experience, Addis Ababa, unpublished.

¹⁵ J. P.J. Dussich, J. Schellenberg (eds) with a foreword by M.S. Umbreit, *The Promise of Restorative Justice: New Approaches for Criminal Justice and Beyond*, Lynne Rienner Publisher 2010.

D. Cautious optimism

There are obviously some reasons for cautious optimism. There are indeed quite a few promising areas for further development of restorative justice initiatives. Unfortunately, very little support has been offered to the development of such initiatives. One should therefore not be surprised to see that the concept of restorative justice which is still a promising and innovative idea¹⁵ has not exactly caught on like a wildfire. The United Nations Crime Prevention and Criminal Justice Programme can certainly do more to make this happen. ■

These general estimates aside, it would be particularly hard to discern what specific proportion of homicides in the five sub-regions is related to general insecurity, which in many cases is further compounded by open or guerrilla military conflict. Notwithstanding Western Europe, where historically there has been a steady decrease in lethal violence,¹⁶⁷ it is still evident in every part of the world that human security is undermined by illegal handgun circulation and use. Generally, police authorities report that handguns destined for offenders and others in urban areas are the most common small arms involved in the illicit trade of new weapons. This re-transfer process responds to the demand for handguns by armed groups, offenders and others.¹⁶⁸ It includes unauthorized and illegal sales, theft, fraud and official corruption. They add to insecurity because these forms of crime undermine the accountability, openness and transparency of law enforcement – key components of the rule of law in building and maintaining security.

Security, the perception of crime and violence, and the fear of crime become respective sides of one equa-

tion. With such a considerable number of firearms in global circulation, including an estimated 10 million firearms in the hand of youth gangs in the world,¹⁶⁹ it is easy to manipulate security and safety issues and influence the fear of crime. Social and cultural ideologies of masculinity and femininity are the transmission belts between global handgun circulation and local communities and families, which on their own terms react to safety issues and fear of crime.¹⁷⁰

The answer to how this transmission belts work can best be found in criminology, especially within its social learning theories. In this context, Edwin Sutherland's theory of differential association, a general sociological theory of criminal behaviour, has received considerable verification. (If there were a Nobel Prize for criminology, he should have received one.¹⁷¹) That theory, in a nutshell, says that "*birds of a feather flock together*". It enabled Donald Cressey (Sutherland's pupil) to argue that the most effective mechanism for exerting anti-criminogenic group pressure will be found in groups so organized that offenders are induced to join with non-offenders for the purposes of changing other offenders.¹⁷²

¹⁶⁷ Ibid.:76.

¹⁶⁸ A/54/404, §16.

¹⁶⁹ SASR 2010:115.

¹⁷⁰ SASR 2006:301-302.

¹⁷¹ Mannheim 1965: Vol. II:470; Ruggiero 2002:177.

¹⁷² Cressey 1955.

But there is more at stake in this precarious equation than the balance between security and fear of crime. What is involved is the question of social capital. Social capital refers to the norms, family and personal values, expectations, beliefs, skills, support services, etc. that are built into social relations, and that, through social institutions (schools, media, faith-based and non-governmental organizations) and their policies, instil foundations for trust, obligation and reciprocity. In addition to *human capital*, the creative and anti-criminogenic value of which was recently recognized by the afore-mentioned Gary Becker, the social capital in a community, or the degree of social bonding according to established norms of behaviour, can help to explain levels of violence and crime.

The International Narcotics Control Board (INCB), the independent and quasi-judicial control organ for the implementation of the United Nations drug control conventions, argues that communities that lack social capital are likely to suffer from more crime and violence. Absence or flight of social capital is exacerbated by increased levels of violence and crime that are related to the negative impact of illicit drug markets on communities.

The INCB documents this with the results of a World Bank study in Jamaica. The study found a cyclical relationship between violence and the destruction of social capital in five poor urban communities.¹⁷³ The INCB observes that as a consequence of violence, employment and educational

opportunities were reduced, business did not invest in the local area, local people were less likely to build new homes or make home improvements, and freedom of movement was curtailed. In turn, those conditions, amounting to destruction of the local infrastructure and opportunities, increased the likelihood of violent behaviour, particularly among young people, since mistrust was enhanced and civil norms were challenged. Thus, the relationship between loss of social capital and increased violent crime, including violent drug-related crime, cannot be ignored.¹⁷⁴

The political science perspective (which was the premise for the introductory observation on security and the fear of crime), shows that between that discipline and criminology there remain unexplored paths which can be connected and can be mutually beneficial. It is true that the concepts and terminologies are partly different, and are less precise in political science. This means that the exploration of these paths will not be easy, but it is possible.

Accordingly, it may be concluded that crime, the perception of crime and the response to crime, may contribute to general conditions of insecurity within civil society and to tensions between governments and citizens, particularly those experiencing political and economic instability. This is a bigger picture in which “*freedom from fear*” and fear of crime is inscribed, and in which in the connection between individual factors and global society, criminology has a central role as a part of world security politics.

¹⁷³ Moser & Holland 1997.

¹⁷⁴ INCB 2003:6-7.

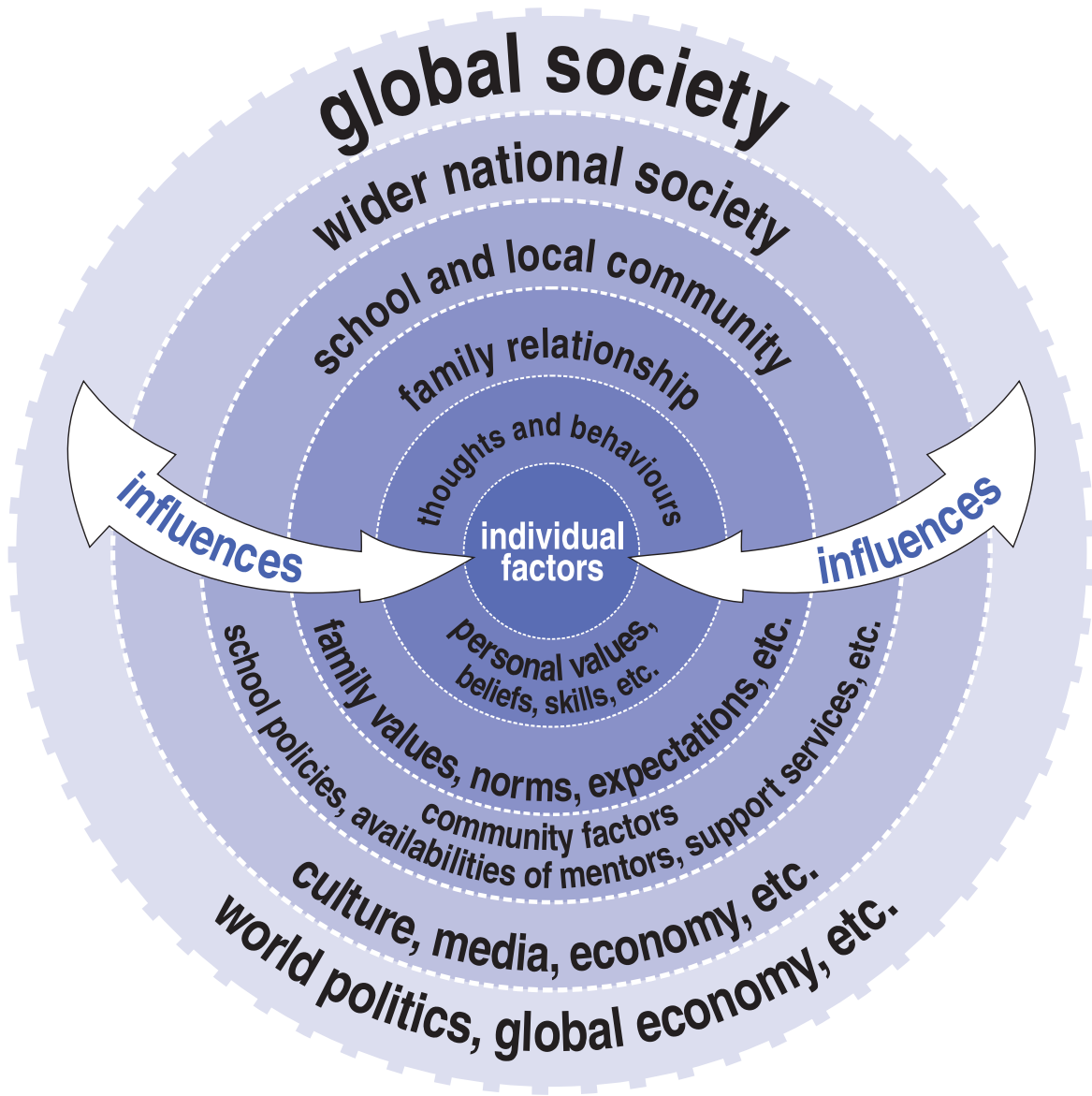


Figure 2. Understanding and preventing criminal violence globally.
Source: Adapted from the *Handbook on the United Nations Crime Prevention Guidelines. Making Them Work* (UNODC, Vienna 2010).

IV Other guiding ideas: human, urban security, security sector reform and crime prevention

In the light of the above picture, and as a result of the merger of development and security discourse, the United Nations has been promoting a broader idea of human security since the beginning of the 1990s.¹⁷⁵ Originally, however, this took place without reference to the challenge of crime, and throughout the entire process as a reinterpretation of what is meant by “*freedom from want*”. The first results (1990-1993) were reflected in a new flagship publication, the United Nations Human Development Report.

As the adjective in the title of the Report manifests, it started to argue that addressing human development concerns mitigates the risk of political violence. At that nascent time, implicit in the discussion on the economic sources of conflict was only the assumption that poverty and hopelessness (i.e., a lack of individual security from economic threats), encouraged it.¹⁷⁶

That broader human security idea was further expanded by the United Nations Human Development Report 1994. It argued that both human development and human security had an instrumental value in the pursuit of peace, since without it “*there may be no development. But without development, peace may be threatened*”.¹⁷⁷ On this basis, the report asserted that the path to peace was sustainable development.

The Report broadened the understanding of the scope and underpinnings of violence. It included in the concept of human security criminal violence against women, and other harsh practices: female circumcision, employing bonded labour and slavery. It added that “*Most people instinctively understand what security means. It means safety from the constant threats of hunger, disease and repression. It also means protection from sudden and hurtful disruption in the pattern of our daily lives – whether in our homes, in our jobs, in our communities, or in our environment ... Some of these traditional practices are*

breaking down under the steady process of modernization ... Some global challenges to human security arise because threats within countries spill beyond national borders ... The trade in drugs is ... a transnational phenomenon – drawing millions of people, both producers and consumers, into a cycle of violence and dependency ... So, when human security is under threat anywhere, it can affect people everywhere”. Finally, the Report stressed that human security was threatened not only by conditions of deprivation, inequity and instability but also by the impact of population growth, illegal migration, economic disparities between states, pollution and environmental degradation. Last but not least, the Report emphasized the threat of drug trade and terrorism. The response to all forms of those crimes can no longer be confined within national borders.¹⁷⁸

This is a very broad concept of human security, and one that is difficult to operationalize. Even at its core (“*most people instinctively understand what security means*”) it is not robust enough to withstand the comparative critique. It is intellectually stretched almost to the limits. It hardly lends itself to a rigorous treatment, especially if one seeks to establish a causal nexus between its violation and a threat to international peace and security. This is an important issue, because such a violation would trigger action by the Security Council under Chapter VII of the UN Charter.¹⁷⁹ To make it fit for this purpose, international lawyers would cut this idealistic definition of human security down to size, and in the process would certainly leave a few crime-related phenomena outside its scope.

As the “*Overview*” to that 1994 Report notes, it was written as a basis for UNDP input to the agenda of the World Summit for Social Development (Copenhagen, Denmark, 1995). The Summit, unbound by definitional and causal concerns, recognized that social justice and social development were preconditions for peace (and vice versa). It accepted that violence was rooted to some extent in poverty, unemployment, and social disintegration. Member States accepted obligations regarding the safety of people within societies and the protection of vulnerable groups.

¹⁷⁵ In its narrow sense, the concept of security involves only military security. Its post-Second World War development in the United Nations deserves separate treatment. Here it must suffice to note that the growing portfolio of “good peace-building practices” involved in demilitarization, demobilization and reintegration of ex-combatants (DDR) is relevant to laying the foundations for the rule of law in countries emerging from conflict (BOX 15), by pursuing proactive initiatives disengaging them from it through programmes and weapons management schemes, offering incentives to former commanders, emergency employment to their troops, and community violence reduction programmes (See further: <http://www.un.org/en/peacekeeping/orolsi.shtml>).

¹⁷⁶ MacFarlane & Khong 2006:143.

¹⁷⁷ UNDP Report 1994:23.

¹⁷⁸ Ibid.:3 & 31-34.

¹⁷⁹ MacFarlane & Khong 2006:227-230.

By and large, their acceptance corresponded to the criminological language of that time. But the Summit was short of language on human security that would parallel that of the UNDP Human Development Report 1994. There are at least two reasons for the Summit's limitations. First, there was resistance to the human security agenda, which was apparently found at the Summit to be unabashed liberal universalism that was insensitive to other cultural perspectives on rights. Second, there was little enthusiasm on the development side of security in other UN bodies, especially in the Department for Peace Keeping Operations, the Department for Political Affairs and the United Nations High Commission for Human Rights,¹⁸⁰ probably partly motivated by the fuzzy definition of human security. But there was a third reason: in the same year as the Summit, also the Ninth United Nations Congress on Crime Prevention and Criminal Justice was held (Cairo, Egypt 1995). Parts of the Summit's security agenda had been addressed by that Congress, especially in respect of starting United Nations work on firearm regulation. The subsequent criminological analysis which included the respective role of the UN crime programme and the establishment of a computerized United Nations Crime Prevention and Criminal Justice Network was soon to be added.¹⁸¹

Since 1995, the understanding of old and new forms of transnational crime has been incorporated not only as a part of threat to human security, but also in various other global criminological ideas, and into the UNODC bureaucracy. In 2003 the human security concept had been elevated institutionally and until mid 2010 *human security* featured in the administrative structure of the UNODC.

In 2004, the UN High-Level Panel on Threats, Challenges and Change incorporated transnational organized crime and terrorism as one of six clusters of human security threats (other crime-related security threats, such as corruption, had been left out). As a result of this selectiveness and all other limitations on the idea of human security, it has become little more than a fig leaf under which anything substantively mandated one or another way had been pursued in the UNODC as a human security project. It remains there as an expression of the political commitment of the UNODC to this idea, associated with the reinterpretation of the "*freedom from fear*".

Another United Nations idea has become less politicized, but criminologically clearer, more compact, constructive and practical: that of "*urban security*", assisting in the response to poverty and crime. This idea emerged in the second half of the 1990s. Since it has an economic underpinning, it can be seen as a



Picture 17. Gro Harlem Brundtland addressing the United Nations General Assembly (New York, 1987)

¹⁸⁰ MacFarlane & Khong 2006:148-149.

¹⁸¹ McDonald 1995:5; Quirchmayr 1998:7-14. See also: *Trends. UNCJIN Crime and Justice Newsletter* Vol. 2, No. 4 (1995), <http://www.uncjin.org/Documents/newsletter/nr3/start.htm> .



Picture 18. The United Nations Crime Prevention and Criminal Justice Network: At the operations room the author with Marie Teresa Polom

reinterpretation of the idea of “*freedom from want*”.

That underpinning clearly came out when the first estimates published showed that a considerable portion of mankind (2.6 billion) lived on US\$2 or less a day, and 1.2 billion on US\$1 or less a day. More precise and recent UNDP estimates showed that this was, respectively, 40% and 18% of the entire world population. Of the half a billion poorest in the world, 75% lived in the countryside, and 25% (ca. 250-300 million) in urban slums.¹⁸²

The study of that proportion received even more attention when World Bank econometric research found that in 1993-2002 there was a process of urbanization of poverty, i.e. of an increase in the number of urban residents living on US\$1 or less a day. That process had been 30% faster than in the countryside. Cities act as a magnet for poor village people. In them the percentage of the poor rose from 18% to 24 %, and in the countryside from 38% to 42%, but the absolute number of the poor in the countryside dropped by about 150 million, while in the cities it grew by about 50 million. The fastest increase was observed in urban slums.¹⁸³

These findings explain why there is a growing feeling of urban insecurity, chiefly attributed to the influx of rural immigrants seeking new life chances in the cities, whether legitimate or not. This influx

leads to increasing intra-city inequality, manifested in stark residential segregation, multiplying violence impacting disproportionately on women and the poor themselves.¹⁸⁴

It is in this most recent urban-focus context that a UN-Habitat estimate may best be understood: in 2001-2006 on the average about 60% of urban residents in Africa and 70% of urban residents in South America were victims of crime.¹⁸⁵

It now remains to be seen whether *urban security* as a common global criminal policy idea is a precursor to forming a transnational urban system which together, and more autonomously from the State, will react to common threats and challenges. This possibility was doubted even a few years ago.¹⁸⁶ It seems that the outlines of the emerging new form of the transnational response to urban crime was established in 1996 in the UN-Habitat Safer Cities Programme/Programme Villes Plus Sûres, a programme which has now become global. Its objective is to facilitate the efforts of urban authorities to develop a more effective response to crime in the world.

The recognition of the global threat that urban crime poses to development allows us to reconceptualize the question of the criminogenic function of inequality and bring it down from the State to the urban level. It is at the urban level that more than 50% of the GDP is produced globally, and 80% in the cities of developed world, i.e. in Northern America, Europe and Asia.¹⁸⁷ Moreover, this new criminogenic situation of inequality (i.e., the urbanization of poverty and the urbanization of State wealth) implies a broader process: haphazard urbanization and other concomitant processes can challenge if not indeed undermine the feeling of security, which is an important component of the quality of life. Thus urban security can also be interpreted from the perspective of the idea of “*freedom from fear*”.

But in the literature and criminal policy the notion of “*security*” seems to be rather narrowly understood, as a notion restricting human rights through State control. This traditional connotation gives rise to one more observation. At least from the United Nations perspective that policy has involved more control than preventive elements, as if the monopoly for it rested exclusively in the hands of the central law enforcement and criminal justice apparatus.

¹⁸² UNDP 2007:9, 26.

¹⁸³ World Bank 2004: 24; http://www.sustainable-design.com/sustain/UN-Habitat_2003WorldSlumsReport.pdf , p. 12.

¹⁸⁴ World Bank 2004: 24.

¹⁸⁵ UN-Habitat 2007:11&55.

¹⁸⁶ Sassen 1995.

¹⁸⁷ UN-Habitat 2007:11&55.

This indeed has been quite clearly visible in the United Nations Crime Prevention and Criminal Justice Programme. Member States, originally through the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Geneva, Switzerland, 1955), adopted in 1957 at the Economic and Social Council the *Standard Minimum Rules for the Treatment of Prisoners* – the first legal control instrument in a long series, including for example the *Code of Conduct for Law Enforcement Officials* (1979), and *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (1990). Thirty five years later, the General Assembly adopted its very first crime prevention instrument – the *United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)*.¹⁸⁸ This happened six years after two PNIs held in Riyadh the first joint international conference on crime prevention research¹⁸⁹ – evidence of how academic criminological ideas eventually influence United Nations criminal policy.

Five years after the adoption of the *Riyadh Guidelines* by the General Assembly, the Council adopted the *Guidelines for Cooperation and Technical Assistance in the Field of Urban Crime Prevention*,¹⁹⁰ and in 1996 the General Assembly adopted the *United Nations Declaration on Crime and Public Security*.¹⁹¹ However, it was not until 2002 that the Council adopted general Guidelines for the *Prevention of Crime*.¹⁹² In sum, out of some 60 legal instruments of customary international law (1955-2010), only four deal with prevention. The rest deal with the control of crime.

The above seems to be a reflection of the “*culture of control*”¹⁹³ that has so far been dominant in the world. A focus on the individual responsibility of offenders and on social control is preferred over social reform and the resocialization of offenders.¹⁹⁴ This inscribes into a broader problem, recognized in the United Nations, namely that of scepticism regarding the effectiveness of preventing conflicts in general. Although that objective is clearly stated in the preamble of the UN *Charter* (“*to save succeeding generations from the scourge of war*”), it was interpreted literally and declaratively and in a diversion-

ary manner. This flaw can be seen in two 1990s documents by the Secretary-General (Agenda for Peace and Supplement). In them *prevention* was a peripheral problematic,¹⁹⁵ since both documents only emphasized the role of *preventive diplomacy* in countering military conflicts, but entirely neglected crime prevention, both international and local.

It is true that, already in the 1970s, in another part of the United Nations Secretariat, the United Nations Crime Prevention and Criminal Justice Section, there had been research work on international crime prevention.¹⁹⁶ However, if we examine the substance dealt with, this work could be described as placing national work in the “*blue covers*” of a UN periodical. Not only at that time but, indeed, since the time of the inception of the United Nations crime programme mandate (1946), the idea of the practical internationalization of crime prevention could not have ripened and had not been a part of the global security picture.

That systemic impotence has started to gradually lessen since 2000. This process may now be seen as prompting the political will of Member States to strengthen crime prevention action in the United Nations. After 2000 several documents emerged in the United Nations which dealt with the “*culture of prevention*”. Among them is a document on *Prevention of Armed Conflict*.¹⁹⁷ In it for the first time ever in the United Nations there was mention of “*structural prevention*”, prompted by one United States publication, rather than only of “*operational prevention*” (§8).

In this context, one political scientist observed that advocating preventive programmes suffers from a methodological dilemma: it is difficult to draw causal links between preventive action and the absence of conflict,¹⁹⁸ because conflicts that were prevented cannot be proven. This is a part of a “*donors’ dilemma*”. This dilemma may imply that the political commitment to support crime prevention is weak because decision-makers prefer to respond to crime through repression rather than prevention. Repression is measurable, prevention is much less so.

¹⁸⁸ GA resolution 45/112 (Annex), 14 December 1994.

¹⁸⁹ UNICRI 1984.

¹⁹⁰ ECOSOC resolution 1995/9, Annex, 24 July 1995.

¹⁹¹ GA resolution 51/60, Annex, 12 December 1996.

¹⁹² ECOSOC resolution 2002/13, Annex, 24 July 2002.

¹⁹³ Garland 2001.

¹⁹⁴ Hastings 2005:213.

¹⁹⁵ A/47/277-S/2411,§55; A/50/60S/1995/1, §§13-14 & 97.

¹⁹⁶ IRCP 1972.

¹⁹⁷ A/55-985-S/2001/574.

¹⁹⁸ Bellamy 2008:143-4.

Peter Homel
Mary-Anne Kirvan

Crime Prevention: Celebrating Its Inroads, Accelerating Its Progress

Introduction

Probably in every language there is an equivalent of the English saying “An ounce of prevention is worth a pound of cure”. In the United Nations “language”, prevention originally emerged in its Charter as an imperative of the *jus post bellum*. But, although “crime prevention” or its functional equivalents have often been invoked in the United Nations records (almost since its inception),¹ the practice and science of crime prevention have been relatively new. Even newer is promoting the “culture of prevention” in the entire United Nations, which only in 2000 started to address it comprehensively.²

Presently, crime prevention has gained an incredible hold. This is because it is seen to be offering an approach designed to prevent victimization and crime that is widely recognized to be more humane and cost-effective than responding after the fact. Indeed, in many instances preventive action may be the only viable option due to problems such as non-reporting, access to justice and other such issues. It is a remarkable achievement that prevention is now recognized in policy as a key pillar of an effective criminal justice system alongside law enforcement, courts and corrections, notwithstanding that its support in terms of funding, institutionalization and professional development remains very modest. This contribution will briefly outline the impact, present and potential, of crime prevention on an effective criminal justice system and on safety and security in general. It will set out big picture challenges that need to be faced and propose compelling reasons for accelerating the pace of progress for a greater commitment to crime prevention principles.

A. Embedding of prevention

Crime prevention has been embedded in international and national laws, standards, policy and programmes

both in its own right, and as a key component to justice, health and developmental goals:

- In 1990, *United Nations Guidelines for the Prevention of Juvenile Delinquency* (the Riyadh Guidelines) emphasized for the first time crime prevention, this being associated with one specific population (GA resolution 45/112, Annex).
- In 1995, the United Nations adopted an additional legal instrument to address urban crime (ECOSOC resolution 1995/9, Annex). By 2002, “there was clear evidence that well-planned crime prevention strategies not only prevent crime and victimization but promote community safety and contribute to the sustainable development of countries”, this forming Art. 1 of the *United Nations Guidelines for the Prevention of Crime*, and the remaining articles setting out the principles, approaches and methodologies for effective crime prevention. These *Guidelines* address strategies for populations vulnerable to victimization or offending, and prevention in the context of space - urban crime more generally and specific disadvantaged neighbourhoods (ECOSOC resolution 2002/13, Annex).
- Various international standards and norms in relation to victims incorporate prevention. The *United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime* (ECOSOC resolution 2005/20, Annex) set out the right to special preventative measures for child victims and witnesses who are particularly vulnerable to recurring child victimization or offending, and call for comprehensive and specially tailored strategies depending on the nature of the victimization. Similarly, various international standards on violence against women call for prevention strategies, including ones to prevent re-victimization.
- *The Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, especially Women and Children*, which supplements the *United Nations*



¹ The work of the United Nations in the field of the prevention of crime and the treatment of offenders. Note prepared by the Secretariat, *International Review of Criminal Policy*, No. 1, January 1952, pp. 3-23.

² Alex J. Bellamy, Conflict prevention and the responsibility to protect, *Global Governance*, Vol. 14, No. 2 (2008), p. 136-137; Ross Hastings, Perspectives on crime prevention: Issues and challenges, *Canadian Journal of Criminology and Criminal Justice*, Vol. 47, No. 2 (April 2005), p. 213; Peter Homel, Lessons for Canadian crime prevention from recent international experience, *Institute for the Prevention of Crime (IPC) Review*, Vol. 3 (2009), p. 13-43.

Convention against Transnational Organized Crime (2000), established prevention as one of three main pillars.

In short, prevention has been well accepted in policy at an international level and by individual States. Expectations are high that it can bring something new to the efforts of States in the justice and human rights domains, and in a manner that is more inclusive and participatory than the other pillars allow. Notwithstanding consensus about prevention's place, the following big picture challenges need to be reckoned with for its promise to be realized.

B. This much we know

The populations and places most vulnerable to victimization and/or to offending experience multiple risk factors at an individual, family and community level that are not the exclusive domain of any one sector. They require integrated, evidence-based responses.

Preventing adverse outcomes for these populations and for high crime urban centres, communities and neighbourhoods is complex work requiring a range of professional skills and tools comparable to those that govern conduct, ethics, standards of evidence and rules of engagement for the principal professions associated with policing, courts and corrections. The required professional competencies need to be articulated, and this must reflect the complexities of the populations and issues intended to be served by preventive action, and the complexity of designing and implementing effective and appropriate responses in the context of sustainable development. For many countries the task of scaling up their professional prevention capacity is considerable.

Good governance of prevention is another big picture challenge. Basically, governance is the process whereby societies or organisations make their important decisions, determine who they involve in the process and how they are accountable for the actions arising from the decisions taken. While good governance for crime prevention has many facets and the responsibilities of governments at all levels have been articulated in the *Guidelines for the Prevention of Crime*, this paper will highlight three that plague many countries.

First, at the national and local level, the overall prevention strategy needs to be designed, managed and delivered in a systematic and integrated manner. Within a strategy, a programme that is targeting a specific crime issue will typically be built on the use of multiple interventions in order to address linked problems. The specific activities that make up each of these interventions will frequently be implemented at the same time or in some very tightly organized logical sequence. To prevent violence and other crime related to alcohol, for example, it would be typical for a public education component of any alcohol and violence initiative to be simultaneously supported by changes to policing practice and physical changes to drinking venues and immediate surrounding areas. Managing such a process effectively and efficiently represents a complex management task in order to ensure that the right people in the right places apply the right resources and skills at the right time.

A second governance challenge arises where there is not an institutional crime prevention presence at the local level capable of collaborative, multi-sectoral action to properly assess and act upon the priority crime, victimization and security issues. As stated in the *Guidelines*, a rigorous planning process that includes a "systematic analysis of crime problems, their causes, risk factors and consequences, particularly at the local level" is key. The intent in institutionalizing prevention at the local level is not to create bureaucracy but rather to ensure that those sectors with responsibilities for contributing to safety come together and do their part.³ This approach also allows for genuine engagement of civil society and affected communities in particular. The very presence of policing and courts in a given community would suggest a commensurate need for funding in support of local level prevention planning with all pillars being subject to appropriate accountability standards.

A third aspect of good governance for crime prevention warrants inclusion as a big picture challenge. It concerns which government departments, within each order of government, are contributing to prevention and whether there is a coherent overall strategy that reflects the types of crime and victimization occurring and that is based on the best available evidence as to effective ways to respond. This strategy should be transparent and distinguish between substantial



³ *Guidance on Local Safety Audits – A Compendium of International Practice*, European Forum for Urban Safety, 2007; Peter Homel, Sandra Nutley, Nick Tilley and Barry Webb, Investing to deliver; reviewing the implementation of the UK Crime Reduction Program, *Home Office Research Study 281* (2004).

programmes of prevention and specific projects, and their respective reaches and duration. It also concerns how crime prevention and intervention get properly managed in order to avoid some of the structural deficiencies that continue to repeatedly expose certain populations and places to adverse outcomes. These include disproportionate victimization and/or involvement in the justice system of indigenous populations and of children leaving child protection and/or youth justice custodial placements; and a disproportionate number of mental health cases in youth and adult corrections systems. While these issues may be shaped by a State's division of powers between orders of government and their resolution complicated by such division, a coherent prevention strategy must clearly take these realities into account in order to realize progress for the vulnerable populations identified above.

C. Accelerating prevention's progress

Compelling reasons exist for accelerating progress in crime prevention. Foremost, there is clear evidence that prevention can significantly reduce crime and victimization and this should be used to increase individual and collective security. Good governance, including appropriate allocation of limited resources, also calls for evidence-based prevention to be supported systematically. The limits of responding to crime after the fact are clear, including: much crime goes unre-

ported; low conviction rates for some crimes; high recidivism rates for youth and adults with multiple challenges, frequently including health and education related issues; and where "justice has been served", victims of violence nevertheless carry a heavy burden that manifests itself in numerous ways throughout their lives. Prevention is a further means to meet the concerns of victims that the criminal justice system is too focused on offenders: internationally, various instruments reflect the vulnerability of specific populations to victimization; reference the evidence that prevention works and call for strategies targeting these at risk populations, including specific strategies to prevent re-victimization. Prevention strategies provide States with an opportunity to engage civil society and affected groups in collaborative work in order to increase safety, holding out the promise that such engagement may serve to break down barriers of distrust between law enforcement and civil society in some States. Finally, the manner in which crimes are being committed has changed dramatically with technology and the spread of organized crime, and prevention is a lever that must be better deployed to keep pace. While the history of crime prevention science is short, it quickly needs to adapt to do better with 'traditional' crimes, address various new forms of crime and enlist the cooperation of new disciplines and constituencies (e.g., "digital communities") in counteracting the ever changing local and global crime patterns. ■

In fact, there is less doubt about success in preventing crime than in preventing conflict. The Guidelines for the Prevention of Crime adopted in 2002 are explicitly based on evidence that crime prevention clearly works (art. I.1). This shows that (a) crime prevention is ahead of conflict prevention, although any policy of responding to crime is usually at the tail end of socio-economic and legal policies pursued, at least in the United Nations, and (b) in the *culture of prevention* there has not yet been enough *crime prevention*. Crime prevention is somehow dispersed, despite meaningful criminological evidence on the after-effects of war, evidence that should be better appreciated by politicians, political scientists and providers and recipients of technical assistance.

Returning, however, to the argument that there is evidence of successful crime prevention, Irwin Waller, a leading international authority in this ar-

ea, concludes that for an effective response to crime "*limiting our response to the 'standard' use of police, courts, and corrections is not the way to prevent and reduce crimes*".¹⁹⁹

In both cases (i.e., UN and academic crime prevention), this is not an argument for a parity of *prevention* and *repression*. In line with the adage that *an ounce of prevention is worth a pound of cure* there is rather a need to include that little or that much depending on the form and dynamics of crime.

To attain such a kind of proportion is quite a call: politically, socially and economically, if sustainable development can show that it works. Taking into account that concept's explanatory and modifying values, the figure in the internal back cover of this publication outlines the evolution of criminological thought globally since the mid-eighteenth century, and in the United Nations since its inception.

¹⁹⁹ Waller 2007:xv.

A more insightful criminological retrospection is still called for. However, whether or not this will happen, the concept of sustainable development is important for our common future.

Surely, calibrating it to the size of the concept of urban security is the way to go, but not for a long time. Both concepts will need to be revisited and re-defined in light of the ongoing changes in the patterns and dynamics of crime in the world. No doubt, the current focus on street crime will need to be broadened in order to include not only urban community crime prevention but also digital community crime prevention. Perhaps it was overly optimistic to foresee in the mid-1990s that “street crime will

nearly disappear in large urban communities”,²⁰⁰ but certainly it is not too early to foresee that cybercrime will outgrow urban and other crime and that prevention will have to move into cyberspace much faster than has so far been the case.

In line with Wolfgang’s forecast in which he sees new “*Gemeinschaft ... through telecommunications*”,²⁰¹ one of the more recent UNODC reports on the prevention of urban gang violence alludes to this emerging development, reminding readers that “*As hubs in a web of global communication and transport, cities are focal points for both internal and international migration, transport, communications and economic activities*”.²⁰²

BOX 5

The ABCs of Urban Crime Prevention¹



A. Crime prevention lessons learnt about institutional and State capacity-building

1. Capacity has been built where modest, incremental reforms have been pursued in politically supportive environments;
2. State reform is overwhelmingly a governance challenge, not an organizational challenge. And the governance challenge is: to align the formal and informal incentives embedded within a country’s broader institutional framework in a supportive manner so that individual and specific organizational capacity deficits can be remedied;
3. The role of the State must be matched by its overall capacity;
4. Incremental approaches are more likely to work than grand strategies and wholesale reform;
5. Goals should be set that are politically feasible rather than technically optimum.

¹ Abridged from: *Handbook on Planning and Action for Crime Prevention in Southern Africa and the Caribbean*, Criminal Justice Handbook Series, UNODC, New York 2008.

B. Some implications for capacity-building

1. Understand precisely the nature and the mission of the agency whose capacity is being built;
2. Choose those organizations whose activities are of greatest priority;
3. Understand the structure and pattern of an organization’s interests and incentives;
4. The more specific, monitorable and limited the task to be performed, the easier it will be to develop organizational capacity to do so. And conversely: be very careful about organizations with many unspecified objectives;
5. Be sure what capacity-building activities will be;
6. If an organization has competent political and technical leadership it has more chance of success;
7. Design solutions that fit the circumstances and the context;
8. Understand the informal institutional structure;
9. Start small;
10. The greater the demand for responsive and effective organizations delivering things that people actually want, the greater the chances for sustainable change.



²⁰⁰ Wolfgang 1994:287.

²⁰¹ Ibid..

²⁰² E/CN.15/2007/CRP.3, §32.

C. From capacity-building to action for sustainable change

1. In all countries which react positively to the need to implement crime prevention programmes, a programme team should be put together.
2. Meetings should be organized with the key donors and NGOs within the target countries to find the level of support they will give for the programme. They could be shown that crime is not just a serious problem in its own right but that it also hinders the reduction of poverty.
3. A decision must be taken at this point in each country as to which group is going to take the lead on the crime prevention programme and who is going to be the programme champion.
4. Make sure the leaders and members of the team really want to prevent or reduce crime. If people are in it for other personal or political ends, it will not work.
5. In each country there should be an assessment of the crime situation using available local data. Then, there should be put in place:
 - (a) A programme to examine and, if necessary, improve the collection and analysis of police recorded crime statistics;
 - (b) A programme to carry out comparable crime surveys using ICVS; and
 - (c) An examination of the possibility of introducing a coordinated computerized justice information system.
6. At the same time, stakeholders for the programme should be identified and involved in the process:
 - (a) The group would include the police, trusted community members or groups, members of traditional structures (e.g. Chiefs in many parts of Africa), people who can evaluate programmes, crime prevention experts;
 - (b) It is very important at this stage to involve the community and citizens.
7. Crime prevention needs-assessments should be produced in all participating countries by²
 - (a) Targeting community concerns; and
 - (b) Understanding the problems.
8. The infrastructure and resources needed for the prevention programme should be discussed and agreed at this point.
 - (a) A decision must be taken as to how ambitious the programme is going to be. Will the aim be to tackle major issues such as the reduction of the propensity to commit crime or will it have more limited but more immediate goals?
 - (b) It should be recognized that the more ambitious the initial programme is, the greater the chance of failure. If at all in doubt — start small. Try just to change a few things. Build on success.
9. Participating countries should very seriously consider creating a Crime Prevention Institute.
10. All these countries should exchange needs-assessments and the documents coming out of the infrastructure and resource need discussions.
11. When the goals have been agreed, it must be ensured that everyone has bought-in to them.
12. Adjustments to the Stakeholder group should be made at this point to make absolutely sure that there is the right group of stakeholders for the goals. For example, a school-based programme will need educationalists while a programme to improve parenting skills will need social workers, health workers and educationalists.
13. A strategic plan should be produced — i.e. an overall plan that you hope will get you to your goals.
14. Using the strategy detailed, plans should be drawn up, consistent with available resources, which will:
 - (a) Prioritize prevention targets;
 - (b) Describe the methods to be used; and
 - (c) Produce a logic model.
15. It would probably be useful to get the help of research and development experts at this point.
16. The level of evaluation which is needed must be agreed and arrangements made to collect the necessary data. Above all, data must be collected in order to establish a baseline against which to measure change.
17. Plans must include ways to build capacity and implement and sustain the programmes effectively.
18. Make sure everyone has agreed with all stages of the planning process.
19. Projects should begin with the knowledge that crime can be reduced or prevented if based on sound evidence and carried out with programme integrity.
20. The local media should be involved, particularly after step 5. ■

² See further: *Crime Prevention Assessment Tool*, Criminal Justice Handbook Series, UNODC & UN-Habitat, New York 2009.

In conclusion, urban security and urban crime prevention are certainly the area of UN and other international work where practical and progressive results are demonstrable and can be achieved, especially in countries in which the security situation is stable enough, thus allowing us to go beyond rudimentary law enforcement (“control”).

There have been other successful security outcomes, albeit with a very limited prevention component. They have been even more crosscutting than “urban security”, and have been achieved in the name of “justice and security sector reform” (JSSR) or “security sector reform” (SSR). They emerged at the end of the 1990s. In 2000, the United Nations Millennium Declaration²⁰³ articulated the essence of security sector reform by stating that men and women have the right to live their lives and raise their children in dignity, free from hunger and the fear of violence, oppression or injustice.

This new concept of “security” bridges the ideas of ensuring freedom from fear and freedom from want, and the idea of security of States. These ideas are inextricably linked. “These cross-sectoral characteristics make the SSR approach innovative and promising while simultaneously rendering it more demanding in terms of conceptualization and particularly implementation.”²⁰⁴

“Security sector” is “a broad term often used to describe the structures, institutions and personnel responsible for the management, provision and oversight of security in a country. It is generally accepted that the security sector includes defence, law enforcement, corrections, intelligence services and institutions responsible for border management, customs and civil emergencies. Elements of the judicial sector responsible for the adjudication of cases of alleged criminal conduct and misuse of force are, in many instances, also included. Furthermore, the security sector includes actors that play a role in managing and overseeing the design and implementation of security, such as ministries, legislative bodies and civil society groups. Other non-State actors that could be considered part of the security sector include customary or informal authorities and private security services.”²⁰⁵ Finally, “security sector reform” describes “a process of assessment, review and implementation as well as monitoring and evaluation led by national authorities that has as its goal

the enhancement of effective and accountable security for the State and its peoples without discrimination and with full respect for human rights and the rule of law ... Security sector reform should be a nationally owned process that is rooted in the particular needs and conditions of the country in question.”²⁰⁶

SSR, first defined in 2002 by the UNDP and in 2008 by the United Nations Secretary-General, considerably modifies the UNDP’s earlier “human security” concept (1994). It has lost much of its currency. SSR reorients the international security agenda even more progressively and practically than “urban security” by spelling out the “action part”, that is “reform”, while also being more holistic and open to accommodate new security threats, for example those from the development of cybercrime. This “mindset shift” focuses on the implementation of laws, norms and values particularly through training, assistance and mentoring programmes in post-conflict situations, but also in other developing countries. Developed countries, such as Canada, Norway, the United Kingdom and the United States, pursue the SSR on their own. In principle, the SSR involves the strengthening of institutions, for instance, armed forces, police, intelligence services, border guards and the judiciary, as well as the strengthening of governance and management of the security structures, as a critical component in ensuring sustainable peace – often the unstated objective of the reform process.²⁰⁷ With the two underlying it jointly ideas of freedom from fear and freedom from want, it is a contributive part of the sustainable development concept.

In the life cycle of United Nations ideas, the shift from “urban security” to SSR is not merely a change of accent in its language of justice. It is a major conceptual advance: moving from a static, analytical approach to dynamic implementation and result-based work. In this way much crime can be better controlled through technical assistance in criminal justice reform (legislative assistance; good practices in the humane treatment of offenders and victims). An effective response can be made to much more, particularly youth urban crime, through technical assistance in crime prevention (primary and secondary prevention, especially through socialization; tertiary prevention, especially through the reintegration of offenders).

²⁰³ GA resolution 55/2 of 1 September 2000.

²⁰⁴ Hanggi 2008.

²⁰⁵ A/62/659-S/2008/39, § 14.

²⁰⁶ *Ibid.*, § 17.

²⁰⁷ Mobekk 2006:4.

The UNODC mandate fits in well in the above framework. The UNODC contributed to and benefited from the growing interest in SSR issues, covering traditional and organized crime, as well as terrorism.

In spite of the prevalence of SSR processes initiated in post-conflict settings, SSR may apply also to fragile, failed, post-authoritarian, and less developed countries,²⁰⁸ where the UNODC is engaged and

active through different types of assistance (normative, analytical, technical). This has been the case for example in Guinea Bissau and Somaliland, where its interventions triggered subsequent concerted actions to reform the security sector; or in Afghanistan and Pakistan, where the UNODC is one of the main players in carrying forward sectoral activities within the ongoing overall framework of SSR.

²⁰⁸ Hrach 2010.

Part II – The United Nations Crime Prevention and Criminal Justice Mandate



V Combining the United Nations and academic criminological ideas into one global picture of the progressive²⁰⁹ response to crime

A combination of the above United Nations and academic criminological ideas into one global picture of the response to crime may be depicted visually (see the front inlay with the outline of development of criminological thought in the world and since the inception of the United Nations).

Figure 1 consists of 14 horizontal rows. They visually support the text contained in parts I through III of this book. The top nine rows and the lowest row (14) of Figure 1 is by and large an adaptation of a similar figure contained in “Criminology” by Larry J. Siegel.²¹⁰ Basically, Figure 1 reflects Siegel’s figure in the way it treats the thematic scope of the development of criminological thought. For this reason, the authors’ name and his/her major work have been factored into the Figure.²¹¹

The original figure largely covers works written and/or known in the United States of America. This kind of *narrowness*, originally observed by American sociologists²¹² when reviewing UNESCO’s book on

²⁰⁹ As explained below, the adjective “progressive” is used in line with art 13.1. (a) of the United Nations Charter. A progressive response to crime does not imply its elimination, but reduction by humane and effective control and preventive measures. As Durkheim reminds us, crime is a social construct, and hence the goal of its elimination is nonsensical (“*Imagine a society of saints, a perfect cloister of exemplary individuals. Crimes properly so called, will there be unknown; but faults which appear venial to the layman will create there the same scandal that the ordinary of-fence does in ordinary consciousness. If, then, this society has the power to judge and punish, it will define these acts as criminal and will treat them as such*” (Durkheim 1966: 68-69)). This functionalist argument is certainly valid in academic and practical analysis of the factors associated with the emergence and further development of various forms of crime. The question of humane and effective crime prevention and control may look different in these two analyses. As if it was a counterpoint to the social justice orientation of penal and criminological developments that is promoted here, Nils Christie in his historical analysis of the question of the progressive treatment of offenders, as an academic, cautions us that it may be futile to establish broadly what, comparatively speaking, is more humane punishment. This is because such conclusions may be drawn from overly ambiguous comparisons or because of periodically reversing penal values in sentencing policy that undermine the popular presumption implying a steady progress. Those values do not progress linearly. Their matrix is more complex (Christie 1968:161-162).

²¹⁰ Siegel 2008.

²¹¹ The format of this visual presentation with a specific time-line invites a simplistic and linear examination of recorded penal and criminological developments. Those developments move ahead as a part of socio-economic progress in the world between 1764 and 2010 (from the Enlightenment to Globalization). Taking partly into account the reservations expressed in the above footnote on the artificiality of such a presentation of penal values as a linear progression of ideas and events, Figure 1 still remains an ideograph and not a historiograph. Therefore also within its infographic limits of a contemporary visual convention, Figure 1 cannot show either the gist of chaos theory in postmodern criminology or the connections involved in the path analysis pursued in this study. Regarding chaos theory, this can technically be noted, but chaos cannot be ideographed, due to its nonlinear characteristics. Regarding this study’s path analysis, due to its diversionary characteristics and outcomes, it can hardly be ideographed, and even then only in another format that is beyond the technical limits of this study. Moreover, the United Nations has its own vision and concept of time and of the related political developments, the showing of which may perhaps be attempted but which are clearly beyond the scope of this study. The vision of time and developments may remain linear, but the United Nations nevertheless interculturally reinterprets time. For it, time is a secular and ecumenical matter. In 1999, the United Nations Secretary-General emphasized that the United Nations has adopted the linear Christian calendar (BC/AD), but noted that it should really be understood as a secular “Common Era” (CE) time, starting off the period of Globalization (Kofi F. Annan, Common values for a common era: Even as we cherish our diversity, we need to discover our shared values, *Civilization: The Magazine of the Library of Congress*, 28 June 1999, <http://www.un.org/News/oss/sg/stories/articleFull.asp?TID=37>). Accordingly, since its inception the United Nations has been developing its own calendar (see Box 12). To return to the topic of the linearity of time, the positivists (beginning during the Enlightenment with Beccaria’s “rationality”) and others differ not only on the question of its end, but also on how the event-based “cycle time” cuts into its understanding (see Figure 6 as an example of an ideographic presentation of “spiral cycle time”). Figure 1 leaves this out. But it addresses also developments that were counter-positivistic (e.g., Marxism), regressive (e.g., eugenics), rational but regressive (e.g., the “get tough” criminal policy promoted by the book by Ernest van den Haag (Punishing Criminals, 1975)), and irrational and regressive (e.g., the IPPC’s support of the Nazi Governments before and during the Second World War, support which almost thwarted the inheritance of its mandate by the United Nations) - developments which neither contributed to social progress and/or to the advancement of human rights stipulated by the *Charter* of the United Nations. There is no doubt, therefore, that this is a value-laden United Nations interpretation of such criminological developments, but there is no better one. For a more incisive presentation of the cultural concept of time see: Vyvyan Evans, *The Structure of Time: Language, Meaning, and Temporal Cognition*, John Benjamins Publishing Company, Amsterdam 2006.

²¹² Bates 1958:247.

criminology,²¹³ seems to remain its dominant feature. To a lesser extent this is the case of the modified Figure 1 in the present book. It includes Asian, South American and Nordic work, some of which are also referred to in the text below.

In the intermediate rows (10-13), Figure 1 outlines entirely new developments in academic and practical criminological thought. These four additional rows illustrate how this division is, in fact, artificial, taking into account that penal reform had begun with the Italian lawyer Cesare Beccaria (*Dei delitti e della pene*, 1764), who was also a politician.

The United Nations embraced the ideas of this farsighted legal reformer and the founder of modern criminal law, which coincided with the lofty principles enshrined in the *Universal Declaration of Human Rights* – as may be recalled – once underlined by Margaret J. Anstee, UN Under Secretary-General and Director-General of the UNOV.²¹⁴ Figure 1 starts with the year 1764 and ends in 2010, the date of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice.

With a few exceptions (like the one above in respect of Beccaria), the limits of this study do not foresee direct cross-referencing between Figure 1 and the present text, especially regarding the names, works and other pre-Second World War criminological facts. Figure 1 lists not only the works originally noted in Siegel's "Criminology", but also, as much as this was technically possible, new works discussed by the author of this study. In sum, the revised Figure 1 covers more than the text. Figure 1 is also more global, cross-disciplinary and panoramic than the original. Therefore it is also more comprehensive than the present text.

This study assumes that the balance of facts between Figure 1 and the narrative text may be easily explained on the basis of Siegel's book and/or other books and articles on the historical development of criminological thought. The range of this monographic study is not sufficient to tally fully with all

fourteen rows in greater detail than above and below. More than anything else, the major purpose of having such an extensive horizon in this book, as given now by Figure 1, is the interest to show the reader how United Nations criminological ideas can be seen against this larger global picture. In redesigning the original figure my call was to find a blue colour in a new Figure.

Last but not least, as already noted, Figure 1 does not purport to document a progressive development of criminological ideas, even though it is so tempting to argue to the contrary.²¹⁵ For this development indeed could coincide with the United Nations *Charter*. It stipulates that the "General Assembly shall initiate studies and make recommendations for the purpose of: promoting international co-operation in the political field and encouraging the progressive development of international law and its codification" (art. 13.1(a)), and in some international and domestic criminal law and in criminology such progress appears to be evident.²¹⁶

But if indeed this were the case, then mostly this progress is in the field of criminal law. Owing to Beccaria's "classicist" views, contemporary criminal law observes the principle of *nullum crimen sine lege, lex retro non agit* and *nullum poena sine lege*. Owing also to him, criminal law instituted the prohibition of torture and the death penalty, the independence of the judiciary and the primacy of prevention over repression. These principles have gradually been introduced in Europe and beyond. As recalled by G.O.W. Mueller,²¹⁷ globally their introduction began only in 1955, with the adoption of the *Standard Minimum Rules for the Treatment of Prisoners* by the First Congress. In 1966 the principle of the humanitarian treatment of prisoners was adopted and broadened by the *International Covenant on Civil and Political Rights* (art. 10§3), which contains classicist principles of criminal law (art. 14), and the goal of eventually abolishing the death penalty (art. 6§6).

²¹³ Carroll 1957.

²¹⁴ Anstee 1988:10.

²¹⁵ In Western culture "progressive development" implies linear progression as the model for modernization. This is only one way of looking at development as time progresses, according to one concept of time. In fact, there are different cultural conceptualizations of time. As Durkheim notes, in every culture time is a social construct that enables its members to coordinate their activities in their own way, and hence look at the past, present and future in other than linear terms (see further Katovich 2005: 367-385). Consequently, Western technical assistance planners tend to simply reject any implications that this might have for development in other cultures (Fisher 1997:130).

²¹⁶ In Western culture for "most people ... when they think of law reform, it ... is for them an instrument of development, not merely a response to it. Such a view of law reform obviously derives support from the idea of progress; one must envision the possibility of achieving a better society in order to propose specific measures for attaining it – to lead the way to progress through law reform ... It is plausible to characterize Western societies as engaged in continuous, extensive, some might say hyperactive law reform" (Merryman 1969:3-4.)

²¹⁷ G.O.W. Mueller 1988.

Later, the Fifth Congress (Geneva, 1975) adopted the *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*²¹⁸ and in 1984 the UN General Assembly adopted the *Convention against Torture*. The Seventh Congress (1985) created the blueprint for the independence of the judiciary, by adopting the *Basic Principles on the Independence of the Judiciary*, which in 2006 were strengthened by the *Principles of Judicial Conduct*.²¹⁹ The Eighth Congress (Havana, 1990) opened the way to international crime prevention by adopting the afore-mentioned *Riyadh Guidelines*, another General Assembly resolution with the *United Nations Declaration on Crime and Public Security*,²²⁰ and two ECOSOC resolutions,²²¹ further built that way by giving crime prevention primacy over repression, as so much emphasized by Beccaria and like-minded penologists.

There are more examples of such interweaving of progressive academic and practical ideas. In this broader context, one can see how obviously artificial the division is between theoretical and practical legal and criminological thought.

But this should not imply that social progress, progressive development of public international law and legal thought are cast in stone. For example, the “*Salvador Declaration*” of the Twelfth Congress sought to open the way to revision of the United Nations standards and norms in crime prevention and criminal justice (§ 4). At the subsequent session of the Commission on Crime Prevention and Criminal Justice (2010) this prompted fears that the process of updating them may involve retrograde steps. This shows that the international criminal justice com-

munity has quickly and well realized the intricacies of social and legal progress. Consequently, the General Assembly cautiously agreed to “exchange information on best practices, as well as national legislation and existing international law,” allowing only the revision of the *Standard Minimum Rules for the Treatment of Prisoners*, and only on the premise that this will “reflect recent advances in correctional science and best practices.”²²²

In conclusion, the path analysis in this study should not lead to the conclusion that from one idea to another, from theory to practice, the social and legal fields have witnessed mutually supporting increments. Such an interpretation may only occasionally be true. But in most cases it is impossible to prove, as was argued by one comparative legal thinker (Grossfeld) mentioned above.

It may be somewhat different in the field of economic development. Recalling Mumford’s estimate, since 1820 there has indeed been considerable improvement in the quality of life worldwide. In 1820, the proportion of those living on the equivalent of less than US\$1 a day was approximately 7:1 and now it is approximately 1:6. Thus there has been economic progress. Consequently, the lowest row (14) shows how socio-economic and humanistic thought has advanced before and after 1945, and in 1987 culminated in the concept of sustainable development. The same row also lists in the mainstream of other global events and guiding ideas the spearheading developments that lead to the genesis of the United Nations Crime Prevention and Criminal Justice Programme and to the forming of UN policy on responding to crime through repression and prevention.

²¹⁸ GA resolution 3452 (XXX) of 9 December 1975.

²¹⁹ Bangalore Principles, ECOSOC resolution 2006/23 (Annex) of 27 July 2006.

²²⁰ GA resolution 51/60, Annex of 12 December 1996.

²²¹ ECOSOC resolutions 1995/9 (Annex) of 24 July 1995, and 2002/13 (Annex) of 24 July 2002.

²²² GA resolution 65/230 of 21 December 2010.

VI The birth and rebirth of the United Nations crime prevention and criminal justice mandate

Higher up, Figure 1 shows the beginning and institutional development of the United Nations crime programme as a part of the United Nations Secretariat. Its genesis dates to the International Congress of Penitentiary Sciences (Frankfurt am Main, Germany, 1846),²²³ the initial phase of the birth of criminology. That Congress had indeed been the first in the great series of some 240 international penitentiary, philanthropic, pacifist, statistical, meteorological, etc. congresses which took place (mostly in Western Europe) up to the end of the nineteenth century.²²⁴ The pioneering Frankfurt Congress, probably held in the Town Hall's Emperor's Hall,²²⁵ had been the first one to have on its agenda the social welfare of children and minors in the context of their solitary confinement, then still regarded as something to be recommended.²²⁶

It should be recalled that between 1830 and 1850, solitary confinement was used to reduce the danger of further individual moral degradation of children in conflict with the law. In the absence of a corollary social welfare policy, that danger could not be averted.²²⁷ Realizing the need for it by prohibiting solitary confinement was one of the ideas of the aforementioned Édouard Ducpétiaux. He was the Belgian general inspector of prisons and public welfare institutions, taking care of children. In that dual capacity, he and Lord John Russell (1792-1878), British prison inspector and later Home Secretary, together with several like-minded German idealists (among them two physicians, Nicolas Heinrich Julius and Georg Varrentrapp; one lawyer, Friedrich Noellner; and Karl Joseph Anton von Mittermaier, a prominent law professor at the University of Heidelberg), took the initiative to host that congress in Frankfurt and to

deal with the issue of children in danger. In addition to lawyers and physicians, the participants at the Congress included prison chaplains, wardens and heads of correctional administrations. The Congress was attended by 75 participants from 12 European countries and from the United States.²²⁸

That was also the period of the first International Congress of Peace (London, 1843) and of the Pacifist Congress (Brussels, 1848). Idealism and the international exchange of ideas were then a new and hopeful development. Thus it is clear why the framers of the UN crime mandate, who were from the outset interested in juvenile justice matters, had referred to the Frankfurt Congress in their own document, and why since its beginning the UN in general has paid considerable attention to the welfare of children.

The early European history of the internationalization of the child welfare movement (1840-1914) points to the considerable humanistic contributions of prison reformers. During that period, they either included that topic on the agenda of their own international congresses or addressed it at the international philanthropic congresses.²²⁹ No wonder that Ducpétiaux in his two functions was a three-time executive secretary of such congresses.²³⁰

The Spring of Nations (1848) had dashed hopes for continuing international cooperation in penitentiary matters. It was resumed in 1867 when the International League of Peace and Liberty Congress (Geneva, Switzerland) was held.²³¹ That was the era of emerging *social justice*. In 1872, after the Franco-Prussian war,²³² the First International Congress on Crime Prevention and the Suppression of Crime was held in London's Middle Temple Hall. As its result, a non-governmental International Penitentiary Commission (1878) was established. Its first Chairman was Enoch Cobb Wines (1806-1879, USA). In 1929, it became the International Penal and Penitentiary Commission (the addition of the word "*penal*" meant that the Commission was intended to be active in the entire field of criminal policy).

²²³ E/CN.5/30, Rev.1:2.

²²⁴ Dupont-Bouchat 2002:542.

²²⁵ Riemer 2004:91 ftn 63.

²²⁶ Leonards 2004:131.

²²⁷ Dupont-Bouchat & Pierre 2001:427.

²²⁸ Among them was also the Polish prison reformer Fryderyk Skarbek.

²²⁹ Attended by Giuseppe Garibaldi and Victor Hugo - the author of this study's motto of 1852.

²³⁰ This accomplishment must be appreciated, also because it well contextualizes the importance of a similar function the chiefs of the United Nations crime programme had performed as the executive secretaries for the majority of the United Nations congresses. (See their biographies in the back of this book.) Such a position is not merely an administrative one, but a position for the visionaries who can project criminological ideas and chart the United Nations mandate into the future.

²³¹ Dupont-Bouchat 2002:533-563.

²³² *Nota bene* which prompted Durkheim to study the effects of war on crime. In France he became the secretary of the Committee for the Publication of Studies and Documents on the War.

The last chairman of the Commission was Thorsten Sellin, author of the theory of the conflict of cultures and an opponent of the death penalty, who wrote on this topic in the United Nations *Newsletter*. It should be likewise noted that Sellin's chairmanship (1949-1951) had not been so coincidental. As an American, and in a way as a "liquidator", he merely oversaw the demise of the ICPC, realizing that already since 1935 (the date of the International Penal and Penitentiary Congress in Berlin) it had gradually come under Nazi influence. This continued in 1939-1945 when the ICPC received funds from the Axis States and publicly supported the Fascist theories on the biological roots of crime as well as the repressive acts and regulations promulgated by the regimes of occupied France (Vichy), Germany, Italy, Japan and Spain. That is why, for quite some time, the United Nations strongly hesitated in coming to new terms with the IPPC, as reported, inter alia, by one U.S. negotiator.²³³ In 1951, after the ICPC's dissolution, it became the International Penal and Penitentiary Foundation (IPPF).

With the exception of the penultimate (war) phase of the Commission's existence, when it went against the spirit of what it had been preaching before, its contribution to the internationalization of humane and effective treatment of prisoners has been constructive. Between 1929 and 1939, together with other *technical organizations* (as they were called before the establishment of the United Nations), such as the Howard League for Penal Reform, these organizations assisted the League of Nations in developing recommendations for a minimum prison code, an inquiry on prison population, and the publication of a set of rules for the treatment of witnesses and accused persons. It was the time when special consideration was given by the League to child welfare issues. These were brought to its attention via the International Association for the Protection of Children and the aforementioned Commission.²³⁴

Judging by contemporary standards of internationalization, that did not go far. The League of Nations was reluctant to take on board and formalize those recommendations, despite the heritage

of and advancements in the field of international criminal conventions, mentioned earlier. That reluctance had its roots in the strongly entrenched traditional doctrine of national sovereignty over penal matters.²³⁵ In other words, "*States naturally move with caution ... and it is only when a need has become imperative and when means and methods have been worked out and shown to be safe and practical, that public authorities feel justified in entering into international administrative arrangements.*"²³⁶

Limited therefore in its mandate as the League of Nations programme was, it nevertheless incorporated juvenile delinquency issues that had been raised the last time in 1913 before the outbreak of the First World War at the international Congress on the Care and Protection of the Child.²³⁷ That congress was convened in Brussels during the third phase of the juvenile justice reform movement, i.e. the phase of *State philanthropy*.²³⁸

It may be useful to re-emphasize this three-phase development. In the third phase of reform the culminating contribution of the 1913 Brussels congress had provided a bridge from the 1846 Frankfurt congress, which had dealt with delinquent children in solitary confinement (first phase). That last congress before the First World War, and also the last one of seven such congresses held since 1890, when the interest of State in family matters had grown strongly over time, eventually projected its *State philanthropic* outcome into the intergovernmental juvenile justice agenda of the League of Nations.²³⁹

That momentum culminating in 1913, plus 75 years of the work of the Commission, and the accomplishments of a number of other technical organizations, including the already mentioned Howard League for Penal Reform as well as the International Association of Penal Law, all contributed to the initial "*crime*" mandate of the United Nations. Between 1946 and 1950 it had been formalized by two resolutions. In 1947, the Economic and Social Council²⁴⁰ declared its intention to assume international leadership in responding to crime. In 1950, the General Assembly decided to transfer the programme functions from the International Penal and Penitentiary

²³³ Bates 1948:569-571.

²³⁴ Alper & Boren 1972:56-58.

²³⁵ Radzinowicz 1945:488-491.

²³⁶ Reinsch 1911, sn 46 at 148-149.

²³⁷ Alper & Boren 1972:55-56.

²³⁸ Pierre & Dupont-Bouchat 2001:428.

²³⁹ This interest is further confirmed by three more international congresses on the welfare and protection of children that were held since 1896 in Western Europe. A total of thirteen such congresses, mostly hosted in Brussels - the capital of such international conferences - dealt also with various other aspects of child welfare (Fuchs 2004:765).

²⁴⁰ ECOSOC resolution 155 C (VIII) of 13 August 1947.



Picture 19. Urban security architecture in Salvador da Bahia (Brazil), the venue of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice (in front of the hotel in which most of the UN staff stayed)

Commission.²⁴¹ The latter mandate also provided the basis for convening the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1955) as well as subsequent congresses.

Against that formal mandate, a new substantive programme mandate was recommended by the intergovernmental Temporary Social Commission (1946-1948). At the outset it contained responsibilities on such questions as trafficking in women and children and child welfare, and the advisory function on transferring the question of the treatment

of offenders from the ICCPC to the UN.²⁴² There was no responsibility over the control of narcotic drugs, which was entrusted exclusively to the Commission on Narcotic Drugs.

The Soviet Union and a number of other socialist countries voted against the UNGA resolution of 1950.²⁴³ They argued that countering crime is an internal matter of Member States,²⁴⁴ as per article 55 of the Charter of the United Nations. Indeed, when the UN draft *Charter* had been negotiated in San Francisco and its article 55 was discussed (from which the UN crime programme draws its origin), there was unanimity on its formulation:²⁴⁵ *crime* was regarded as an internal affair of each Member State.

Retrospectively, one may now have the impression that the negative voting of those five Member States (out of 60 – two other Member States abstained) on the draft resolution had taken place as if the criminogenic consequences of the recently ended Second World War had faded away. Moreover, it was as if the outbreak of the war had had not been facilitated by the limited capacity of the League of Nations to contribute to preserving international order, and, especially, to maintaining peace and security – the objective which gave birth to the United Nations. The 1991 resolution, nominally creating the United Nations Crime Prevention and Criminal Justice Programme, was adopted unanimously by all 166 Member States.

The changes in the voting pattern between 1950 and 1991 signal a more fundamental shift in the global perception of *penal matters*, as defined up to the outbreak of the Second World War. Namely, it seems that the dominant view of those matters had changed between the adoption of the former resolution and 1991. The Soviet Union (Russia until 1924) between the October Revolution and the collapse of that country in 1991, had regarded penal matters, especially imprisonment, as a form of slave labour (*gulags*). Since 1945 until the time of Russian *perestroika* reforms under Soviet President Gorbachev (1987-1991), the Soviet Union and other like-minded countries, especially during the early post-Second World War period, had been practicing that form of slave labour – an instrument helping ideological and economic competition with the West, pursued by force for the sake of modernization.

²⁴¹ GA resolution 415 (V) of 1 December 1950.

²⁴² UN Yearbook 1946-1947:514.

²⁴³ López-Rey 1984:1.

²⁴⁴ A/1547, §§117-122.

²⁴⁵ WD 65 CO/31, Documents: 397.

During that period, the United States and Western European countries (which historically formed the International Penal and Penitentiary Commission) – had looked away from that problem. They did so notwithstanding the fact that there was abundant evidence²⁴⁶ of non-compliance with human rights arts. 1, 55 and 56 of the UN *Charter*, and with the *Declaration of Human Rights*, in particular arts. 4 and 5, which protected the rights of prisoners. At that time, Western diplomacy, which did not want to see the problem, and Western political science, which was appalled by it, were distant from one another. Roosevelt's *Four Freedoms* ideas existed on paper only.

In these adverse conditions, the Social Commission authorized the establishment of the ad-hoc International Group of Experts on the Prevention of Crime and the Treatment of Offenders (1949-1950), later reconstituted as the Ad-Hoc Committee of Experts on the Prevention of Crime and the Treatment of Offenders (1950-1964). That committee was subsequently transformed into a regular Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders (1965-1969), and then into the Committee on Crime Prevention and Control (1971-1991). Since 1992 its successor has been the intergovernmental Commission on Crime Prevention and Criminal Justice.

The period 1949-1992 had been a time of increasing importance of the substantive and political role of those expert bodies, with two turning points. In 1983, the Committee had started reporting to the Economic and Social Council: not indirectly – through the Commission on Social Development – but directly. In 1991 the Committee dissolved itself.²⁴⁷

The establishment of the Commission on Crime Prevention and Criminal Justice by ECOSOC in 1992 has, in fact, signalled the emergence of a new substantive quality. From the original mandate of the

UN crime programme quoted above, derived from the United Nations Charter and operationalized through various follow-up ECOSOC and GA resolutions (1948-1991), ECOSOC has projected some of the *social* elements of those original provisions into the new bureaucratic realm of the United Nations. It constituted them in their own right through the Commission on Crime Prevention and Criminal Justice. At that time Member States still had proposals to develop the UN crime programme as an independent specialized agency (Clark 1994:20-21), but, in fact, the furthest development culminated in establishing a "Centre" within the United Nations Secretariat.

By and large, the *drug* part of the UNODC mandate still maintains its own distinct profile, as defined through the Commission on Narcotic Drugs. The UNODC name that captures this two-part mandate shows quite well how bureaucracy responds to the policies of Member States which at this point defy the need for streamlining it, thus allowing the *crime* part to expand.

One positive aspect in the bureaucratic process is the fact that in changing the legal status from an expert Committee to an intergovernmental Commission, the UN crime programme has already been streamlined. Two developments contributed to this. First, the latter body allows the legalizing of relevant substantive recommendations with the ECOSOC and the GA much more easily than before. Second, it is currently a peer-to-peer process.²⁴⁸ Earlier and at the time of the transfer of mandates from the Committee to the Commission because of the absence of that process, there had been quite a debate²⁴⁹ on the legality of previously adopted United Nations criminal justice standards and norms, including those which had originated from the quinquennial United Nations congresses on crime prevention and criminal justice (1955-1990).

²⁴⁶ Swianiewicz 1965; Conquest 1968.

²⁴⁷ These two actions involved a very considerable lobbying effort. The senior management of the Centre for Social Development and Humanitarian Affairs (CSDHA, the current UNODC), especially the Head of its Social Development Division, was in favour of retaining the original reporting procedure, fearing the loss of the importance of his Division and of the Commission on Social Development which it serviced. For the staff of the Crime Prevention and Criminal Justice Branch which reported through that Division, making the expert committee independent of the Commission had been a top priority, and they proved to be the winner in the internal bureaucratic struggle. The expert Committee on Crime Prevention and Control surrendered its own independence and existence in 1991 when through the Council it, de facto, requested the General Assembly to authorize the establishment of a new intergovernmental (functional) commission.

²⁴⁸ However, as noted earlier, since the Commission on Crime Prevention and Criminal Justice adopts its resolutions by consensus only, the intergovernmental legalization process of certain drafts still remains very complex. For example, the nineteenth session of the Commission (2010) had difficulties in legalizing (that is, considering the text legally binding) preambular paragraph 9 of its resolution on "Strengthening crime prevention and criminal justice responses to violence against women" which invoked two Security Council resolutions 1325 (2000) and 1820 (2008) on women and peace and security, because those two international legal instruments, although adopted by an intergovernmental (Security Council) mechanism, did not involve the G77 representation in the permanent membership of the Security Council. Eventually, the reservation intended by G77 to exclude the Security Council resolutions was not included in the report on the nineteenth session of the Commission, and the text of paragraph 9 remained intact (E/2010/30).

²⁴⁹ E/1993/32, p. 86, §3.

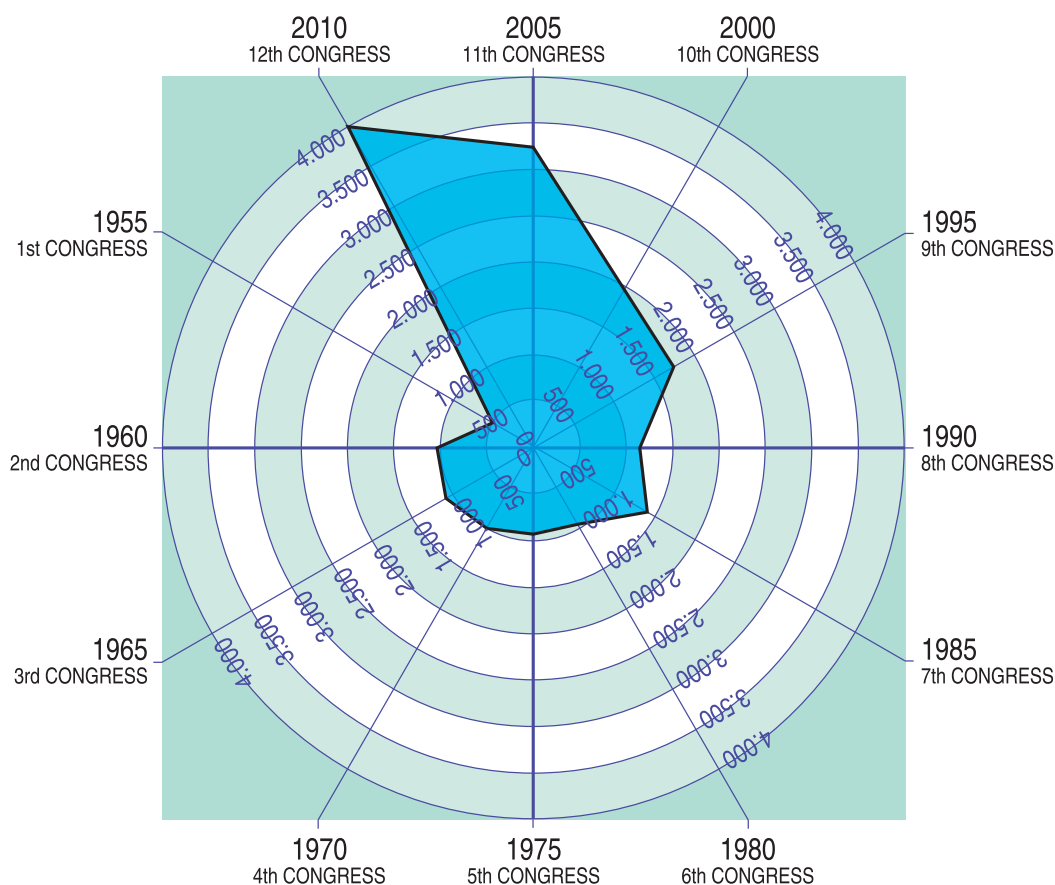


Figure 3. Dynamics of governmental and individual participation at the United Nations congresses on crime prevention and criminal justice (1955-2010)

Those congresses have always been composed of governmental delegates and individual experts, among other participants. While, in either case and with time, more and more States and individual experts have participated in the Congresses,²⁵⁰ in no case had the attendance of States been as representative as it was in the General Assembly. Member States that did not attend a congress had the chance to react to its outcome at the General Assembly.

The relative non-representativeness of the congresses and their hybrid nature had been gradually brought under scrutiny by Member States. At the First Congress (1955) the right to vote on its draft re-

solutions belonged to Member States,²⁵¹ but participants attending in a personal capacity and representatives of non-governmental organizations could vote for “consultative purposes” (art. 21). Since the Sixth Congress (1980) onwards, the right to vote has been confined to Member States only.

With these changing rules of procedure, there were doubts regarding the legalization process of the resolutions of the congresses.²⁵² They partly originated from expert bodies, such as the aforementioned Committee on Crime Prevention and Control or the expert groups preparing the congresses (1970-1980). The reason for questioning the legality of such an in-

²⁵⁰ The number of Member States sending delegations to the congresses had continuously increased between the first and eleventh congress (1955-2005), and dropped at the Twelfth Congress (2010). This is probably because of the relatively remote location of the Congress, in Salvador de Bahia and not in any other larger Brazilian city. That Congress had, however, the greatest number of individual participants, partly due to the very large number of individual Brazilian expert participants.

²⁵¹ Arts 18 and 19, doc. A/CONF.6/L.1.

²⁵² Consequently, the General Assembly (but not for this reason only) has occasionally dropped from its resolutions some originally annexed resolutions of Congresses (submitted by them to the GA until 1990), for its action or has merely “taken note” of them. In its decision 55/488 of 7 September 2001, the General Assembly stated that its “taking note” or “noting” of a matter did not constitute either approval or disapproval, but rather was a neutral term. This decision and interpretation have been reiterated by the General Assembly on many occasions since then. Regarding other phrases, such as “adopts”, “approves”, “endorses” and “welcomes”, with different degrees of legal softness, see Clark 1994, ch. XI.

ternational law-generating process could be found in article 38 of the *Statute* of the International Court of Justice. In the first place the *Statute* recognizes, in international law disputes, the role of States as treaty-makers, and only in the fourth place does it recognize the "teachings" of individual experts, but only those who are "most highly qualified publicists of the various nations."²⁵³

In any case, the transformative power of the congresses has been eventually qualified and restricted after the assumption by the Commission of the role of a preparatory body for the United Nations crime prevention and criminal justice programme. Although in the rhetoric heard at the nineteenth session of the Commission on Crime Prevention and Criminal Justice (2010) the congresses continued to be lauded as the "United Nations crime prevention and criminal justice General Assembly", they have in fact lost that power ever since 1990, when they began to report to the General Assembly via the Commission.

The debate over the legality of some "expert-generated" recommendations contributing to the body of United Nations standards and norms has then entered a new phase. First, at the recommendation of the Commission, ECOSOC reaffirmed the legality of all the standards and norms that had been elaborated so far.²⁵⁴ Nonetheless, some of the substantive resolutions that had been adopted only by the Congresses (but not also by the General Assembly) remain as evidence of how nuanced the softness of law sourced by the UN crime programme can be. Second, after an expert group meeting on the use and application of the UN crime prevention and criminal justice standards and norms (Stadtschlaining, Burgenland, Austria, 2003), the Commission having considered its report,²⁵⁵ requested the holding of an intergovernmental expert group meeting. It was only after this meeting was held that the Commission acted on the recommendations originally proposed by individual experts.²⁵⁶

This shows how individual expert ideas are filtered through an intergovernmental mechanism, and how they may and can enter United Nations criminal policy. Certainly, the United Nations Crime Prevention and Criminal Justice Programme has become less permeable to those individual ideas than before. But now and then it nonetheless remains receptive, especially through the non-governmental organizations that are in consultative status with the Economic and Social Council. Moreover, the rules of the procedure of the United Nations congresses on crime prevention and criminal justice not only allow for individual and non-governmental participation, but also allow the submission to the congress of individual expert papers on their agendas. Permitting such expert contributions is rather rare for UN conferences of that rank.

The contributions of individual experts grew also through their participation at the official congress workshops. At these occasions of combined diplomatic and academic interaction, concerns surface concerning the mutual appreciation of the accomplishments. Since workshop agendas focus less on the academic picture of the crime situation and more on practical recommendations for action, the usual academic mantra that "more research is needed", often repeated by members of the scientific world, has not received much recognition by Member States.

Notwithstanding this issue, since the introduction of the workshops in the official agenda of the United Nations congresses, they have gained considerable relevance to both types of participants, projecting some practical actions. For example, the Twelfth Congress workshops on "International criminal justice education for the rule of law" and "Practical approaches to preventing urban crime" had for the first time opened an avenue for the operationalization of United Nations crime prevention and criminal justice standards and norms in terms of their teaching and training. This happened not only by charting the respective way for-

²⁵³ Among individual expert participants at the congresses there have been such highly qualified experts. But their quality aside, another fact is that in their increasingly growing number there have only been a few who have left their trace in writing through their individual submissions, allowed by the rules of procedure of the congresses, and even fewer ones who have made really quality submissions. Still another fact is that the increasingly growing number of congress participants has been largely due to the inclusion by the host governments of such individuals in the membership of their delegations. Throughout the history of the UN congresses, such governments continuously outdid one another in this area, responding more and more to their domestic priorities rather than contributing individual expert knowledge to the congresses that can really be tapped. UN congresses, when held away from the UN headquarters, have been especially convenient venues for settling "my country" priorities instead of enhancing their genuine international and transformative powers. But this in its own way helps spread the UN message.

²⁵⁴ ECOSOC resolution 1994/18 of 24 July 1994, §1.

²⁵⁵ E/CN.15/2003/10 and Add.1.

²⁵⁶ ECOSOC resolution 2004/28 of 21 July 2004, §6.

ward for Member States and the UNODC (eventually through the Congress declaration), but also because both topics prompted a parallel ancillary meeting on “Crime prevention in urban areas and the role of universities in crime prevention programmes”. That latter meeting provided practical insights into how this has been done in Brazil and elsewhere. In conclusion, the transformative power of the United Nations congresses is still very pronounced, although qualified to some extent.

The need for that qualification was already felt at the Eighth Congress (Havana, Cuba, 1990), which had been opposed by the United States. It had felt uncomfortable not only with the venue, but, first of all, with the legislative power of the Congress.

The year after the Havana Congress was a defining and remarkable time. In 1991, the diplomacy and societies of both West and East Europe had eventually come closer to one another. Notwithstanding lingering legal challenges to the role of the UN congresses, East and West agreed with others (including, however, some who were perfunctory in their agreement) to regard “*penal matters*” as genuinely international, and requiring global humane and effective approaches to dealing with them. Two great minds in the Committee on Crime Prevention and Control, the Soviet expert Vasyli P. Ignatov, and the U.S. expert Ronald L. Gainer should be commended for their respective and mutually reinforcing contributions to that effect.

One can now connect the above convergence of views with Tocqueville’s counterintuitive (but surprisingly prophetic in its own terms) observation on Russia and the United States in his book “*Democracy in America*”. If re-read as a part of the above bigger picture, the following quotation from that book shows the extent of the relationship between crime prevention and criminal justice and democracy:

“There are now two great nations in the world which, starting from different points, seem to be advancing toward the same goal: the Russians and the Anglo-Americans. Both have grown in obscurity, and while the world’s attention was occupied elsewhere, they have suddenly taken their place among the leading nations, making the world take note of their birth and of their greatness almost at the same instant. All other peoples seem to have nearly reached their natural limits and to need nothing but to preserve them; but these two are growing ...

The American fights against natural obstacles; the Russian is at grips with men. The former combats the wilderness and barbarism; the latter, civilization with all its arms. America’s conquests are made with the ploughshare, Russia’s with the sword. To attain their aims, the former relies on personal interest and gives free scope to the unguided strength and common sense of individuals. The latter in a sense concentrates the whole power of society in one man. One has freedom as the principal means of action; the other has servitude. Their point of departure is different and their paths diverse; nevertheless, each seems called by some secret desire of Providence one day to hold in its hands the destinies of half the world.”²⁵⁷

Since 1991 these two worlds have started to come together.

At about that time, the first meeting of the directors of central prison administrations took place in Messina (Italy), organized by the Programme Network’s now dormant International Centre for Sociological, Penal and Penitentiary Studies. At this meeting, for example the chiefs of the Russian and U.S. prison administrations met.

The year 1991 was a cut-off date also in another sense. Two years after renaming the United Nations Social Defence Research Institute the United Nations Interregional Crime and Justice Research Institute (1989), the UN crime programme had finally been ideologically disconnected from the *social defence* movement with no nominal barriers. Since 1991 the UN crime programme has plainly incorporated, alongside the *social defence* movement, all other humanistic and progressive ideas to respond to crime under the newly constituted name.

This can be regarded as the end of the history of the UN crime programme. But in no way does this complete its overview. In a very broad sense it only shows various directions in which it has developed since 1946, at the core of all of which there has been a strong social welfare orientation.

In 2003, with the disbanding of the Centre for International Crime Prevention, it ceased to exist in the UN Secretariat, as a separate entity in its own terms. At its own will since 1992, the UN crime programme had changed its character by assuming new features through the United Nations intergovernmental machinery. These features made it more “diplomatic” and less “expert”, as if it had

²⁵⁷ de Tocqueville 2008, Vol. I, ch. XVIII:351-352. For a more extensive, albeit *Cold War*, interpretation of the above quote see: Lerner 1957:938-950.



Picture 20. The United Nations General Assembly (1950) at its fifth session in Flushing Meadows (Queens, New York, USA), now the building of the Museum of Art



Picture 21. Perez de Cuellar, Secretary-General, at a talk with members of the Committee on Crime Prevention and Control: Prof. Roger S. Clark (first to the left), General Vasyli P. Ignatov (first to the right, with his interpreter), Dusan Cotic (top right), accompanied by Dame Margaret J. Anstee, Under Secretary-General, UNOV, and Eduardo Vetere, Chief of the Crime Prevention and Criminal Justice Branch

lost much of the criminological substance, if not also its *heart and soul*.²⁵⁸

Delegations attending the intergovernmental Commission on Crime Prevention and Criminal Justice are more often than not composed of diplomats, rarely of criminal justice experts, law enforcement officials, criminologists or international criminal lawyers. The attending delegates, who are often from the permanent missions of their countries to the United Nations Office at Vienna participating in the Commission's sessions, concentrate mostly on diplomatic aspects of the items at hand. The highly technical crime problems of a practical nature can rarely be addressed by the Commission in an expert manner. The exception is the one-day *thematic debates*, which are debates by expert panellists on the criminological theme chosen by the Commission.

With the above exception, the substantive discussions at the Commission are, therefore, rather shallow. Quite often the Commission is satisfied with general exchanges. The flow of ideas between academia and praxis is weaker than before. But this flow of ideas does exist. The introduction of United Nations *Basic principles on restorative justice* is a case in point. The eighteenth session of the Commission (2009), which lasted seven rather than the usual five days, had been a breakthrough, perhaps even facilitating the return of the *heart and soul* of the UN crime programme.

It seems that history has now truly made a full circle. In the newly created UNODC organogramme, which communicates the emergence of branches dealing with transnational organized crime, corruption and economic crime, health and sustainable livelihood (thus strongly reflecting its function as the custodian of two international conventions against transnational organized crime and corruption and three drug control conventions), there is also a small and weak section on crime prevention and criminal justice (Justice Section) – the reincarnation of the

Social Defence Section, perhaps, but with some 60 international soft law instruments at its disposal for implementation. In line with its central mandate it worked out for itself a mission statement, *Bring justice to the people* and projected *Justice at the heart of UNODC's work*.

Figure 4 shows the above developments (the birth and rebirth of the United Nations Crime Prevention and Criminal Justice Programme) on a special timeline.

As of 2010, the UNODC has clearly amalgamated the *crime* and *drugs* mandate into various internal programme pillars in which, apparently, the word "*drug*" has vanished, whereas, but only nominally (i.e., in the UNODC's name) it has remained as a signpost to its substantive mandates and to the budgetary preponderance of *drugs* over *crime*.²⁵⁹ The original UN crime mandate's (1946-2002) criminological ingredients are now located within those pillars.

From the UNODC operational perspective the substantive merger of the mandates is going quite well. From the criminological perspective, dealing with deviance and crime together has not really been anything new. However, academic and practical criminological thinking may and does develop independently of one another, and therefore in this case, academia and bureaucracy are two autonomous processes.

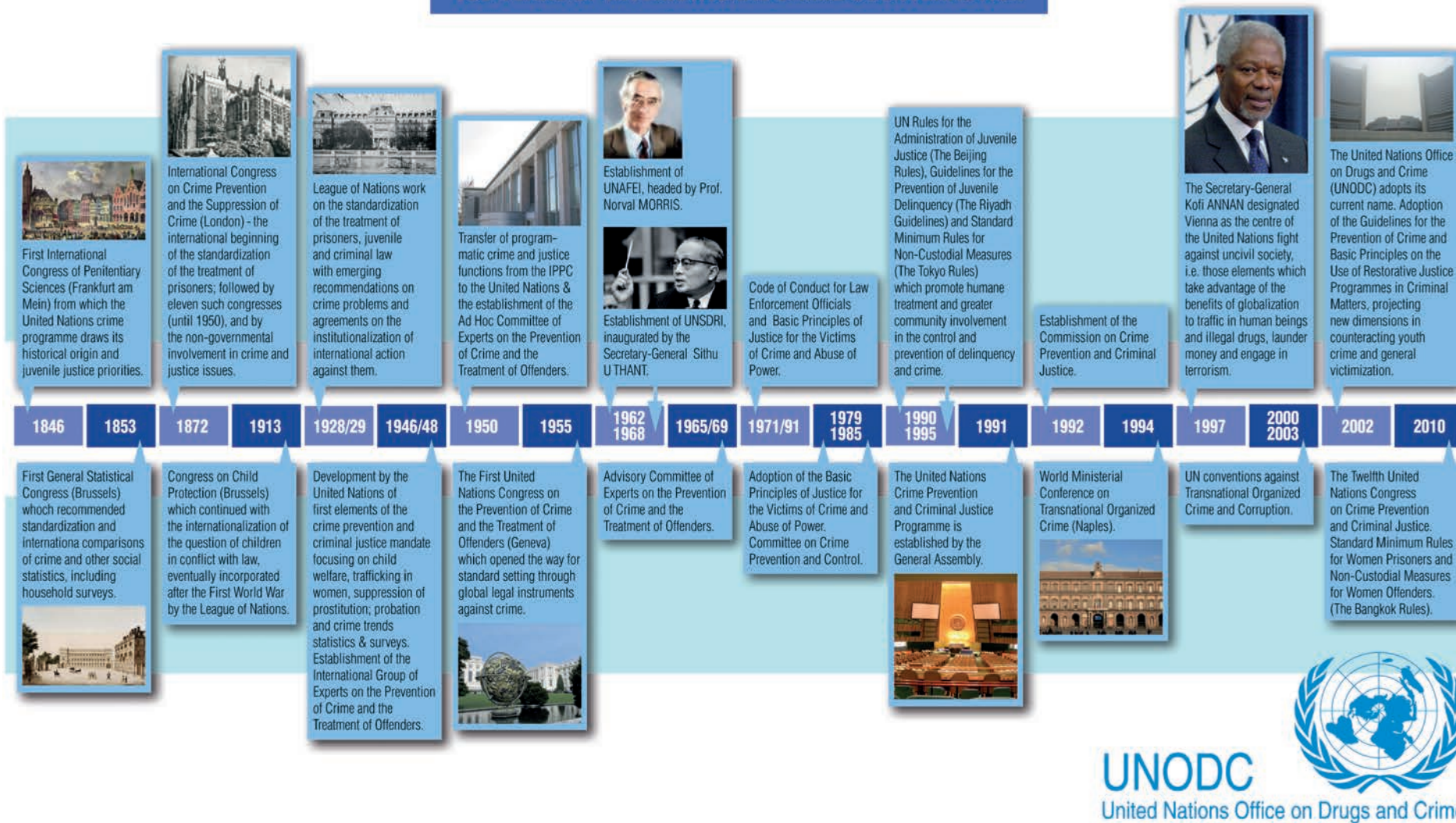
In early 2010 an historic event took place for the UNODC, when the Security Council for the first time ever engaged in an in-depth discussion, at the global level, of the threats to peace and security posed by drug trafficking and other organized criminal activities. The Council invited the Secretary-General to regard these threats as a factor in conflict prevention strategies, conflict analysis and the assessment and planning of integrated mission, and invited the UNODC Executive Director to give further regular briefings.²⁶⁰ Soon thereafter (around the time of the 2010 General Assembly session on transnational organized crime), the UNODC launched its first report

²⁵⁸ The Centre's former staff members (several of whom contributed to this study by writing on specific issues that are dealt with in the text boxes) have moved on to other assignments. The disbanded Centre could no longer be an institutional nucleus for criminological thought. That thought dispersed. Traces of it can be found across the entire United Nations Secretariat and beyond. That capacity of the Centre cannot be replaced. Inevitable as this might have been, what is now called in diplomacy the *sentiment of the house* nevertheless continues to exist, probably not only in the memory of some of its still active old staff members who had given their "*heart and soul*" to the UN crime programme mandate, but also through the continuing work of the newcomers on various crime prevention and criminal justice ideas that earlier originated from it. However, the absence of the expert type of contributions to the UN crime programme is a strongly felt deficit. And some of the results of this are clearly visible. It is striking to note that the lack of institutional memory resulted in a situation where, when in 2005 the programme published the "*Compendium of International Legal Instruments on Corruption*" containing 21 of these instruments, the publication overlooked the 1979 United Nations Code of Conduct for Law Enforcement Officials, the instrument from which the history of the anti-corruption efforts of the programme actually originated.

²⁵⁹ *De lege ferenda* its name should be "United Nations Office on Crime, Drugs and Justice".

²⁶⁰ SC 9867. The invitation was expressed in the statement of the President of the Security Council (S/PRST/2010/4). Such statements, read by the President at a public Security Council meeting, are actually consensus resolutions of the entire SC (which may vote on its other resolutions). Although closely resembling those SC resolutions in content, force and effect, they are generally considered as "less compelling" politically and legally, but are generally more difficult to achieve (Woodward 2010:255).

165 YEARS OF INTERNATIONAL CRIME COUNTERACTION



UNODC
United Nations Office on Drugs and Crime

Figure 4. 165 years of an international and United Nations response to crime

entitled *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*. It shows that illicit trafficking in various commodities involves all major nations: the G8 and the BRIC countries (the fastest growing and largest emerging markets economies of Brazil, the Russian Federation, India and the People's Republic of China) alike, as well as regional powers. It also shows how the criminal market spans the planet, and has turned into a global security threat.

That earlier historic event, followed by the report's launch, would probably not have taken place, had Member States not accepted the proposal of Poland made in 1996 to the General Assembly²⁶¹ to start working on the United Nations convention against transnational organized crime, and had there not been the Naples Interministerial Meeting (1994), at the request of which the General Assembly adopted the *Naples Political Declaration and Global Action Plan against Organized Transnational Crime*.²⁶² Of course, there had been several other meetings else-

where (Buenos Aires, Cairo, Chicago, Palermo), all of which contributed to the convention.

Reworked and finalized by Member States, the draft was adopted by the General Assembly²⁶³ in 2000.²⁶⁴ In 2003 the General Assembly adopted the *Convention against Corruption*.²⁶⁵

No doubt a crucial role in this process had been played by Eduardo Vetere, the Centre's last Director, and a three-time Executive Secretary of the United Nations congresses on crime prevention and criminal justice (1990, 1995 and 2005). During his tenure the idea of a United Nations convention against crime was resuscitated. In 1991 it was proposed by the Russian member of the Committee on Crime Prevention and Control, Vasyli P. Ignatov.²⁶⁶ In the same year, at the afore-mentioned Versailles Ministerial Meeting on the Structure and Programme of Work of the United Nations Crime Prevention and Criminal Justice Programme, Costa Rica submitted a draft convention on international cooperation in crime prevention and criminal justice.²⁶⁷



Picture 22. General Vasyli P. Ignatov (Soviet Union) and Ronald Gainer (USA), both members of the United Nations Committee on Crime Prevention and Control



Picture 23. At the World Ministerial Conference on Transnational Organized Crime (Naples, 1994), chaired by Silvio Berlusconi, Prime Minister of Italy (in the middle). On his far right Giorgio Giacomelli, Under Secretary-General, Director General of UNOV; on the Chairman's left Włodzimierz Cimoszewicz (Deputy Chairman of the Conference, Minister of Justice, Poland) and to his left the author

²⁶¹ A/C.3/51/7. That is why, originally, the later United Nations convention against Transnational Organized Crime was to be called "The Warsaw convention". When the General Assembly decided in 1999 to accept the invitation of Italy to hold the signing ceremony of that convention in Palermo (Italy), the convention came to be called the "Palermo convention". The proposal to hold that conference in Warsaw was eventually not made by Poland for financial reasons.

²⁶² A/49/159.

²⁶³ GA resolution 55/25, op. cit.

²⁶⁴ Vlassis 2001:356-362.

²⁶⁵ GA resolution 58/4 of 21 November 2003.

²⁶⁶ Clark 1994:49.

²⁶⁷ A/CONF. 156/CRP.1.

VII The Programme Network of Institutes and Non-Governmental Organizations

Figure 4 shows that in the United Nations, crime prevention and criminal justice institutes have also been involved in the United Nations criminal justice reform process. UNAFEI and UNICRI deserve special mention. The idea of introducing institutes into the Programme had been in the offing since 1954, but had only started materializing since 1962 with the establishment of UNAFEI. Its first director (1962-1964) was Norval Morris (1923-2004), a renowned Australian and international criminologist, who had been unable at the time to institutionalize international criminological research in his own country where originally he had wanted it, with Sir John V. Barry as his mentor.

After a visit to UNAFEI, Barry was so “*taken up with an account of his UNAFEI experience*” that “*he had determined to review the 1960 proposal for a like institute in Australia.*”²⁶⁸ The Institute (AIC) was finally established in 1975 and affiliated with the United Nations in 1994. This painstakingly long process of institutionalization of international criminology in Australia is an indicator of “*blue blood*” coagulation, beginning with Barry’s early very dismissive view of the United Nations (see BOX 9). But the eventually successful AIC affiliation process shows retrospectively not only the metamorphosis of his own *internationality* which had eventually received a true, genuine and lasting institutional expression. It also shows a more constructive Australian general attitude to the United Nations, keeping in mind that it was the afore-mentioned Gareth Evans who first proposed to the world the Australian idea of “*good international citizenship*”, followed by another idea, that of a United Nations “*blue book*” (about which more below).

UNICRI (formerly UNSDRI), established in 1968, is the first global and truly United Nations entity (i.e., it is a part of the United Nations Secretariat). In its earlier days, as indicated by the name of the United Nations Social Defence Research Institute, it was mandated to be the Secretariat’s research arm in promoting the social defence movement via the United Nations. There are now seventeen institutes and one specialized center in the Programme Network.

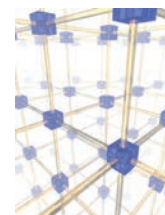
While each of the institutes has its own history, what is common for all of them are their changing fortunes that may depend not only on to what extent their directors and staff prioritize the work of the United Nations but, first of all, on the Governments which fund their international projects. This is connected with the changing sentiments vis-à-vis the United Nations in general. The Australian example referred to above is by no means unique. As mentioned in the introduction, the UNODC enjoyed much stronger direct support from the Government of Canada between 1981 and 2002 than is currently the case (although note should be made of the fact that the Canadian Government continues to provide partial support to two institutes in Canada that are members of the Programme Network of Institutes). Also U.S. support, during the Bush administration, had been lukewarm. In conclusion, in the larger international picture the Programme Network of Institutes and the UN Secretariat share the same lot, where the sentiments of the major stakeholders change over time.

The United Nations Crime Prevention and Criminal Justice Programme also includes numerous non-governmental organizations. Their work programme is even broader and entirely independent of that of the Programme. Solely at their own initiative, the non-governmental organizations contribute their expertise to the Programme through various meetings, other advice, and, last but not least, financial contributions to the UNODC.

²⁶⁸ Finnane 2007:242-243.

Matti Joutsen

The United Nations Crime Prevention and Criminal Justice Programme Network of Institutes



Introduction

The United Nations Crime Prevention and Criminal Justice Programme Network of Institutes (often referred to as the “Programme Network”, or the PNI) consists of 17 institutes (and one specialized centre) that have agreed to assist the United Nations Secretariat in issues related to crime prevention and criminal justice.

A. Four waves of development

The Programme Network originally consisted of the Secretariat, one interregional research institute that was (and is) a full-fledged United Nations entity (the United Nations Interregional Crime and Justice Research Institute, established in 1968 and located in Italy), and four regional institutes that were (and are) affiliated with the United Nations (established in Japan in 1962, Costa Rica in 1975, Finland in 1981 and Uganda in 1987, and serving, respectively, Asia and the Pacific, Latin America and the Caribbean, Europe, and Africa). Already on establishment, these institutes were specifically mandated to cooperate with the Secretariat on crime prevention and criminal justice issues.¹

This original concept of a Programme Network sought to supplement the global and regional reach of the United Nations Crime Prevention and Criminal Justice Programme in two ways. First, the institutes could provide the Secretariat with a regional perspective on the various issues at hand. Second, the institutes could augment the very limited capacity that the Secretariat (located as it is in Vienna) has for technical assistance and other activity requested by the Member States.

During a second wave of Programme Network expansion (roughly the 1980s and 1990s), the interregional UN institute and the regional institutes were

joined by a regional institute covering the Arab world (located in Saudi Arabia), an Australian government research institute (AIC) serving also the Pacific, a scientific institute in Italy focusing largely on human rights and criminal law, and two international centres located in Canada, one focusing on crime prevention, and the second on criminal law reform and criminal justice policy. In addition, the International Scientific and Professional Advisory Council (ISPAC) joined the Programme Network.

This second wave thus enhanced the regional perspective (by bringing in institutes focusing on the Arab and the Pacific regions), and also brought in institutes with expertise in specific issues. ISPAC, in turn, provide a structure for cooperation between the Secretariat and those non-governmental organizations and academic institutions that are involved in crime prevention and criminal justice issues.

During a third wave of expansion, three national criminological research institutes (in the United States, the Republic of Korea and South Africa; this last institute seeks to serve also the broader southern African region) and a Swedish institute focusing on human rights and humanitarian law joined the Programme Network.

A fourth wave of expansion started in 2007 with the inclusion in the PNI of the Basel Institute on Governance/the International Centre for Asset Recovery, and in 2011 the College for Criminal Law Science at the Beijing Normal University (PRC). The contributions of the Basel Institute enhance international assistance for the recovery of stolen assets (as per chapter V of the UNCAC). The contributions of the College contribute to the internationalization of domestic criminal justice reform through increasingly practical exchanges and engagements, according to UN criminal policy recommendations.



¹ The first wave of PNIs development (UNAFEI, UNDSRI) is described in: B. Alper, B & F. Boren, with a foreword by William Clifford, *Crime: International Agenda. Concern and Action in the Prevention of Crime and Treatment of Offenders, 1846-1972*, D.C. Heath and Company/Lexington, Mass. – Toronto – London 1972:103-109, and M. Finnane (with the assistance of John Myrtle), *JV Barry: A Life*, University of New South Wales Press 2007: 235-245; 249-250. It shows quite a complex picture of political circumstances in which UNAFEI (rather than AIC) has first emerged as a forerunner of the regional institutionalization of international criminology. As for UNICRI, it is one of five research institutes in the United Nations Secretariat. There are also two training institutes (UN Staff Training College and the United Nations University).

B. The PNIs and the Commission on Crime Prevention and Criminal Justice

The institutes report annually on their programme of work and its implementation to the United Nations Commission on Crime Prevention and Criminal Justice. One of the functions of the Commission is to facilitate and to help coordinate the activities of the institutes. The Commission may request the institutes, subject to the availability of resources, to implement selected elements of the programme and suggest areas for inter-institute activities.

Indeed, ideally, the Programme Network should significantly enhance the resources available to the Secretariat to carry out the policy laid down by the Commission. In theory, for example, the specialized institutes could contribute to the preparation of priority issues for discussion at the Commission or the Congresses, and contribute world-wide to technical assistance activities in their fields of expertise. The regional institutes, in turn, could ensure that Secretariat documents going to the Commission and the Congresses properly reflect the different priorities and concerns of the regions, and they can also provide research, training and other technical assistance services to the member states.

C. The PNIs and the United Nations Secretariat

This ideal scheme of cooperation between the Secretariat and the institutes, however, is significantly hampered by a number of factors, in particular the differences in the mandates, priorities, orientation, capacities, and funding bases of the institutes. As noted, only the interregional and the regional institutes have been specifically established to work with the Secretariat and more broadly to contribute to the United Nations Crime Prevention and Criminal Justice Programme. The other institutes must remain mindful of their original mandate, which for example in the case of the national institutes in Australia, South Africa, South Korea and the United States is understandably focused on national priorities in crime and justice. Quite simply, their management structure may not allow the institutes to carry out UN-related activities, unless these at the same time contribute to the basic mission of the institute in question.

Even when and if the respective institutes are prepared to assist the Secretariat, there are inherent

limits in respect of their orientation, capacities and funding. Some of the institutes focus on research, others on training. Some of the institutes (such as the national institutes as well as the regional institutes for Asia and the Pacific and for Europe, which are funded primarily by their host government) have a relatively stable funding base, allowing them some flexibility when deciding whether or not to assist the Secretariat. Others, in turn, rely on voluntary contributions, and in many cases these voluntary contributions have been fairly meagre. Although these institutes would be prepared to provide assistance, they simply do not have the resources to do so. And in all of the institutes, the regular staff may not have the time or the background necessary to respond to a Secretariat request for assistance.

Such factors may explain why the discussions at the Commission on coordination of the work of the institutes have usually been quite limited. The Commission often finds that the institutes are unable to respond to requests and, therefore, will understandably not bother to ask.

The above limits notwithstanding, a significant amount of cooperation takes place between the Secretariat and the institutes, and among the institutes themselves. This cooperation has been fostered by regular coordination meetings, a tradition dating back to 1984 (at the initiative of the institute in Saudi Arabia). The coordination has been most evident in the organization, since 1985, of one or more workshops at each of the quinquennial United Nations Congresses. This role of the institutes was formally recognized by the United Nations Commission in 2001. Also since 2001, the institutes in the Programme Network have cooperated in organizing practical workshops and other events during the annual sessions of the United Nations Commission. Generally, these workshops have focused on the theme of the annual session in question, thus in principle enriching the Commission's discussion on the matter.

In addition to the cooperation with and among the institutes, individual institutes have given their own contributions to the Programme. This has often taken the form of comments on, or actual first drafts of, Secretariat papers on their area of expertise, or the organization of expert meetings and training activities related to United Nations priorities. The interregional and the regional institutes have assisted in developing the UN surveys on crime and criminal justice, on victimization, and on violence against women. They as



well as several of the specialized institutes have also contributed for example to work on the implementation of UN standards and norms.

Individual institutes carry out cooperation and projects with one or more sister institutes on an ad hoc basis.

Further information on the institutes, their activities and publication can be obtained via their home page on the Internet:

Australian Institute of Criminology
(Canberra, Australia): www.aic.gov.au

European Institute for Crime Prevention and Control, affiliated with the United Nations (Helsinki, Finland):
<http://www.heuni.fi>

Institute for Security Studies (Pretoria, South Africa):
www.iss.org.za

International Centre for Criminal Law Reform and Criminal Justice Policy (Vancouver, Canada):
www.icclr.law.ubc.ca

International Centre for the Prevention of Crime
(Montreal, Canada): www.crime-prevention-intl.org

International Institute of Higher Studies in Criminal Sciences (Siracusa, Italy): www.isisc.org

International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme (Milan, Italy):
www.ispac-italy.org

Korean Institute of Criminology (Seoul, The Republic of Korea): www.kic.re.kr/english/index.asp

Naif Arab University for Security Sciences (Riyadh, Kingdom of Saudi Arabia): www.nauss.edu.sa

National Institute of Justice (Washington, D.C., USA)
www.ojp.usdoj.gov/nij/

Raoul Wallenberg Institute of Human Rights and Humanitarian Law (Lund, Sweden): www.rwi.lu.se

United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (Kampala, Uganda): www.unafri.or.ug

United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (Tokyo, Japan): www.unafei.or.jp/english/index.htm

United Nations Interregional Crime and Justice Research Institute (Turin, Italy): <http://www.unicri.it>

United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (San José, Costa Rica): www.ilanud.or.cr

The Basel Institute on Governance
www.baselgovernance.org .

College for Criminal Law Science, Beijing Normal² University (Beijing, Peoples' Republic of China),
www.criminallawbnu.cn

D. Conclusion

The above network of institutes has emerged to provide the UN Secretariat with a needed regional perspective as well as added expertise in specific areas. In addition, by supplementing the limited resources of the Secretariat, the institutes enhance the ability of the UN Crime Prevention and Criminal Justice Programme to respond to the needs of Member States through research, training and other technical assistance. ■

² The term “normal school” originated in the early 19th century from the French *école normale*. The French concept of an “*école normale*” was to provide a model school with model classrooms to teach model teaching practices to its student teachers (http://en.wikipedia.org/wiki/Normal_school).



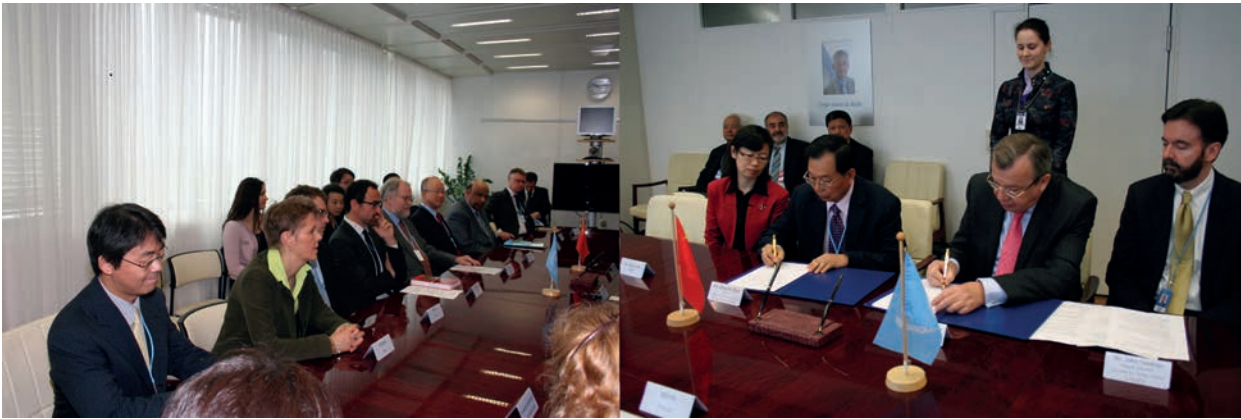
Picture 24. The President of Poland Aleksander Kwaśniewski addressing the United Nations General Assembly (1996) while submitting for its consideration the draft framework convention against transnational organized crime



Picture 25. Giorgio Giacomelli, Under Secretary-General, Director General of UNOV with Göran Mellander, Director of the Raoul Wallenberg Institute (Lund, Sweden), Mikael Johansson (RWI), Henrik Andersen and the author (both CSDHA/UNOV) at the ceremony affiliating RWI with the United Nations (1996)



Picture 26. Signing ceremony of the Memorandum of Understanding between the Korean Institute of Criminology and the UNODC (Prof. Jae Sang Lee, Director of the KIC and the author)



Picture 27. Collage: Signing ceremony of the Memorandum of Understanding between the College for Criminal Law Science/CCLS (Beijing Normal University, PRC) and the UNODC (among those sitting behind the table from the left: Prof. Zhao Bingzhi, Dean, CCLS; Mr. Yuri Fedotov, Executive Director of the UNODC and John Sandage, UNODC Director of the Division for Treaty Affairs. Across the same desk, facing them from left to right are the representatives of UNAFEI, UNICRI, ISISC, ISPAC, HEUNI, KIC, NAUSS and RWI (2011)



*Picture 28. Staff of the Programme Network Institutes at a meeting in the Vienna International Centre (2001). From right to left: Miki-
nao Kitada (UNAFEI), Kauko Aro-
maa and Terhi Viljanen (HEUNI),
Mohsen Ahmed (NAUSS), Brian
Tkachuk, Yvon Dandurand and
Daniel Prefontaine (ICCLR & CJP),
and Anna Alvazzi del Frate (UNIC-
RI), in company with Gary Hill (IS-
PAC)*



Picture 29. During the twentieth session of the Commission on Crime Prevention and Criminal Justice (2011), the meeting of the Executive Director of the UNODC, MR. Yuri Fedotov, with the representatives of non-governmental organizations

BOX 7

Jolanta Redo

Non-Governmental Organizations in the United Nations Crime Prevention and Criminal Justice Programme



Introduction

When after more than twenty years after the establishment of the International Prison Commission (later the International Penal and Penitentiary Commission - IPPC), the United States and United Kingdom officially and without any reservations joined it in 1895,¹ the hybrid (semi-official) nature of such an international non-governmental organization (NGO) and the international congresses convened by it became a fact of life. Individual experts and governments cooperated with one another organizationally in various forms. Hybrid organizations such as the IPPC have since their inception (the first international NGOs were founded around 1850)² remained at the forefront of the goal of universalism in world polity. The intergovernmental League of Nations and the United Nations have enabled and accepted the NGO contributions, confirming that the world polity is indeed one, albeit developed by mutually reinforcing tensions between the States and NGOs. Especially around the time of the First and Second World Wars, these tensions resulted in a decline in the establishment of international NGOs.³

A. What are the NGOs?

The phrase “non-governmental organization” only came into popular use with the establishment of the *United Nations* in 1945 (art. 71 of its Charter). The definition of “international NGO” is given in ECOSOC resolution 288 (X) of 27 February 1950. It is “any international organization that is not founded by an international treaty”. The exponential growth of such NGOs has started in 1946-1947 and continues until the present time.

Among the international NGOs (the total number of which in the United Nations amounts to 3,500) that

may attend various official conferences of the United Nations Crime Prevention and Criminal Justice Programme, there are those with “general”, “special” and “roster” consultative ECOSOC status. Those in general consultative status, “broadly representative” and “concerned with most of the activities of the Council” must document that their programme outreach and delivery is cross-sectoral. Those in special consultative status, i.e. “organizations with special competence” in a few ECOSOC fields, should make contributions to the development of the United Nations Crime Prevention and Criminal Justice Programme. Those on the roster “can make occasional and useful contributions”.

B. Which NGOs are active in the UN Crime Prevention and Criminal Justice programme?

The International Association of Penal Law (1924), the International Society for Criminology (1938), the International Society for Social Defence (1949), and the International Penal and Penitentiary Foundation (1951) are traditionally considered to be the “Big Four” group of NGOs because of their founding roles in the United Nations Crime Prevention and Criminal Justice Programme. In addition to the “Big Four”, special mention should also be made of the Howard League for Penal Reform (1921). Further, this bigger group now includes such important NGOs as the American Correctional Association (1870), the International Law Association (1873), Pax Romana (1921), Soroptimist International (1921), Friends World Committee for Consultation (Quakers, 1937), the American Society of Criminology (1941), the International Police Association (1950), the International Commission for Catholic Prison Pastoral Care (1950), Amnesty International (1961), the Academy of Criminal Justice Sciences (1963), Prison Fellowship International (1976), the



¹ N. K. Teeters, *Deliberations of the International Penal and Penitentiary Congresses. Questions and Answers 1872-1935*, Temple University Book Store, Philadelphia, Pennsylvania 1949:26.

² Ch. Chatfield, *Intergovernmental and Nongovernmental Associations to 1945*, (in) J. Smith, Ch. Chatfield & R. Pagnucco (eds.), *Transnational Social Movements and Global Politics: Solidarity Beyond the State*, Syracuse, NY: Syracuse University Press, 1997: 19; Bill Seary, *The early history: From the Congress in Vienna to the San Francisco Conference* (in:) P. Willets (ed.), *The conscience of the world: The influence of non-governmental organizations in the UN System*, London, Hurst 1996: 15-30.

³ J. Boli, G. M. Thomas, *World culture in the world polity: a century of international non-governmental organization*, *American Sociological Review*, Vol. 62, April 1997: 171-190.

World Society of Victimology (1979), the Asia Crime Prevention Foundation (1982), the International Society for Traumatic Stress Studies (1985), the Academic Council on the United Nations System (1987), Penal Reform International (1989), the Open Society Institute (1993), and the International Police Executive Symposium (1994).

NGOs with consultative and associated status belong to the two United Nations crime prevention and criminal justice alliances, the first established in 1972 in New York (USA) and the second in 1983 in Vienna (Austria). From there they interact with the relevant United Nations policy-making bodies (General Assembly, Economic and Social Council, Commission on Crime Prevention and Criminal Justice).

Some of the NGO members of the two NGO alliances are also members of the NGO Committee on Peace in Vienna. The members of the latter committee promote peace, culture and education through personal change and social contribution, thus contributing to the prevention of a culture of violence and nuclear abolition. That process has been historically ignited by the bombing of Hiroshima and Nagasaki at the end of the Second World War. Various NGOs, including especially Soka Gakkai International (1975), a worldwide lay Buddhist association of twelve million members, since 1983 has been active with others in the United Nations in public education for peace and disarmament, human rights and sustainable development.

C. NGOs in the world

There are also numerous NGOs associated with the UN system that do not hold consultative status. They represent a large range of vital interests, in areas such as social justice, human rights, governance, gender, peace and disarmament, environment and sustainable development.

Cross-sectorally these NGOs collaborate with their larger community through the United Nations Committee of Non-governmental Organizations, with its standing committees which follow issues that are of key substantive interest relative to their mandates and objectives.

The total number of *internationally operating NGOs* is estimated to be 35,000. Their budget apparently exceeds that of the United Nations (without the World Bank and the International Monetary Fund).⁴ The numbers of other NGOs are far greater. For example⁵, *Russia* has 277,000 NGOs. India is estimated to have between one million and two million NGOs. Just as they often are in their nascent stage, NGOs may today still be purely “technical”, but in developing countries they may also fulfil human rights watchdog functions.

Unlike States, NGOs can neither make nor enforce law, but NGOs have successfully worked in and around the UN system by advocating new crime prevention and criminal justice standards and norm and developing new UNODC programmes. They are becoming increasingly integrated by networks of exchange, competition, and cooperation.

Separately or together, thus overcoming their own “universalization of particularism”,⁶ but really acting worldwide, the international NGOs of the United Nations Crime Prevention and Criminal Justice Programme make joint recommendations to the Commission on Crime Prevention and Criminal Justice and/or individually contribute to the implementation of the work programme of the United Nations Office on Drugs, financially or in-kind. Rules of procedure permitting, these NGOs participate also in other inter-governmental conferences of the Programme. Further extension of the ECOSOC consultative arrangements has been debated since the mid-1990s. In the meantime, the General Assembly and its main committees have increasingly involved NGOs in their deliberations, both informally, through round-table meetings and panel discussions, and formally, through invitations to the special sessions and conferences convened under its auspices, and, more recently, through the biennial high-level dialogue. The Security Council can organize individual consultations with the NGOs.

In 2004, in response⁷ to the *Report of the Panel of Eminent Persons on United Nations-Civil Society Relations* which proposed to formally open the GA to NGO participation, the Secretary-General proposed to standardize these practices, so that they become a regular component of the General Assembly’s work.



⁴ J. Keane, A new cosmology (in:) H. K. Anheier, M. Glasius, M. Kaldor (eds.), *Global Civil Society 2001*, Oxford University Press, 2001: 26.

⁵ http://en.wikipedia.org/wiki/Non-governmental_organization

⁶ R. Robertson, Globalization or Glocalization, *Journal of International Communication*, 1 (1) 1994: 33-52.

⁷ A/59/354 (13 September 2004), *Report of the Secretary-General in response to the report of the Panel of Eminent Persons on United Nations-Civil Society Relations*, § 10.

For example, prior to major events, the Assembly could institute the practice of holding interactive hearings between Member States and NGO representatives that have the necessary expertise on the issues on the agenda.

A survey of programme activities of some 6,000 international NGOs (1875-1988) found that power remains in the hands of States, but the impact of the NGOs on the world socio-economic and cultural developments is substantial.⁸

D. Conclusion

Along with the global demographic and labour market changes, the work of NGOs is no longer regarded as the privilege of older people. First, the world has now a very high proportion of youth. They are more idle but better educated, at least formally, in an over-

supplied insecurity-conscious job market.⁹ This 300 million unemployed “youth bulge” (approximately 25% of the entire youth world population) live below the US \$ 2 per day poverty line.¹⁰ Those better educated can be members of NGOs, while those less privileged form their target groups. That is the only arena that can absorb all the people who are not needed in the market or the government. Social skills are the only ones the computer cannot take over. The alternative is having more candidates for jobs offered by organized criminals and then putting more people in prisons. Without a serious debate and action on this, there is going to be more crime and more violence. People forced out of the marketplace will seek to earn illegitimately what they cannot earn legitimately.¹¹ For the NGOs in crime prevention and criminal justice this may be an odd chance for further growth. ■

⁸ J. Boli, G. M. Thomas, op. cit.

⁹ See further; U.S. Population Reference Bureau, *The World's Youth Population Data Sheet 2006*. 6, <http://www.prb.org/pdf06/WorldsYouth-2006DataSheet.pdf>.

¹⁰ P. Lock, Crime and violence: Global economic parameters (2006) <http://www.libertysecurity.org/article940.html>.

¹¹ J. Rifkin, *The End of Work: The Decline of the Global Labor Force and the Dawn of the Post-Market Era*. Putnam Publishing Group 1995.

VIII Commission on Crime Prevention and Criminal Justice

One positive aspect of the bureaucratic process has been the fact that in changing the legal status of the expert Committee to that of the intergovernmental Commission, the UN crime programme has already been streamlined, since the latter body makes it possible to legalize the relevant substantive recommendations with the ECOSOC and the GA much more easily than before, and also since it is a peer-to-peer process.²⁶⁹

The change in the legal status of the UN crime mandate programming body strengthened its position vis-à-vis other ECOSOC functional commissions and vis-à-vis Member States.²⁷⁰ The United Nations' new crime prevention and criminal justice programme is being resurrected. Presently it is still overshadowed by the drug control work programme.

The resurrection of the programme is best represented by a variety of documents, including UNODC research publications, which gradually came to match the standard and outreach of the UN “*Global Report on Crime and Justice*” (1999) and may surpass that level soon.

²⁶⁹ Earlier and at the time of the transfer of mandates from the Committee to the Commission, there had been quite a debate (E/1993/32:86, §3) on the legality of previously adopted United Nations criminal justice standards and norms, including those which had originated from the quinquennial United Nations congresses on crime prevention and criminal justice (1955-1990).

²⁷⁰ E/1990/31/Add.1, §§ 43-45; A/46/703, §57.

Christopher Ram

The Commission on Crime Prevention and Criminal Justice: A Search for Complimentarity Between Politics and Criminology



Introduction

The Commission on Crime Prevention and Criminal Justice (Crime Commission) was established in 1992 to address concerns that had been expressed about the pre-existing Committee on Crime Prevention and Control in a series of meetings beginning with the Seventh United Nations Congress (1985). Many reasons for the 1992 changes are discussed in the various documents, but the major concerns appear to have been the fact that Member States felt that the pre-existing Programme lacked the profile and resources it needed to address the concerns of governments about domestic and transnational crime problems, and that the existing arrangements did not ensure sufficient governmental participation or oversight.

A. Political and substantive functions of the Commission

The Commission, which was established in 1991 and first convened in April of 1992, is intended to be the principal UN policy-making body with respect to crime prevention and criminal justice¹ and to have a comprehensive competence over such matters. This includes both proactive and reactive aspects and crime which is both transnational nature, or which occurs within individual Member States.² In essence, its substantive mandate is to consider any issues which may be referred to it as crime prevention and criminal justice subject-matter by the Member States, subject to other bodies with more specific mandates, including the Commission on Narcotic Drugs and the Conferences of States Parties to the 2000 and 2003 conventions against transnational organized crime and corruption. Even where another body has a more specific, overlapping mandate, the competence of the Commission over crime matter remains: the Commission is merely directed to consider the need to avoid such overlaps. This ensures that there is comprehensive coverage of the subject matter, which is essential because crime issues are inherently difficult to classify, frequently

overlap with other areas and can change substantially as crime and the reactions of Member States to it evolve over time.

The open-ended nature of its jurisdiction supports one of the most critical functions of the Commission, that of simply delineating the subjective and objective scope of global crime. It serves to identify at an early stage any new or emerging crime problem encountered by one State in objective factual terms, and disseminate information to all. In subjective terms, “*crime*” includes any sort of harmful conduct the Member States choose to label as crime and respond to with crime prevention and criminal justice measures, and the Commission provides the primary forum in which Member States can express and respond to views about whether various subject matter warrants a crime prevention and/or criminal justice response or should be dealt with as a non-criminal issue. As the twentieth session (2011) passes, this poses one of the most serious challenges to the Commission. It faces issues of much greater scope and diversity than was originally envisaged, with much less time and resources than were originally allocated. While the extrabudgetary resources allocated for crime prevention, criminal justice, and terrorism-prevention projects has increased substantially since the Commission was first convened, the resources available for the Commission itself have actually been reduced. Since 2005, its annual sessions have been reduced from eight sitting days to five, and at the twentieth session, dramatic reductions in the capacity to produce documents in all languages were announced.

At the same time as its capacity has been eroded, the demands on the Commission and on national delegations to its sessions, has increased. The criminal law aspects of issues such as the protection of the environment and cultural heritage property are now coming before the Crime Commission with increasing frequency. Given the functions of the Commission and the positions of many Member States that these warrant a crime prevention and criminal justice response,



¹ ECOSOC resolution 1992/22, Part IV, op. § 4.

² See, for example, A/46/152, p. § 7, and op. § 3.

this is entirely appropriate, but also unsustainable from the standpoint of the management of Commission sessions and the production of documents. It also poses a major challenge to delegations, which must be expanded to include expertise in what for some Member States are nor crime prevention and criminal justice issues.

As with other functional commissions of the ECOSOC, the Crime Commission is intended as a forum for considering expert assessments of crime problems. Substantive experts bring actual knowledge on how crime works, how it affects Member States and their populations, and how to gain further knowledge, an especially critical function as crime itself globalises and factors such as technological change produce an ever-accelerating evolution of crime, and as a place where States in need of technical assistance could be brought together with States willing and able to provide it. One of its founding documents states that:

*“Each Member State shall make every effort to ensure that its delegation includes experts and senior officials with special training and practical experience in crime prevention and criminal justice, preferably with policy responsibility in the field”.*³

It is also clear, however, that political functions, generally brought before it by the Member States’ foreign ministries and diplomatic representatives, are also central to the work of the Commission. These include marshalling and contributing financial resources and holding UNODC and other UN bodies accountable for how they are spent, general oversight of the work of the Secretariat, and coordinating the work of the Commission with other bodies, especially in areas such as rule of law, narcotics and human rights, where overlapping or dual-aspect subject matter is often encountered. At its most fundamental level, however, the work of diplomatic representatives in the Commission consists of articulating the political will of the various Member States. Diplomatic experts serve as channels of communication, bringing the political views of their governments into the Commission, taking back their assessments of the political views of other States, both individually and collectively, and ultimately conveying the consent of each Member State to join consensus on outcomes.

They are the means whereby governments seek to influence the Commission, and whereby the Commission itself seeks to influence the views of their governments in return.

Without the former, diplomatic discourse would be sterile and devoid of underlying substance, and without the latter there would be substance, but little or no meaningful discourse or transfer of substantive knowledge from one State to another. A balance of the two gives the Commission a function similar to that of domestic legislatures in establishing legitimacy. Unlike legislatures, the outputs of the Commission are not usually legislative or prescriptive in nature, but they are seen by the Member States and their populations as valid and legitimate because they are the output of open and transparent deliberations, first in establishing criminological validity, and second in establishing political consensus.

B. The Commission’s responsibilities before other UN policy-making bodies

The Commission can also be seen as a boundary body in both a vertical and horizontal sense. From a vertical perspective, most of the subordinate bodies the Commission creates consist primarily of substance experts mandated to conduct research and produce analytical reports, and much of its Secretariat performs a similar function. The bodies to which the Commission itself reports, on the other hand, the ECOSOC and General Assembly, are primarily diplomatic bodies set up to take substantive input from functional expert bodies and integrate these into the larger global framework. From a horizontal perspective, proposals to use crime prevention and criminal justice measures frequently entail subject-matter that may not necessarily be seen as criminal in itself, but rather a policy decision on the part of Member States to use the criminal law as a means of implementing or enforcing non-criminal policies in areas such as human rights, good governance, rule of law, or environmental law. This is reflected in the fact that the Commission and its delegations must frequently coordinate with the work of other bodies, and in the fact that UNODC has, under the oversight of the Commission, a key role as the source of criminal justice expertise for the rest of the UN secretariat, who have need of it on an issue-by-issue basis.



³ A/46/152 (Annex), § 24.

Both the diplomatic/political and criminological elements are essential, but they can be difficult to reconcile, and a balance is needed to ensure that what is produced is valid in substantive terms, while at the same time being viable in political terms. The tension between politics and criminology is not unique to the Commission. It is mirrored in debates that regularly arise in most if not all Member States, and with which all criminologists are familiar. Indeed, the Commission's proceedings often parallel domestic debates in which one side of the political spectrum advocates reactive and retributive policies seen as providing "just desserts" punishments and strong, effective deterrence, while the other side advocates social reforms, proactive measures and restorative justice sentencing. What is different in the Commission is that, while individual States (or at least those with regular democratic changes in government) tend to oscillate back and forth between these policies, the Commission tends to try to articulate all policies all the time, reflecting the fact that its Members tend to collectively reflect a full range of political philosophies as individual countries shift back and forth. In a global crime environment, this has value both in disseminating information among the Member States and stabilising the policy oscillation by intermingling the various political and ideological positions in play, injecting an element of pragmatism and bringing some degree of consistency and continuity over the longer time-scales that govern international policy-making.

C. Capacity and resources

Since its inception, the Commission and its secretariat have faced a steadily-increasing workload with steadily-diminishing capacity in terms of duration and documentation and other resources, which has increased pressure to do more with less. The duration of annual sessions was reduced from eight days to five in 2005, which has limited time for discussions, made it difficult to produce translated versions of texts under negotiation, and forced more parallel meetings which smaller delegations cannot attend. The regular budget allocation for the Commission and its work have been subject to a *de facto* freeze since the late 1980s, with the result that an annually increasing shortfall in the amount of any inflation plus any actual increase in mandated workload has been created. This has been made up by the voluntary contribution of extra-budgetary resources, which have risen from about 75% to

over 90% of UNODC's overall budget since the Commission was established. One consequence has been some degree of shift of control or influence over the policy agenda and controversy between recipient States, who want policy priorities set in the Commission, and the donors, who often articulate priorities by "earmarking" their contributions to specific projects that reflect their priorities. This debate, along with the need for joint oversight by the Crime and Drug Commissions, led to the establishment of an open-ended intergovernmental working group on finance and governance in 2009. The debate has become more acute in the context of the recent global financial crisis and the erosion of both voluntary contributions and dues assessments (some of which depend on economic or development indicators). One consequence of this has been a dramatic reduction in the resources available to produce written documents submitted to the Commission, and the Report of the Commission itself, in the six official languages of the U.N.

At the twentieth session, these pressures re-invigorated efforts to make the sessions of the Commission itself more efficient, including decisions to require the early submission of draft resolutions to ensure availability in languages at the beginning of each session and to allow the Member States to prepare and select appropriate expert delegates beforehand. These and other reforms may well succeed in making the Commission more efficient than it already is, and one must always be optimistic, but they do nothing to address the underlying fact that chronic underfunding of the capacity of the Commission to do its work has severely limited what the Commission can accomplish. As with any intergovernmental body, the work is expensive, but the increasing importance with which the Member States regard transnational crime problems is clearly evident in the extrabudgetary resources they have allocated, the perception of States that it is not just a social issue but a matter of regional security and economic globalisation, and the increasing politicisation of the Commission itself and the vigour with which many recent resolutions have been negotiated. Given the importance of these issues to Member States, the Commission represents substantial value as the primary forum for developing international responses and supporting domestic responses, but it falls far short of its potential and will continue to do so until Member States take the funding of responses to crime as seriously as they take the problem of crime itself.



D. The search for balance

The search for balance is also made difficult by the fact that the political and diplomatic side of the equation tends to have most of the influence: diplomats are the channel of communication to political governments, they tend to control financial resources, and they are resident in Vienna. Assembling a group of substantive experts on subjects such as juvenile justice or economic crime is expensive, difficult, and may encounter active opposition from States who prefer to avoid subject matter that might be embarrassing to them, or who seek to allocate the resources to other subject matter that their governments see as a greater priority. Assembling a group of diplomatic representatives is much easier and less expensive, but also far more limited in what they can achieve. Such groups can be very effective in financial and management discussions on which they themselves are experts, but any substantive discussion about crime is either devoid of substance or reduced to a time-consuming exercise in which they articulate the views of experts at home based on instructions but are not able to conduct any form of substantive discourse on a real-time basis. Perhaps the best recent examples of this have been Commission intersessional meetings, which have produced useful management texts, but which have consistently failed to reach agreement on substantive and thematic Commission agenda items which can support coherent debate in the Commission, and which are usually not agreed sufficiently far in advance to permit expert participants to be identified, coordinated and properly prepared for the discussions. This disconnect also becomes a factor in the search for adequate resources for the work, when there is no consensus between crime experts, who seek mandates and resources to develop factual information about crime; legal, policy and practical responses to crime; and to deliver assistance to Member States which seek it; and diplomatic experts who generally articulate the desire of the Member States to minimise costs. While it is clearly important to have both inputs in order to ensure accountability in budgetary matters, the record so far is not very encouraging as the Commission commences its third decade.

E. Conclusion

However difficult the search, a balance must be found which meets criminological, diplomatic and budgetary requirements. The reality of global crime is that the true agenda is neither set nor controlled by the diplomats or the criminologists. It is set by the criminals, whose evolving and expanding grasp poses a serious threat to all Member States and their peoples. To meet the requirements of both substantive validity and political viability, it is essential that substance experts be provided with a forum in which views can be expressed and knowledge exchanged freely and independently of the political constraints often imposed by Member States, but it is also essential that this forum be supported by diplomatic expertise to facilitate communications and negotiations, and it is essential that substantive outputs be politically considered and filtered. To accomplish this, there must be sufficient expertise in the sessions, and there must be sufficient time to exchange views on the issues and where necessary to obtain instructions from capitals to ensure that consensus, when it emerges, actually reflects the informed will and consent of the Member States. There must also be sufficient documentation of inputs and outputs to permit the Member States to actually put to use the information they have gathered and the decisions they have made. The task of the criminologists is to tell the diplomats what is necessary, and the task of the diplomats is to tell the criminologists what is possible. The task of both is to collaborate effectively to produce crime prevention and criminal justice measures that will be effective against crime and which Member States are willing and able to implement. ■

IX Guiding and specific themes of the United Nations congresses

In the context of Figure 1, but separately because of its technical limitations, Table 1 provides information on the overall programmatic development of the twelve congresses, showing their guiding and specific themes.²⁷¹

The guiding themes of the United Nations congresses are not always clear cut (the guiding theme of the Twelfth Congress is the best example). But when they are clear cut, as was the case with “*Crime and development*” at the Fourth Congress (1970), one may wonder not only about the life cycle of certain criminological ideas (especially those which become quite pertinent to the world), but also about the meandering way in which such ideas surface at the global level.

Other substantive agenda items of the twelve congresses may perhaps be more straightforward and informative. To some extent they help to identify the evolving critical focal points. One can see that the focus moved from penitentiary matters to non-custodial measures; from questions of repression discussed in a clearly legal and dogmatic framework, to questions more broadly related to socioeconomic development, including technical assistance in responding to crime; from domestic to transnational organized crime; from common crime to organized crime and terrorism; from retributive to restorative justice and, finally, from repression to prevention.

A candid assessment of the focus of the first four congresses (1955-1970) was made by William Clifford, Chief of the United Nations Crime Prevention and Criminal Justice Section, and the Executive Secretary of the Fourth Congress (Kyoto, Japan, 1970). Having analyzed the thematics of those congresses in order to discern the development of criminological thought in the world, he quite reasonably concluded that up to 1970 these thematics had circled around penitentiary matters, as if that thought had caught up itself in a vicious circle.²⁷² What had originally been residing

in the minds of the participants of the first congress seized with the aftermath of “*the Second World War, as well as the treatment and conditions to which prisoners were subjected, a significant post-war problem,*”²⁷³ had, in fact, lasted much longer.²⁷⁴ The formal change happened only at the Eleventh Congress (2005) in the title of which *the treatment of offenders* was replaced by *criminal justice*”

Still more insightful would have been a listing of the titles of the numerous position papers and working papers prepared under the various agenda items by the Secretariat for all the congresses. For the purposes of this study, it must suffice to note that already at the Second Congress (1960) the theme of “*Effective measures to combat transnational organized crime*” was inconclusively discussed,²⁷⁵ and at the Fourth Congress (1970) the evolving congress focus captured the need to adopt an international convention on the treatment of offenders.²⁷⁶ That idea resurfaced in 1975 at the Fifth Congress,²⁷⁷ again before 1980 during the preparations for the Eighth Congress,²⁷⁸ and, next, in 1995, at the Ninth Congress.²⁷⁹ The proposals oscillated between the idea of consolidating the United Nations legal instruments on responding to crime and the idea of a framework convention defining the principles of international cooperation against crime. Since 1995 the focus became even clearer – on the fight against transnational organized crime.

That theme started to live a life of its own when, after the recommendations of the UN Congresses and the Commission on Crime Prevention and Criminal Justice, and, after the entry into force of the United Nations Convention against Transnational Organized Crime, the Conference of the States Parties to that convention was established. The same happened with the *United Nations Convention against Corruption*.

Since that time, both; the congresses and the Commission have lost some of their respective legal relevance. What has been largely left in their purview involves the prevention and control of other forms of crime – those covered by “soft law” instruments belonging to the United Nations standards and norms.

²⁷¹ The first and second Congress did not have guiding themes.

²⁷² Clifford 1972:xv.

²⁷³ UN Newsletter 1990:4.

²⁷⁴ The only change that affected the cast of mind of the participants involved the venue of that congress: For the first time in the history of the UN crime programme, a Congress was held outside Europe, and for the first time ever in the entire history of international penitentiary and penal congresses, a congress was held outside Europe and the United States.

²⁷⁵ GEN/5/Corr.1.

²⁷⁶ A/CONF. 43/5, §§ 21-22, 31-34.

²⁷⁷ A/CONF. 56/10, §§ 9-18.

²⁷⁸ Clark 1994:48.

²⁷⁹ A/CONF. 169/16.

TABLE 1 GUIDING AND SPECIFIC THEMES OF THE UNITED NATIONS CONGRESSES (PLENARY AND WORKSHOPS)	
1	Standard minimum rules for the treatment of prisoners; Selection, recruitment, training and status of prison personnel; Open penal and correctional institutions; Prison labour; Prevention of juvenile delinquency.
2	New forms of juvenile delinquency: their origin, prevention and treatment; Special police services for the prevention of juvenile delinquency; Prevention of types of criminality resulting from social changes and accompanying economic development in less developed countries; Short-term imprisonment; The integration of prison labour with the national economy, including the remuneration of prisoners; Pre-release treatment and after-care, as well as assistance to dependants of prisoners.
3	Prevention of criminality Social change and criminality; Social forces and the prevention of criminality; Community preventive action; Measures to combat recidivism; Probation and other non-institutional measures; Special preventive and treatment measures for young adults.
4	Crime and development Social defence policies and national development planning; Organization of research for policy development in social defence; The Standard Minimum Rules for the Treatment of Prisoners in the light of recent developments in the correctional field; Technical assistance in social defence in the region; Participation of the public in the prevention and control of crime and delinquency.
5	Crime prevention and crime control: the challenge of the last quarter of the century Changes in forms and dimensions of criminality-transnational and national; Criminal legislation, judicial procedures and other forms of social control in the prevention of crime; The emerging roles of the police and other law enforcement agencies, with special reference to changing expectations and minimum standards of performance; The treatment of offenders, in custody or in the community with special reference to the implementation of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations; Economic and social consequences of crime: new challenges for research and planning.
6	Crime prevention and the quality of life Crime trends and crime prevention strategies; United Nations norms and guidelines in criminal justice: from standard-setting to implementation; and capital punishment; New perspectives in crime prevention and criminal justice and development: the role of international cooperation; Juvenile justice: before and after the onset of delinquency; Crime and the abuse of power: offences and offenders beyond the reach of the law; Deinstitutionalization of corrections and its implications for the residual prisoner.
7	Crime prevention for freedom, justice, peace and development New dimensions of criminality and crime prevention in the context of development: challenges for the future; Criminal justice processes and perspectives in a changing world; Victims of crime; Youth, crime and justice; Formulation and application of United Nations standards and norms in criminal justice.
8	International crime prevention and criminal justice in the twenty-first century Crime prevention and criminal justice in the context of development: realities and perspectives of international co-operation; Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures; Prevention of delinquency, juvenile justice and the protection of the young: policy approaches and directions; Effective national and international action against: Organized crime; (b) Terrorist criminal activities; United Nations norms and guidelines in crime prevention and criminal justice: implementation and priorities for further standard setting.
9	Less crime, more justice: security for all International cooperation and practical technical; Assistance for strengthening the rule of law; Promoting the United Nations crime prevention and criminal justice programme; Action against national and transnational economic and organized crime and the role of criminal law in the protection of the environment: national experiences and international cooperation; Criminal justice and police systems: management and improvement of police and other law enforcement agencies, prosecution, courts and corrections, and the role of lawyers; Crime prevention strategies, in particular as related to crime in urban areas and juvenile and violent criminality, including the question of victims: assessment and new perspectives; Plenary discussion on corruption.



TABLE 1 (Cont.)**Workshops**

Extradition and international cooperation: exchange of national experiences and Implementation of relevant principles in national legislation; Mass media and crime prevention; Urban policy and crime prevention; Prevention of violent crime; Environmental protection at the national and international levels: potentials and limits of criminal justice International cooperation and assistance in the management of the criminal justice system: Computerization of criminal justice operations and the development, analysis and policy use of criminal justice information.

10 Crime and justice, meeting the challenges of the 21st century

Promoting the rule of law and strengthening the criminal justice system; International cooperation in combating transnational crime: new challenges in the twenty-first century; Effective crime prevention: keeping pace with new developments; Offenders and victims: accountability and fairness in the justice process.

Workshops

Combating corruption; Crimes related to the computer network; Community involvement in crime prevention; Women in the criminal justice system.

11 Synergies and responses: strategic alliances in crime prevention and criminal justice

Effective measures to combat transnational organized crime; International cooperation against terrorism and links between terrorism and other criminal activities in the context of the work of the United Nations Office on Drugs and Crime; Corruption: threats and trends in the twenty-first century; Economic and financial crimes: challenges to sustainable development; Making standards work: fifty years of standard-setting in crime prevention and criminal justice.

Workshops

Enhancing international law enforcement cooperation, including extradition measures; Enhancing criminal justice reform, including restorative justice; Strategies and best practices for crime prevention, in particular in relation to urban crime and youth at risk; Measures to combat terrorism, with reference to the relevant international conventions and protocols; Measures to combat economic crime, including money-laundering; Measures to combat computer-related crime.

12 Comprehensive strategies for global challenges: crime prevention and criminal justice systems and their development in a changing world

Children, youth and crime; Provision of technical assistance to facilitate the ratification and implementation of the international instruments related to the prevention and suppression of terrorism; Making the United Nations guidelines on crime prevention work; Criminal justice responses to the smuggling of migrants and trafficking in persons: links to transnational organized crime; International cooperation to address money-laundering based on existing and relevant United Nations and other instruments; Recent developments in the use of science and technology by offenders and by competent authorities in fighting crime, including the case of cybercrime; Strengthening international cooperation in fighting crime-related problems: practical approaches; Crime prevention and criminal justice responses to violence against migrants, migrant workers and their families.

Workshops

International criminal justice education for the rule of law; Survey of United Nations and other best practices in the treatment of prisoners in the criminal justice system; Practical approaches to preventing urban crime; Links between drug trafficking and other forms of organized crime: international coordinated response; Strategies and best practices against overcrowding in correctional facilities.

Neither the Commission (which is the preparatory body for the United Nations congresses on crime prevention and criminal justice) nor the congresses themselves have managed to come to terms with this new reality which calls for their modification. The guiding theme of the Twelfth Congress had been the first manifestation of the need for the reorientation of the work of the congresses. But this was not fully appreciated by Member States. They confined their recommendations into one general congress declaration with a garden variety of global criminological issues addressed in a cursory fashion.²⁸⁰

Member States were bound to adopt a single Congress declaration by General Assembly resolution 54/125 of 17 December 1999. Within that form one can still note, however, that the *Salvador Declaration* of the Twelfth Congress substantively differed from the *Bangkok Declaration* of the Eleventh Congress. The *Salvador Declaration* had given – in nine operative paragraphs – a much stronger emphasis to the prevention of urban crime. The *Bangkok Declaration* had only one such paragraph. Similarly, much more is said in the *Salvador Declaration* about the response to cybercrime than in the *Bangkok Declaration*. Last but not least, for the first time at the United Nations congresses, there is a one-paragraph mention in the *Salvador Declaration* of the importance of international criminal justice education for the rule of law. A few years from now that topic may be treated in a much more elaborated fashion, as was the case with urban crime prevention. But more incisive and forward looking-mandate changes are needed, if the congresses and the Commission would like to paint further the global picture of the response to crime, and if they want to be the major painters. With that picture rearranged at their own original request, both bodies are short of that capacity and of various instrumentalities that would bridge their parliamentary-level function with more practical orientation and outreach.

The Commission needs to do its homework in order to rearrange that picture.²⁸¹ As a preparatory body for the United Nations congresses, it has not yet responded to the expert-group recommendations calling for various modifications in its and

their functioning.²⁸² Consequently, it is no wonder that the external perception of the Commission and the congresses as relatively unimportant UN policy bodies is still dominant. If and when their “justice” contributions – now too limited and restrained (as we recall, “justice” is much broader than that mandated by the UN crime programme) – are to become more influential, then this may primarily happen via support for technical assistance programmes and projects, especially in fields other than those covered by the mechanisms of the UN conventions against transnational organized crime and corruption.

Regarding the congresses, such support may be offered via re-profiled position papers and background papers which more than before should concentrate on “how” practically certain crime and justice objectives can be achieved rather than primarily analysing “what” global crime and justice call for. Right after the adoption of the *Salvador Declaration* by the Twelfth Congress, a few countries (such as Algeria and Argentina) stated their interest in modifying the formula of the Thirteenth Congress in 2015, planned for Doha (Qatar). No doubt, the Commission, as a preparatory body for the congresses, will hear more about their future format and role, before it decides on the draft agenda and format of the next congress.

The Commission, in turn, should authorize the establishment of “independent experts” / “special rapporteurs” (as is the case at the Human Rights Council), but with a technical assistance mandate. For example, an independent expert on the prevention of urban crime may help to elevate and consolidate the international response to urban crime, by reporting to the Commission on the concerns of State and municipal authorities in this area and providing high-level guidance to the UNODC for its technical assistance follow-up work. There also should be permanent working groups established by the Commission to consider other emerging global security issues, for instance relating to cybercrime. In conclusion and broadly speaking, the future of the Commission rests in supporting criminal justice reform worldwide, in line with the United Nations crime prevention and criminal justice standards and norms.

²⁸⁰ As self-admittedly iterated in the first follow-up report on the Twelfth Congress (see section V and VI. A., § 41, doc. E/CN.15/2011/15).

²⁸¹ It will likely do so in the preparations for the Thirteenth Congress. The Commission began these preparations at its twentieth session (2011). That very early start may be credited to two developments. First, at the nineteenth session (2010), the Commission realized that the format of the Twelfth Congress has to be reviewed, in order to accommodate more functionally the plenary and workshop-level legislative-, advocacy- and operational-level programmatic issues and actions. Second, and consequently, the Commission found it to be difficult to deal with the only outcome of the Twelfth Congress – its *Salvador Declaration*. Its eventually consensually adopted text, widely regarded as a patchwork of various international crime and justice issues, hastily negotiated before and at the Twelfth Congress, has given very many Member States second thoughts about the utility of such an undertaking.

²⁸² E/CN.15/2007/6 & E/CN.15/2007/CRP.1

X International criminal justice reforms and reformers

It should be noted that up to 1945, the word *reform* had a simpler connotation than it does today. During the initial phase (roughly, from the 1770s until 1914, the outbreak of the First World War), criminal justice reformers acted very much on their own. They were driven by the classical school of criminal law thought with emerging social considerations, which broadened the agenda of criminal law. They have rarely been inspired by international (intergovernmental) recommendations, even though since the 1840s such recommendations started to build a body of knowledge that should not be underestimated.

By and large, criminal justice reforms originated internally and remained internal and were inspired by individuals and by scientific or non-governmental circles which began to be more pronounced at the turn of the nineteenth and twentieth century. Although during the pre-Second World War period there were no transitional justice²⁸³ initiatives, only after the Nuremberg trial has international criminal justice reform in fact taken a practical shape, owing to the involvement of governments. Since that time, one could identify at least four phases of criminal justice reform, starting with an early post-Second World War phase (up to 1950), the *Cold War* phase (until 1989), the later international phase (up to 2000), and now a global phase.²⁸⁴

In brief, the foundation for post-Second World War criminal justice reform was first laid down by the Nuremberg trial. It had started the phase of retributive justice for Nazi war crimes, reaching out to the individual accountability of the offenders for these atrocities and universalizing the rule of law. During the *Cold War* phase, the reform superficially ran on the international legislative plane and the reception of foreign legal solutions (the theory of modernization). Based on these, that reform served more to preserve the status quo than to change it (preservative justice).

After that second phase, the reform went deeper into the essence of the rule of law and international accountability (the third phase), starting the process of bringing persons to justice on the basis of indivi-

dual criminal responsibility (international justice). It moved into different criminal policy directions, revising occasionally the principles of accountability (through amnesties) in order to resolve conflicts and achieve social peace, even though not always with positive effect. This third phase saw for example *commissions of reconciliation, truth commissions* and the like, which met with variable success. The third phase also saw a dictotomy between *justice* and *peace*, the process of vetting (*“lustration”*) aiming at a fuller accountability with possible retribution, and an emphasis on *governance*, the essence of which is democratization through deepening accountability and transparency. In comparison with the third phase of transitional justice, which had an impact on the contents and practice of international humanitarian law, the present (fourth) phase of international criminal justice reform promulgates selected standards and norms within the entire justice concept in places where these have been found to work (global justice).²⁸⁵

From the UNODC perspective, *global justice* at its current phase of development does not consist of more than incorporating within *justice* various United Nations standards and norms and their implementation in the course of domestic criminal justice reform. Even though much *justice* becomes more global through this process, it nevertheless stops short of being justice delivered by supranational courts. In the absence of the competence of the ICC to preside over international drug trafficking cases (or any other transnational organized crime cases), that phase of global justice truly shows the primacy of the jurisdictional sovereignty of national courts over international courts.

Table 2 seeks to capture the above legal developments in international criminal justice reform process from 1945 to the present, especially focusing on its current global justice phase in which the UNODC plays an active role.

This three-part table includes, first, the core criminal justice reform developments described above (left part). Further to the right, its second and third parts show the ensuing United Nations criminal policy strategic objectives, in terms, respectively, of generic and specific approaches to implement the mandated items in the UNODC action fields.

²⁸³ The current broader meaning of this term differs from the one used in those early days, which was restricted to changes in the formal criminal justice system.

²⁸⁴ Teitel 2003.

²⁸⁵ For a more in-depth analysis, reviewing normative and practical developments influencing justice and security reform and providing examples of these, particularly in post-conflict countries entering or in the process of “transitional justice”, see Mobekk 2006. This study focuses only on those ones which have either originated within the UN crime programme mandate or which have been found relevant to it (within the author’s purview).

TABLE 2 LEGAL DEVELOPMENTS IN INTERNATIONAL CRIMINAL JUSTICE REFORM AND THE UNODC MANDATE (1945-2015)

TRANSITIONAL JUSTICE ACROSS THE WORLD		PHASE	GENERIC RULE OF LAW AND HUMAN SECURITY APPROACHES
1945-50	< 1989		
CORE CRIMINAL JUSTICE DEVELOPMENTS			
Universalization of rule-of-law principles (Nuremberg and Tokyo tribunals, 1945-48 with related domestic trials) § Transitional justice norm: emergence of individual responsibility for State crime § Notion of universal rights forms the basis of modern human rights law.			
Internationalization of criminal law through multilateral legal instruments and superficial domestic application § West-East ideological confrontation on the principles of application of the rule of law § Development of modernization theory in comparative criminology.			
Compromises on the rule of law § Dichotomy between “justice” and “peace” (truth and reconciliation commissions, amnesties, lustrations) § Transitional justice norm: preserving peace § Pursuing “governance”, “transparency” and other legal arrangements (e.g., international ad hoc tribunals and domestic-level customary-law trials) with more than earlier accountability for State crime.			
Incorporation of the post-war model’s human rights rhetoric albeit in a broader restorative approach § Transitional justice norm: merging of the law of war with the human rights and criminal justice law (International Criminal Court) § Expansion of humanitarian justice as a body of law associated with pervasive conflict: foundation for the emerging law on terrorism § Return to international humanitarian law in the relationship individual-State and the expansion of the law of war § New inroads into the globalization of the rule of law.			
Promote effective responses to crime, drugs and terrorism by facilitating the implementation of relevant international legal instruments § Promote effective, fair and humane criminal justice systems through the use and application of United Nations standards and norms in crime prevention and criminal justice.			
Enhance knowledge of thematic and cross-sectoral trends for effective policy formulation, operational response and impact assessment in drugs and crime § Map information sources and assessing the capacity and capability of national information-generating infrastructures as well as the utilization of the information gathered in support of drug control and crime prevention governance frameworks § Provide expertise on implementing data collection and surveys on a wide range of issues in the field (epidemiological networks, victimization, corruption, illicit crop monitoring, synthetic drugs monitoring) as well as on forensic data generation.			
Foster and strengthen international cooperation based on the shared responsibility principle in sustainable alternative development, including, where appropriate, preventive alternative development § Enhance capacity of Member States to design and implement sustainable alternative development programmes, including, where appropriate, preventive alternative development programmes, within their broader development context, aimed at preventing, reducing and eliminating the illicit cultivation of opium poppy, coca bush and cannabis § Enhance understanding and use of balanced demand and supply reduction strategies as a means for reducing the illicit drug problem.			
Work with Governments to strengthen their legal and technical capacities to prevent and stop the trafficking of people, drugs, natural resources and smuggling of migrants § Help governments to develop and implement national action plans and strategies on organized crime and related matters § Launch a programme on law enforcement, forensic and judicial capacity-building and strengthening international judicial cooperation to fight illicit trafficking.			
Provide technical assistance in implementing measures in anti-money laundering and countering the financing of terrorism and assisting them in detecting, seizing and confiscating illicit proceeds, as required under UN-related instruments and other worldwide accepted standards.			

SOURCE: Adapted from Ruth G. Teitel, *Transitional Justice Genealogy*, *Harvard Human Rights Journal*, vol. 16 (2003): 69-94; E/CN.7/2007/14-E/CN.15/2007/5, *Strategy for the period 2008-2011 for the United Nations Office on Drugs and Crime*, Note by the Secretariat, *Regional UNODC programmes to promote rule of law and human security* (2008-2015).



TABLE 2
(Cont.)

LEGAL DEVELOPMENTS IN INTERNATIONAL CRIMINAL JUSTICE REFORM AND THE UNODC MANDATE (1945-2015)

AREA/AGENCY	CRIMINAL JUSTICE REFORM IN DEVELOPING COUNTRIES AND COUNTRIES WITH ECONOMIES IN TRANSITION. TECHNICAL ASSISTANCE PROJECT ORIENTATION OF THE UNITED NATIONS OFFICE ON DRUGS AND CRIME: SPECIFIC CRIMINAL POLICY OBJECTIVES 2000–2015
LAW ENFORCEMENT	Capacity-building for law enforcement cooperation against crime, organized crime, including drug trafficking, diversion of precursors and sea piracy (ship riders agreements); corruption, terrorism § Capacity-building to respond effectively utilizing special investigative techniques in the detection, investigation of crime, organized crime, including drug trafficking; corruption § Capacity-building to protect witnesses § Improve border management—measures to include strengthening inter-agency cooperation, information exchange and agency operational inter-action § Enhance the forensic capacity through promoting best practices at scenes of crime and in laboratories.
PROSECUTION	Capacity-building to respond effectively utilizing special investigative techniques in the investigation and prosecution of crime, organized crime, including drug trafficking; corruption § Capacity-building to protect witnesses § Develop and revise domestic standards of professional conduct based on the “professional standards for prosecutors”, and related tools for their effective implementation.
COURTS	Capacity-building for judicial practitioners and central authorities to request and grant international cooperation in criminal matters, including extradition, mutual legal assistance and confiscation § Enhance capacity of Member States to apply international standards § Increased partnerships between UNODC and relevant civil society entities that advance Member States’ capacities to apply international programme to exchange good practices in the prevention of crime and justice for children and youth (as offenders and victims), penal reform and alternatives to imprisonment § Design monitoring system that will enable the judicial leadership to assess the compliance of judges and other judicial staff with the rules and principles of professional units conduct, including overall assessment of indicators of judicial integrity through surveys and qualitative expert assessments, the establishment and capacity building of court inspection, as well as the development of IT based public complaints system.
PRISONS	Upgrade prison infrastructure and corrections operational capacity § Wide application of international standards and norms on the treatment of prisoners/operation of prisons § Assist in the preparation of laws on prisons § Increased capacity to apply international standards and norms on diversions, restorative justice and non-custodial sanctions, where appropriate capacities to apply international standards and norms in accordance with the relevant international conventions and within the established mandates of UNODC § Increase capacity to help Member States to apply international standards on the professional management § Increase partnerships with relevant civil society entities that advance Member States’ capacities to apply the alternatives to imprisonment.
CRIME PREVENTION	Strengthen national capacities for the prevention of crime through diagnostic audits, benchmarking, monitoring and evaluation § Support cooperation mechanisms with civil society organizations and crime prevention actions in schools, and help to strengthen national and local capacities for the prevention of violence and crime against women, including domestic violence § Support community and problem-oriented policing, facilitating the international exchange of experience and good practices in building up police integrity programmes.
CRIMINAL LAW	Apply computer-based training methods in training law enforcement officers on issues not related to drugs, such as human trafficking, anti-money laundering, intelligence led enforcement and crime scene investigation, in order to increase the regional capacity to deal with various forms of trafficking § Training on specialised law enforcement techniques such as controlled delivery, surveillance; support for operational exercises applying new skills § Training, on-site mentoring and practical tools to national law enforcement agencies (such as police, customs or coastguards) and forensic science § Training manual and the guide for strengthening judicial integrity and capacity to train police, prosecutors and judges on how to deal with vulnerable victims and witnesses of crime and provide technical assistance for the reintegration of victim § Comprehensive victim assistance that will provide legal assistance to countries in revising or drafting national legislation.
CRIMINAL JUSTICE EDUCATION	Promote effective responses to crime, drugs and terrorism by facilitating the implementation of relevant international legal instruments § Promote effective, fair and humane criminal justice systems through the use and application of United Nations standards and norms in crime prevention and criminal justice § Provide legal assistance in support of the ratification and implementation of international legal instruments to counter drug trafficking and organized crime (and related instruments on human trafficking, migrant smuggling and firearms control) as well as of relevant United Nations standards and norms in crime prevention and criminal justice, including advice on the accession process, assessing the domestic legal and institutional framework, assisting with the drafting of amendments to domestic legislation and developing and disseminating technical tools, guidelines and model legislation to assist countries in implementing the international instruments.

Nominally, the idea of an holistic approach to the criminal justice system against the background of the increasingly comprehensive socio-economic framework, indeed gradually emerging as sustainable development, is very revealing. Various capacity-building specific objectives inform this well. It is less revealing that this idealistic progressive strategy is fragmented by de facto piecemeal programmatic contributions with quite an unbalance between law enforcement (especially police and border control staff) and the staff of the criminal justice system (especially prosecution and judiciary), between *control* and *prevention*, between *drugs* and *crime*, and last but not least, between alternative development and more embracing sustainable development. There is a *second wave* of various law enforcement (*control*) projects, which involve *container control* (to strengthen measures against illicit drug trafficking) and assistance in strengthening forensic laboratories, extended from drug to crime detection in general.

This fragmentation has been the result of the extra-budgetary influence on the UNODC mandate, while the lack of balance in the above four equations also reflects the global criminal policy approach that has been evolving since 1945.

Against the backdrop of these four phases in the process of criminal justice reform during the post-Second World War period, one can better understand its entire historical background, form, contents and scope. The United Nations crime programme, starting with its first post-war study on the effect of that war on homicide rates, has contributed to all of them from the very beginning. Since the third phase, the mandated contribution of the UN crime programme has gradually been more pronounced. Formally, this happened through ECOSOC resolution 1997/30 on the administration of juvenile justice – the question with which, historically, the UN crime programme has always started its important international engagement, either by inheriting this from its predecessor and/or by pursuing its own. Programmatically, this has always been the most viable entry point for the UN mandate into crime prevention and criminal justice, appreciated internationally.

The above-mentioned ECOSOC resolution emphasized that “*Close cooperation should be maintained between the Crime Prevention and Criminal Justice Division and the Department of Peacekeeping*

Operations of the Secretariat in view of the relevance of the protection of children’s rights in peacekeeping operations, [...] in peace-building and post-conflict or other emerging situations”. But there were also other related developments during the 1990s, about which more below. In the current (fourth) phase, at least two ECOSOC resolutions²⁸⁶ and one General Assembly resolution²⁸⁷ clearly define the UNODC mandate as complementary to the mandate of the United Nations Department of Peacekeeping Operations.

In the light of Table 2, one may now better see how the individual criminal justice reformers shown on pages 261-263 (“Criminologists, criminal justice thinkers and reformers (1764-2010): international and United Nations perspectives”) “*fit*” the post-Second World War criminal justice developments (Figure 7). That figure incorporates also the photos with short information on the ten chiefs of the United Nations crime programme.

Regardless how big they had been or are as individuals, against this background they can now be appreciated in the global intergovernmental context, driven since 1945 by the similarly increasingly global peace and security concerns. This was less visible, if at all, before 1945. Especially at that early time, those reformers had probably been “*expounders of their inner logic*”²⁸⁸ more than anything else. The first stronger manifestations of governmentally-influenced criminal policy ideas and *external logic* seem to emerge during the pre-First World War period.

Since the end of the nineteenth century, that is since the beginning of the theory of modernization originating from Emile Durkheim’s theory of anomie,²⁸⁹ most reformers acted under the former’s influence. Sometimes they acted on the behest of their governments which, however, did not join in any internationally agreed concert. In contrast, the post-Second World War *transitional justice* or the NIEO have been more or less successful adaptations of the theory of modernization, first of all orchestrated by governments through various and evolving international configurations.

Despite the fact that the terms in the row (Figure 1) differ from those in Table 2, they complement one another more than they are different. For example, in Figure 1, *retributive* and *preservative* justice are partly duplicative. In turn, in Table 2, *transitional justice*, at least up to the present, does not include a *culture*

²⁸⁶ ECOSOC resolutions 2004/25 of 21 July 2004, and 2006/25 of 27 July 2006.

²⁸⁷ GA resolution 62/175 of 18 December 2007.

²⁸⁸ Kennedy 2003a:654.

²⁸⁹ Lawrence & Berger 1988:281-313; Burke 2009:114.

of prevention, although in its entire scope from 1945 up to the present, this part of the criminal justice reform movement has been global, albeit not comprehensive.

These primarily academic terms happen to be quite hermetic. Trying to align their meaning with the policy relevant terms in this study, even if with academic ambitions, may lead to overly theoretical discussions. Instead, it should be recalled that some of these terms depend on the concept and method, while others depend on the mandate and authority. Hence they are not identical and may have partly overlapping meanings.

Table 2 does not list all ideas or inform about all criminal law tendencies that are visible with the "naked eye" outside the UN rather than inside. For example, between 2000 and the present, there has been an international tendency toward introducing international humanitarian law solutions which deepen the individualization of criminal responsibility in domestic criminal law for a crime committed on behalf of a State (subjective responsibility based on the concept of guilt in human rights, as a part of ordinary criminal law, and not only of military law), which has been a process coexisting with the modification of the principles of objective responsibility (a kind of "civilianization" of criminal law), but in the sense of diagnosing the social dangerousness of the potential crime perpetrator and relevant preventive measures.²⁹⁰

This tendency could not be found in United Nations law. However, the recommended United Nations crime prevention and reintegration policy for some time advocates the diagnostic of *risk factors* amongst youth who may enter into conflict with criminal law and among adult prisoners eligible for parole.

The above review could be the topic of another study, because the UNODC is only one of several international regulatory agencies which carry out this sort of work. The UNDP, UNESCO and the World Bank, among many others, have similarly been involved in international criminal justice reform. Thus the picture presented here is incomplete and the conclusions that may be drawn from it are very limited.

On the basis of the present study, one can, however, offer another type of conclusion, namely that the academic and United Nations criminological ideas differ in their theoretical base. The *Four Freedoms* of Roosevelt and the three generations of human rights

by Vasak (shown in Figure 1) may carry the same ideological weight, but the latter offers a better theoretical base. Human security has a quite weak theoretical base, and, surely, it is less viable than the *Four Freedoms*. This should be kept in mind, since against the guiding ideas of certain periods, one may better understand the ideological climate in which certain criminal justice reforms had started. This does not mean that all criminal justice reforms were prompted by such ideas, nor that these ideas implemented them. The autonomy of a single criminal justice reformer and academic is also a factor which should be taken into account when studying who and why this someone went *with* or *against* the "external logic".

Moreover, the role of some academics and practitioners was greater than that of others, and some of them really acted in a double capacity. In that broader perspective, listed in row no. 3 in Figure 1 is the academic contribution of Enrico Ferri. His *scuola positiva*, advocating the primacy of crime prevention over repression, must also be seen in the context of the considerable practical influence he had as an Italian parliamentarian, editor of a newspaper and, last but not least, author of the Argentinean penal code of 1921.

Certainly he was also a criminal justice reformer, as much as Manuel López-Rey. Both were legal reformers engaged in introducing a new world order (positivism / social defence / NIEO), and perhaps (and above all) great experts acting on the border of science and international criminal justice reform, together with several others whose interest in it was even more practical.

Above row no. 11 there is one more row showing the development of Polish criminological (positivist) thought since 1886 (row no. 10). It lists first and major criminological publications, some of which as co-edited works. Among the first ones listed is January Waclaw Dawid's (1859-1914) experimental pedagogy book, "*About Moral Infection*", written in line with the then-popular imitation theory of Gabriel Tarde, the French sociologist, and the precursor of Sutherland's differential association theory. This was followed by the academic theoretical and voluminous philosophy-of-law works of Leon Petrażycki (1889-1931), the sociological works of the Polish-American Florian Znaniecki (1919-1954), and the first book on the theory of criminal policy²⁹¹ by Rabinowicz/Radzinowicz,²⁹² and works by Stanisław Bata-

²⁹⁰ Slobogin 2005.

²⁹¹ Wróblewski 1922.

²⁹² Rabinowicz 1933.

wia (1898-1980) who had charted the development of Polish clinical criminology.

Row no. 10 also shows Polish periodicals issued after the Second World War which either through their spearheading articles or through the organization of competitions for the best academic legal dissertations, facilitated the growth of criminology. In this context, the work of Dr. Krzysztof Poklewski-Kozieł (1915-2006), a long-time Secretary of the most prominent Polish scientific journal, "State and Law" (published by the Polish Academy of Sciences), a great lawyer, criminologist and anti-death penalty advocate, should be acknowledged.

Separately and surely, international criminological articles, books and journals either written or edited by Brunon Hołyst, and others written by Jerzy Jasiński, should also be acknowledged here, followed by those by Emil Pływaczewski.

Despite its domestic and international accomplishments, Polish positivist criminology since the beginning of 1990s has started to be politically marginalized. It has not been able to convey successfully its criminal policy recommendations to the politicians. Thus it "joined the club" of British,²⁹³ US²⁹⁴ and other liberal criminologies,²⁹⁵ in that it is disregarded by the conservative politicians who prefer to cater to demands for "law and order" than to scientific recommendations on the humane and effective response to crime.²⁹⁶

In the context of the outstanding Polish personalities, widely known in criminal science, it is rare to mention the criminological contribution, personal heroism and martyrdom of the Polish juvenile justice reformer Janusz Korczak (1877-1942), a physician by profession, called the "Polish Gandhi".²⁹⁷ Shortly after the First World War, Korczak was a member of the U.S.-Polish Committee for the Rescue of Children, engaged in humanitarian assistance. During the Second World War he was murdered, together with the 200 orphaned Jewish children he took care of in the Nazi concentration camp Auschwitz.

Korczak's pedagogical thought, which originated before the First World War, had first been published in Poland in 1920 in his book, "How to love

children?" (Jak kochać dzieci?). His contributions developed under the influence of Polish, British and German works.²⁹⁸ He drew his polemics from the German works on eugenics,²⁹⁹ its proponents and other bio-social criminologists (e.g., Cesare Lombroso, 1835-1909 *L'uomo delinquente*), whose names are listed in row no. 2 in Figure 1.

Mention is made even less frequently of the contribution of the Tunisian Ahmed Othmani (1943-2004). This tortured Arab socialist and human rights activist worked against the death penalty in the world, and managed from London the non-governmental organization Prison Reform International (since 1989 Penal Reform International). This organization has been advocating the humane treatment of prisoners in developing countries and countries in transition. The United Nations has honoured both in a special movie about international criminal justice reformers shown at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice (2005).

One person who is remembered more often, also for his criminal justice reform work, is George Soros (1930-), a U.S. billionaire of Hungarian descent who finances this work through his Open Society Institute, a non-governmental organization in consultative status with the ECOSOC. Its work focuses on broadening the access to justice in developing countries and countries in transition. Among the issues is the overcrowding of prisons, an issue that is quite well popularized in criminal policy and media circles.

The name that is most often remembered in connection with criminal reform is the Briton John Howard (1726-1790), author of *The State of the Prisons in England and Wales with Preliminary Observations* (1777). His observations, based on his visits to British and other European prisons, have earned him and his many followers the qualification of "penitentiary tourists" whose work preceded the phase of international penitentiary congresses.³⁰⁰ He had a considerable positive influence over the British prison system, later extended to the system of a number of other European countries.

Although this study does not describe the history of the evolution of systems for the enforcement of

²⁹³ Radzinowicz 1999.

²⁹⁴ Garland 2000.

²⁹⁵ Kury & Shea 2011.

²⁹⁶ Tyszkiewicz 1970; Kossowska et al. 2001.

²⁹⁷ Wołoszyn 1978. See further Kohlberg (1981:401-408), who devoted a special article to the memory of Korczak.

²⁹⁸ Falkowska 1983:342-343.

²⁹⁹ Jörger 1905:494-500.

³⁰⁰ Dupont-Bouchat 2002.

the deprivation of liberty, it should be briefly noted that this started with no classification of prisoners at all. The evolution then moved on to a system of total solitary confinement (the Pennsylvania system), and later to a system in which uniformed prisoners worked during the day in groups and were kept in solitary confinement at night, with enforced silence at all times (the Auburn system). Finally, it changed into the progressive system of a gradual mitigation of the conditions of imprisonment, nowadays most popular across the world. It must suffice to say here that practical prison reforms on the above continuum of progressive developments have started with the separation of prisoners from one another on the basis of their gender, age, classification of committed offences and degree of their social degeneration (recidivism), then on the respective improvements in their treatment, including hygiene.

The above developments owe nothing to the theory of penitentiary (penology). By and large they have materialized thanks to the reformers who at the various penal and penitentiary congresses worked on practical issues for the promotion of the humane treatment of prisoners. The involvement of academics was negligible.³⁰¹

A philosophical eye on the origins and evolving rationale behind these systems was cast in *“Surveiller et punir: Naissance de la Prison”* (Discipline and Punish: The Birth of the Prison, 1977) by the Frenchman Michel Foucault. He argues that progressive treatment regimes represented the first step away from the excessive force of the sovereign, and towards more generalized and controlled means of punishment.

Foucault's book was prompted by the post-Howard contributions to prison reform of another Briton, the architect and lawyer Jeremy Bentham (1748-1832).³⁰² Bentham developed the idea of a panopticon-built type of prison facilitating visual control of inmates and the theory of a utilitarian punishment calculus which can deter potential offenders.

About the time when Bentham made his contributions to prison reform, two Frenchmen noted earlier, Tocqueville and Beaumont, aware of the deplorable prison conditions in their country, reported on the results of their mission to the United States in the aforementioned *“The Penitentiary System in the United States and Its Application in France”*. They sought inspiration from the United States for prison reform

in France, which, even though it had been initiated earlier than in Great Britain, had not been as successful as there. Both authors scrutinized, inter alia, the development of the American prison system, i.e. the Pennsylvania and Auburn systems. However, since their real interest was to pursue a plan much closer to their hearts, namely a study on the spot of the social and political institutions of the young republic, that report did not really influence criminal justice reform, let alone in France.³⁰³ It should therefore be recalled that for Tocqueville and his co-author, their visits to US prisons had taught them little about that nation or about the administration of prisons in democracies.

This missing linkage was brought to light through the works of Enoch C. Wines (1806-1879), a truly internationally-oriented U.S. prison reformer. First, he postulated the internationalization of the penitentiary movement through the establishment of an international academy. Impressed by this idea, Franz Von Holtzendorff, professor of international law and criminal law at the Royal University in Munich (Germany), wrote to Wines³⁰⁴ in the following superlative language:

“My Dear Dr. Wines,

Considering ... your idea to found an international academy for the study of prison discipline and prison reform, I am struck with the greatness of your scheme, and the difficulty you will have to meet in carrying it out. It is a truly American conception, no European Government would venture to give it a fair support. Is there among your countrymen any individual noble enough to appropriate a considerable sum to the object you have in view? If so, his name would belong to the Pantheon of humanity. Your country is just now celebrating the centenary glory of her Independence. The memory of that time could in no better way become sanctified than by setting an example of how you are anxious to keep your position in prison reform. Is it not strange that the first impulse towards political freedom has been associated by Americans with the first serious trial in prison reform, belonging to Pennsylvania? Before the war of Independence, the prison might have been said to be the final destiny of all the antagonists opposing tyrants. The modern idea is, Liberty even for the prisoners! Such are the ways of Providence: first, in the beginning of mankind

³⁰¹ Dupont-Bouchat 2002.

³⁰² Inventor of the term “international law” (1786-1789), see further Janis 1984.

³⁰³ Sellin 1979:xv.

³⁰⁴ Wines 1880:706-707.

the prison allotted to the martyrs of liberty; and now liberty as the end of prison reform! All countries have received their particular task in the common work of human civilization. Your country should remain the foremost in the continuance of her glory won in the practical inauguration of prison reform. The foundation of such an academy as you are undertaking to call into life would form a wonderful machinery in promoting steady progress. I need not say how deeply European statesmen and politicians would be interested in the final triumph of your efforts.

Believe me, my dear Dr. Wines,

*very faithfully yours,
Fr. Von Holtzendorff."*

Second, at his initiative, the first international rules on the treatment of prisoners had been elaborated. Initially proposed and developed by earlier individual prison reformers in Europe and the United States, these rules were first adopted in 1870 by the American Penitentiary Association (now the American Correctional Association, a non-governmental organization in consultative status with the ECOSOC). They were distributed at the already-mentioned First Congress in London (1872), went as a draft through the League of Nations and were eventually adopted, but not until at the First United Nations Congress in London (1955).

As we recall, Tocqueville had chosen to concentrate on governance merely as the secret of Providence, and had not made any connections between governance and penal matters. But was he really so disconnected from his own report and stupefied, as alleged? Or, unlike Franz von Holtzendorff, had he simply been overwhelmed by what has perhaps until this day been a dominant international paradigm, that *prison reform* cannot be central to *democracy*, and that similarly as today, *crime* is still regarded as an internal affair of a State rather than as a problem of peace and security and global governance?

Depending on the answer to the above questions, one can accordingly contextualize the assessment of international prison reform. In the opinion of some experts, the International Penal and Penitentiary Commission "realized that it should be something more than a co-coordinating centre for internation-

al penal discussion. It was felt that the Commission should also explore the possibilities of an international juridical order and to expedite the improvement of penal administration in its member States ... but their practical importance should not be exaggerated".³⁰⁵

This limited view of the role of criminal justice globally fits in well with the traditional paradigm, one that can even be found in an authoritative French two-volume commentary on the UN Charter. In that text³⁰⁶ there is not a single direct reference to the UN crime programme mandate, let alone to General Assembly resolution 46/152 (Annex) of 18 December 1991 on the *Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme*, developed in 1990 at the ministerial meeting held in Versailles (France)! This may suggest that the aforementioned academic conceptualization of transitional justice developments since the Second World War up to the present – the phase of global justice³⁰⁷ – has been ahead of the bureaucratic realities of international crime prevention and criminal justice cooperation and the perception of *crime* as an internal affair of a State. No wonder, therefore, that *old school* United Nations diplomats have difficulties in juxtaposing *criminal justice*, sometimes saying: "I understand what 'justice' means, but 'criminal'?"

Perhaps as a result of this dominant traditional paradigm on crime prevention and criminal justice, no international penitentiary academy was established before the Second World War. However, the criminal justice reformers – foremost among them Wines – had done quite a lot for the humanization of penal and criminal policy.

Among these criminal justice reformers, the developer of probation, John Augustus (1785-1859), should be mentioned. His work suggested that if the offender's degree of demoralization is not deep, he or she could be resocialized in freedom, controlled through community orders and supervision, both imposed at the sentencing stage. Since 1841 Augustus practically implemented the policy of release of prisoners on bail and for supervision. Since 1910 this policy has been widely accepted in the United States. Other countries followed suit.³⁰⁸

At about the same time, similar measures were developed in Australia, Ireland and Spain: the conditional release (parole) of prisoners, who could not be eligible for probation. This system was initially deve-

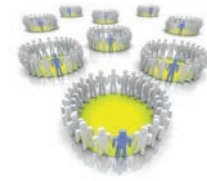
³⁰⁵ Radzinowicz 1945:487.

³⁰⁶ Commentaire 2005.

³⁰⁷ Teitel 2003.

³⁰⁸ Binder et al. 1997; Klein 1997.

International Crime Prevention and Criminal Justice Congresses (1871-2010): Reflections by Commentators over the Years



1871

Far from looking upon those great assemblies as wholly useless, I must acknowledge that the meeting of so many men, so distinguished for their learning and virtuous purposes, and the mutual interchange of ideas, of practical views and projects, cannot fail to give a powerful impulse to the advancement of science, and widen the individual horizon beyond the sphere of each individuality. But this must not be the only object we aim at. The compact, united forces of eminent men, led by such lofty desires, must necessarily and ultimately attain the most advantageous results.¹

1950

From the optimism of Enoch Wines in 1872 to the pessimism of 1935, Professor Teeters has given us a generous and solid example of the views, opinions, and philosophies delineated by world-renowned experts in attendance at the eleven International Penal and Penitentiary Congresses that have thus far been held. These deliberations, for the first time collected and published in English, are of uneven value. Many of the discussions in the light of modern knowledge appear to have only archaeological interest and many appear completely irrelevant to any understanding of the basic purposes of penal policy and practice. One gets the impression that whatever may be transacted at such stratospheric levels remains highly academic. International exchange of information is certainly desirable and worthwhile, but this reviewer could find very little definite information that would be significant or pertinent for the American penal system with the possible exception of the discussion on the disposition of juvenile offenders and the justification of the indeterminate sentence.²

1955

The phoniness of the UN, the substantial incompetence of its secretariats, and the rootlessness of an international organization were strikingly brought home to me³.

2000

The United Nations Congress on the Prevention of Crime and the Treatment of Offenders have generally been regarded as the most successful, the least politicized, United Nations efforts to shape global policy. They have served as a free-enterprise-zone market of global ideas on what to do about crime, and on how to humanize crime prevention efforts. One representative at the 36th session (in 1981—*added*) of the General Assembly, in commenting on the Sixth UN Congress, yet metaphorically speaking for all of the UN Congresses, and for all of the delegations at these congresses, summed it up admirably:

“The Congress was a resounding success and an example of the United Nations at its very best. It brought together experts from all regions of the world to exchange information and experience on a wide and complex range of criminal justice issues ... As a result of their committed and highly professional participation in discussions, important resolutions and conclusions were arrived at by consensus”.

“Recent scientific evaluations have documented the immense global benefit which the UN Congresses have yielded.”

...

“[C]onferences, both large and small, including the United Nations quinquennial congresses, have,



¹ Martini Bertrani-Scalia, Historical Sketch of National and International Congresses in Europe and America (in:) *Transactions of the National Congresses on Penitentiary and Reformatory Discipline*, Cincinnati, Ohio, Oct. 12-18, 1870, ed. By E.C. Wines, Albany, N.Y.: Weed, Parsons and Co., Printers, 1871:275.

² J. P. Shalloo, Review of the book by Negley K. Teeters, *Deliberations of the International Penal and Penitentiary Congresses: Questions and Answers, 1872-1935*, Philadelphia, Temple University Book Store 1949, *Journal of Criminal Law and Criminology*, Vol. 41, No. 1 (May – June 1950): 82.

³ Sir John V. Barry (1963-1969), Australian justice of the Supreme Court of Victoria, and an expert in criminology, quoted by Finnane (2006: 415).

over time, formed a social system of their own. These social systems have their own distinct culture and their unique elaborate rituals. The word “culture” is used here in its sociological and socio-anthropological sense. It refers to a set of norms in the wide sense and to forms of behaviour that are related to these norms ... [C]ulture is not “discovered” or created at conferences, since the participants bring their cultural patterns with them. However, it is at the conference that these patterns are refined and blended together.”

...

“[C]ongresses are not limited to official governmental delegations of States, as participation is extended to a great number on NGO representatives and members of relevant professional organizations, as well as individual experts (i.e., university professors, criminologists, penologists, and criminal justice educators, as well as judges, prosecutors, police and probation officers, and prison administrators).”

...

“The unique character of the Congresses, in which participants combine political leverage with highly professional and technical skills and expertise, in which political debates that take place in the Plenary and the Committees are blended with the practical discussions held during the workshop and the ancillary meetings organized in co-operation with the NGOs, all this makes the Congresses a very special forum for the world-wide sharing of knowledge, exchange of experience and transfer of know-how, with the clear demonstration that crime and delinquency are universal concerns that bridge cultural and governmental differences.”

...

“Finally, as our friend Sir Leon Radzinowicz has so clearly stated in his ... book (*“Adventures in Criminology”*, Routledge, 1999), you can become a partner of the great “adventures of criminology” ... Much has been achieved, in spite of the limited resources available, when one compares the budget of such congresses with those of other major United Nations conferences. However, much more can be achieved if, within the limits of the culture of the UN congresses, we are able to ensure the practical follow-up of their recommendations, in terms of their application by the various countries of the world, as well as of their implementation by the United Nations itself.”⁴

2010

There was extensive discussion on the issues related to the organization of the Twelfth Congress and ways to improve the organization of and preparations for future congresses, including further consideration of the relationship between the Congress and the Commission. Some speakers referred to the need to better organize the work of the Congress and to select fewer topics for consideration and noted that the agenda could be structured differently to allow for more focused and interactive discussions. Ways to improve the organization of the high-level segment and its timing with a view to optimizing the participation of high-level officials and the process of drafting the outcome declaration were also discussed. It was recommended that the preparations for the Thirteenth Congress should commence as early as the twentieth session of the Commission, with a view to ensuring an optimal outcome of the Congress.⁵ ■

⁴ Excerpted from G.O.W. Mueller and Eduardo Vetere, The UN’s Global Gatherings on Crime Prevention and Criminal Justice: Some Basic Maxims, *HEUNI Newsletter. Special Supplement (January 2000)*, including the related English-language translation of an article by Prof. Thomas Mathiesen in *Nordisk Tidsskrift for Kriminalvidenskap* (Vol. 73, No. 2, April 1988:157-160), translated by Dr Matti Joutsen.

⁵ E/2010/30, Commission on Crime Prevention and Criminal Justice, Report on the nineteenth session (4 December 2009 and 17-21 May 2010), ch. V, § 8.

loped in Australia by Alexander Maconochie (1787-1860), in Ireland by Sir Walter Crofton (1815-1897) and in Spain by Manuel Montesinos (1796-1862). Ten years after the death of Montesinos, Crofton honoured him at the First International Penitentiary Congress in London by calling him “*the inventor of the progressive system*” in prisons. The term parole entered into international use at the Eighth Congress in Washington (1910).

Since 1995, the date of the adoption of the UN *Standard Minimum Rules on Non-Custodial Measures* (the *Tokyo Rules*), which include alternatives to imprisonment (such as probation and parole), probation and parole have been promoted and implemented across the world, in part thanks to these rules. In 1997 the first UN book appeared on the promotion of probation internationally.³⁰⁹

Amongst female criminal justice reformers, mention should be made of the Briton Elizabeth Fry (1780-1845), known for her work with female prisoners. Concerned about the very adverse prison conditions in which they served their sentences, in 1827-1845 she made recommendations to the Governments of Great Britain, France, the Netherlands, Canada, Prussia and Russia aimed at improving their treatment. A few years before the first Congress of Penitentiary Sciences she submitted to the king of France, where prisons were in extremely bad condition, the following recommendation: “*When thee builds a prison, thee had better build with the thought ever in thy mind that thee and thy children may occupy the cells*”.³¹⁰ In 2010 the Twelfth UN Congress (and subsequently the General Assembly) adopted *The Standard Minimum Rules for Women Prisoners and Non-custodial Measures for Women Offenders* (the *Bangkok Rules*), the development of which started in 2008 at the initiative of Thailand, the host in 2005 of the Eleventh Congress.³¹¹

Also another United Nations legal instrument, the *Code of Conduct for Law Enforcement Officials* (1979), may trace its origins to a British genesis, this time by Sir Robert Peel (1788-1850), who is regarded as the author of the modern model of policing in the world. In 1822-1827 he started reforming the police by facilitating amendments to the British criminal

law, and by establishing the State police force (1829). In its code of conduct he formulated the principle of the ability of the police to perform their duties dependent upon the public approval of police actions. The police must secure the willing co-operation of the public in the voluntary observation of the law, in order to be able to secure and maintain the respect of the public. The degree of the co-operation of the public that can be secured diminishes proportionately to the necessity of the use of physical force.

The UN code accepted this in its articles 1 and 3. In this connection, in art. 5 it prohibited the infliction, instigation or tolerance of any act of torture or other cruel, inhuman or degrading treatment or punishment, separately postulated since 1764 by Beccaria.

The League of Nations, and, later, the United Nations have both further internationalized this idea. The difference between the two is, however, that the United Nations has not limited itself to normative work on the police code of conduct, but has been dealing also with its practical implementation. This may be a *sign of the times* rather than a superior approach, since *technical assistance* seems to be a type of work invented after the Second World War, in the period of decolonization.

XI Technical assistance activities

In the United Nations crime programme, technical assistance activities began in 1947 in the Secretariat's programme in the fields of child welfare and welfare administration. At the end of 1948 technical assistance was extended to all other fields mandated by the Social Commission. This happened even before the General Assembly resolutions instituting technical assistance for economic development,³¹² public administration³¹³ and social welfare.³¹⁴ Thus one may say that the UN crime programme has not only spearheaded technical assistance generally, but has also been a forerunner of the concept of sustainable development, for what better than child welfare can serve future generations in preserving and expanding their developmental rights?

³⁰⁹ UNICRI 1997.

³¹⁰ Johnson 1976:61.

³¹¹ A/65/229 of 21 December 2010. The Twelfth Congress also discussed the viability of a new United Nations convention on the treatment of prisoners, but eventually the Commission on Crime Prevention and Criminal Justice (2010) mandated the starting of work in 2012 on the updating of the Standard Minimum Rules.

³¹² General Assembly resolution 200 (III) of 4 December 1948.

³¹³ General Assembly resolution 246 (III) of 4 December 1948.

³¹⁴ General Assembly resolution 418 (V) of 1 December 1950.

The system-wide application of technical assistance continued through the 1950s and 1960s. Its focus had remained on economic technical assistance, rather peripherally addressing *criminal*, let alone *social justice*. Looking back at its programme and method of those years, experts called that assistance “*paternalistic*”, involving transfer “*from the*

knowledgeable West to the rest of the world”.³¹⁵ During the 1970s the more “*equitable*” term of technical *cooperation* was used.³¹⁶ Although the original term has regained its currency, its meaning now only implies that the leadership in and the ownership of reforms belongs to the country requesting assistance.

BOX 10

Early Years of United Nations Crime Prevention and Criminal Justice Technical Assistance¹



Introduction

Direct advisory services to Governments in the prevention and control of crime have been a distinctive aspect of the work of the United Nations in this field from the earliest days of the Organization. Indeed, under the system of advisory services instituted in 1946, direct technical assistance to Member States in the advancement of policy and practice in what was then known as social defence antedated the much larger and better-known programmes of technical assistance in economic development.

Under the programme ... provision is made for fellowships and scholarships, advisory expert consultants or missions, seminars and training programmes, experimental and demonstration projects, the making available of technical publications and films. During 1947 and 1948 services under this programme were provided principally in the fields of child welfare and social welfare administration, but since the end of 1948 such services have been extended to all fields of interest ..., including the prevention of crime and the treatment of offenders.

A. General technical assistance principles

The general working principles underlying the various parts of the United Nations technical assistance programme are essentially similar in broad outlines.

These include the principle that technical assistance is rendered only on the basis of requests received from Governments. Technical assistance is furnished only to or through Governments, and the kind of services to be rendered to each country is decided by the Government concerned. Technical assistance may not be a means of foreign economic and political interference in the internal affairs of the country concerned. Countries desiring assistance are expected to perform, in advance, as much of the work as possible in order to define the nature and the scope of the problem involved.

Any request from, for example, a ministry of justice must pass through a single national office of that country (increasingly often the ministry of planning) and be fitted into a national plan for requests in accordance with the whole gamut of governmental activity. Whether a request is made for assistance in crime control depends, then, on the choice of national priorities. If a minister cannot be adequately persuasive — or, more precisely, if a Ministry cannot be convincing as to the importance of the request, especially as it relates to national development — its request for crime control assistance will ultimately be dropped at the national level and never reach the United Nations.

While the system of supplying relatively long-term expertise (one to two years) continued to be part of the United Nations technical assistance programme,



¹ Excerpted and combined from: “The work of the United Nations in the field of the prevention of crime and the treatment of offenders”, *International Review of Criminal Policy*, No. 1 (1952):15-16; Edward Galway, United Nations technical assistance in crime prevention and control, *International Review of Criminal Policy*, No. 34 (1978):22-25.

³¹⁵ Weiss et al. 2005:60.

³¹⁶ Ibid. 2005:201-3.

in 1970 the United Nations created two posts (one supported by a special grant from the Swedish Government) for individuals to be made quickly available for brief (not more than one month) high-level consultation with Governments on issues then facing them in the field of the administration of criminal justice. From 1970 to 1974, these two individuals (known as inter-regional advisers) responded to requests from over 40 countries. A most encouraging aspect of these requests was the high number that focused on evaluation, research and planning.

Under the original enabling legislation, United Nations technical assistance in the criminal justice field was available to all member countries; a remarkable feature of the early years was the extent to which economically advanced, industrialized countries availed themselves of the Programme.

B. Lessons learned

On the basis of experience hitherto gained, the United Nations fully recognizes that, as a matter of general policy, technical assistance in the field of the prevention of crime and the treatment of offenders should not be undertaken in an uncoordinated or piecemeal fashion, but should be planned on a comprehensive scale, or at least with due recognition of the total problem. A total view of the goals and of the main directions of future planning and development constitutes a prerequisite to the realistic planning of any particular segment of an existing system of treatment of offenders. It follows that technical assistance with respect to specific problems in the field of the prevention of crime and the treatment of offenders is more appropriate in the case of countries in which long-range objectives have already been defined, and where technical assistance is required primarily with a view to the detailed planning of specific parts of a programme which has already been formulated in broad outline. In the case of the lesser developed countries, on the other hand, it would seem to be particularly appropriate for technical assistance in this field to be based on the work of survey missions for the purpose of assisting governments in defining long-range policies and programmes.

In many countries, ministries of justice, or their equivalent, wished to set up research and planning bureaux. In the establishment of such facilities, the crime control field had lagged greatly behind other units of government — especially behind those involved in economic development but even behind those in such social fields as health and education. Why this should have been the case is too complex to analyse satisfactorily in a brief article on technical assistance. One factor, it can be said, is that since the crime control field had been viewed as being outside the “productive” sphere of government, it had not been drawn within the guidelines for the national developmental process — a process that requires evaluation and planning. It can also be said that administrators and professionals in the field had not been adequately sensitive to the implication of the existence of alternatives and options; many persons and units were functioning with very little communication or collaboration and often at cross-purposes. Then in its turn the incapacity — the lack even of motivation — for research and planning had held back the crime control field from participation in the long-range national developmental process — to crime control’s great detriment, if for no other reason than that, increasingly, the great bulk of national resources were being directed to those activities carried out under national development plans. Fortunately, in many countries this gap is being overcome (sometimes, perhaps remarkably, at the prodding of the planning ministries) and in the technical aspects of this development the interregional advisers have had a significant role to play.

C. Conclusion

This is believed to have come about through a greater realization of the interrelatedness of all the efforts of Governments in the prevention and control of crime and, perhaps especially, the acceptance that crime and society’s approach to it and its perpetrators are intimately bound to the socio-economic fabric of the country.

Perhaps the most important factor — and a difficult and subtle one — is the status, authority, relevance and credibility of the crime control field itself, nationally and internationally. ■

The breakthrough happened in 1970 when two special posts of United Nations interregional technical advisers on crime prevention and criminal justice were established. In 1978 the work of the technical advisers was incorporated into the newly created Department of Technical Cooperation for Development (DTCD), to be known later as the Department for Development Support and Management Services, and presently the Department of Economic and Social Affairs (DESA). However, already at the time of the existence of the DTCD, at the end of the 1980s, the technical cooperation mandate was transferred from it to the United Nations Crime Prevention and Criminal Justice Branch. Presently, United Nations crime prevention and criminal justice technical cooperation is a full-fledged programme backstopped by several units within the UNODC, originally involved in the development of technical cooperation against drugs.

Between 1970 and 1974, technical advisory services were delivered by Edward Galway (Ireland/U.S.) and Torsten Eriksson (Sweden), earlier Director-General of the Swedish prison administration, author of a book on penal reformers (1976) and previously expert on the UN Committee on Crime Prevention and Control. Both operated out of UNSDRI (now UNICRI) in Rome. After an interval of seven years, the next advisors were Pedro David (Argentina; 1981-1992), Matti Joutsen (Finland; 1993), Vincent del Buono (Canada; 1994-1998), Jean-Paul Laborde (France; 1999-2001), Fausto Zucarelli (Italy; 2002), Mark Shaw (South Africa; 2002-2005) and Sandra Valle (Brazil; 2002-2011).



Picture 30. At the expert group meeting on "Mass Media and Crime Prevention" hosted by the Naif Arab University for Security Sciences (NAUSS, Riyadh, The Kingdom of Saudi Arabia, 1994). Among the participants are Matti Joutsen and Terhi Viljanen (HEUNI; second row on the left) and Mohsen Ahmed (NAUSS)

XII Chiefs and their Office

It is not entirely clear who first headed the UN crime programme (originally called the “Social Defence Unit”): it was either Sir Leon Radzinowicz, a British criminologist of Polish origin,³¹⁷ or the American criminologist Benedict S. Alper.³¹⁸ Alper’s original incumbency appears to be confirmed in the biographical information about him.³¹⁹ The third Chief was Paul Amor (France; 1950-1952). His successor was Don Manuel López-Rey (Spain; 1952-1961). The fifth Chief was the aforementioned Edward Galway (1961-1966). He was succeeded by Georges Kahale (Syria; 1966-1968). The seventh Chief was William Clifford (British/Australia; 1968-1974). His successor was G.O.W. Mueller (United States; 1974-1981), who was succeeded by Minoru Shikita (Japan; 1982-1986). The last, tenth chief, was Eduardo Vetere (Italy; 1987-2005).

Photos of the ten programme heads, with short descriptions of their UN background, are provided on pages 261-263 of this book. Their biographies are contained in a separate section at the end of this book. Some of them served in the “Chief” capacity briefly, but all of them had related United Nations involvement (whether as officers of United Nations congresses, experts/consultants or UNSDRI/UNICRI staff members). Their combined United Nations accomplishments are impressive. Their academic records vary from very modest (e.g., Amor and Kahale) to eminent (Radzinowicz, López-Rey and Mueller). Conversely, their practical criminological experience (e.g. that of Amor, Alper and Kahale) has been immensely relevant to the United Nations.³²⁰

Those chiefs whom I have known personally were more often than not, personalities (role models) in their own right, and hardly fitting what Kretchmer-Sheldon and Eysenck³²¹ have meant in their theories.

For example, an obituary reflecting on Radzinowicz notes that “*He was not always good at human relations but there was, in his retirement, a mellowness about him. Some thought it stemmed from*

guilt, long overdue, for the appalling way in which he had treated junior colleagues ... It was not in his nature to be a tyrant, for he had too much humanity; he was just uncommonly ill-tempered, especially when he thought that he had been thwarted, when his behaviour degenerated to the level of any departmental bully. He despised weakness in others and respected those with the courage to stand up to his tantrums”.³²²

Regarding the fourth Chief (López-Rey), as a result of his management style of the Section of Social Defence, there were “*clashes between the persons at the top level*”.³²³ Consequently, a plan was developed to “*offload*”³²⁴ him, by sending him to head UNAFEI, rather than allowing him to continue heading the Section.

Comments on other chiefs were no less disheartening. For example, Radzinowicz commented on Clifford that “*He was not a criminological star*”,³²⁵ and Shikita commented about another Chief that he was “*lazy*”.³²⁶

From these examples, one can see that the United Nations Secretariat has neither been a “*society of saints*” nor a “*perfect cloister*” (Durkheim), but rather a volatile melting pot of good and bad ideas, visions, ambitions, characters, vested interests and personal skills. Another truth is that one does not need to be a “*criminological star*” to become a good United Nations manager. What matters more in the latter function is the work ethic, the ability to delegate authority and network, the ability to sell the results of one’s own work, and honesty – probably the hardest feature in the world so heavily and dynamically influenced by politicking and the competition for resources and favours.

The chiefs had different work habits. The chiefs could be *day* or *night* persons, or neither a *day* or *night* person, coming as they did from various cultures where, in some cases, time was not of the essence in an organization working on a 24/7 basis. In other cases, such as with Radzinowicz, Mueller, Shikita and Vetere, they shared to a considerable extent the same hard work ethic, despite different Western

³¹⁷ Hood 2001:652.

³¹⁸ ASA Footnotes 1994:13.

³¹⁹ Alper & Boren 1972:221.

³²⁰ Alongside every chief’s biography there are also alternate ones by the very many contenders who did not make it to that post. Some of them were experts of the UN body advising on crime prevention and criminal justice matters, others were recommended by their Governments.

³²¹ Regarding a few criminologists who studied personalities, see Figure 1.

³²² Morris 2000.

³²³ *Ibid.*:240.

³²⁴ Finnane 2007:39.

³²⁵ Radzinowicz 1999:407.

³²⁶ Shikita 2004:113.

and Eastern mind sets. Interestingly enough, those who wrote their memoirs³²⁷ or some shorter accounts of their stint with the United Nations³²⁸ still display stunning differences in Western and Eastern perspectives at the United Nations, and how tenuous it is to bridge these perspectives in the period of globalization.

One should remember that until the end of the 1990s, preceding a major United Nations internal reform, the UN staff could have benefited only from a very limited number of rudimentary management and enculturation training courses. Until that time, the United Nations had been the Organization with a collectivistic culture. It required extensive consultations among the staff and the delegations of Member States, but the Organization's universalistic ideas and management practices had not been systematically and systematically developed and pursued. *Collaborative negotiation training* has been introduced in the United Nations during the mid-1990s, and the very concept of it had started to be implemented in the Western academic and business world only a few years earlier. The UN staff learnt the hard way how to interact among themselves with different ethnic, religious and cultural background. Consequently, one has to take a note of the compliment paid to Amor, that he was "*intellectually free of prejudice*",³²⁹ in a situation where otherwise human *chemistry* worked to a limited extent between the (incumbent) chiefs and the other United Nations staff.

In addition to the history of strong rivalries among the chiefs, there is also a history of other *world views*. Perhaps the most glaring example of the latter is Alper's removal from the UN during the McCarthy era in the USA.³³⁰ Other contentious cases carried lesser political weight (López-Rey and the NIEO), perhaps because the United Nations Secretariat became more independent from Member States than it had been in its nascent time. But this study is really and mostly about the other side of the work of the essential staff members of the United Nations. Their biographies document just that.

Their professional and political background serves as evidence of the time in which the United Nations called for their service. Radzinowicz's adverse

experience in Poland with teaching positivist criminology led him to emigrate to the United Kingdom. There he became a prominent and prolific academic with very considerable influence on penal policy both in the United Kingdom and abroad. The experience of Alper and Amor during and after the Second World War made both keen protagonists of the humane treatment of prisoners around the world. The respective academic record of López-Rey and Mueller, comparable only to that of Radzinowicz, has exerted a considerable influence on the international development of the *social defence* movement. These five together shared strong anti-Nazi sentiments (Mueller was a U.S.-naturalized German citizen).

Shikita's prosecutorial career and his drive to internationalize Asian crime prevention perspectives has been a landmark in bridging other regions of the world. Vetere's distinguished and long United Nations service, involving several field postings, signalled the evolving competencies in United Nations crime prevention and criminal justice technical assistance in the context of global peace and security. Whereas the Congo peacekeeping experience of Kahale and Clifford (1961-1963 and 1964-1966, respectively) might have been a coincidental background to their heading of the United Nations crime programme, in the case of Vetere (1992-2001) it had been at the foreground (Cambodia, Iraq and Western Sahara). While this may have been a coincidental career development path, nonetheless it is quite telling how the United Nations looks now at the global peace and security picture. Crime prevention and criminal justice have eventually entered it. With their different professional experience all ten heads had input their expertise into the United Nations crime prevention and criminal justice programme, as a result of which the programme has developed considerably and produced impressive accomplishments.

These names (whether of criminal justice reformers / technical advisors or heads of the UN crime programme, etc.) alone matter more in the context of the machineries supporting them (and the UNODC is one such "machinery"). Among those people were some who may be called "*moral entrepreneurs*". But there were and are also rank-and-file individuals for

³²⁷ Radzinowicz 1999; Shikita 2004.

³²⁸ Mueller & Adler 1995.

³²⁹ Arpinalage 1985:165.

³³⁰ He was known for his pro-Soviet sentiments. His wife was working for the Council of American-Soviet Friendship. For her and him it was "*very important to have the Soviet Union on the side of democracy*" (Wallach Scott 1992:x). "*The United States was exercising strict control over the political opinions of its own staff members ... [D]uring the McCarthy period it even succeeded in introducing the FBI into the UN Building, and in extracting from Secretary-General Trygve Lie the dismissal of employees suspected of communist sympathies ... [T]he independence of the international civil service became a constant refrain of the Western countries*" (Bertrand 1996:91).

whom this or another stint could have been no more than a career opportunity. However, if we expand the retrospective to the post-Second World War institutionalization of the international development aid mechanism in which United Nations criminal justice reforms can be inscribed, one may conclude that this institutionalization created a context in which individuals and reforms have become better known. This institutional context, that is, the programmatic and financial support mechanism consisting of dozens if not hundreds of staff and a long-term incremental involvement in reform, has made those names and accomplishments not only a contribution to the history of criminology, but also a contribution to the emerging science of technical cooperation and to United Nations Criminal Justice Studies (about which more below).

Information on the institutional development of the UN crime programme and the names of all its technical advisors is shown on pages 261-263 of this book, together with the names of other international and United Nations criminal justice reformers, whose accomplishments are mentioned in the text of this study.

The institutional growth of the UN crime programme, to which all of its chiefs contributed, has been accompanied by changes in administrative status and configuration. Originally established as the

Social Defence Unit in 1946, two years later it became a Section. Located at the New York Headquarters, it was part of the Social Development Division of the Department of Economic and Social Affairs (DESA). Between 1960 and 1967 some of its staff were moved to the United Nations Office at Geneva as the Social Defence Unit, while the rest of the staff remained at Headquarters, headed by officers-in-charge. In 1971, and as a follow-up to the recommendations of the Fourth Congress, it was renamed the Crime Prevention and Criminal Justice Section, until it was upgraded to the status of a Branch in 1974. As rightly noted by G.O.W. Mueller, its Chief until 1982, that upgrade was thanks to its "benevolent leader" – Ms Helvi Sipilä (1915-2009) a Finnish lawyer and politician. As the first-ever female Assistant-Secretary-General of the United Nations, and as the person in charge of the CSDHA from 1972 to her retirement from the post in 1980, she "granted the Branch every courtesy as long as the Branch delivered".³³¹

In 1980, soon after the holding of the Sixth Congress, the Branch was relocated to the United Nations Office at Vienna (Austria), as part of the transfer from New York to Vienna of the CSDHA/DIESA. Further to the decision in 1992 to re-transfer the CSDHA to New York, while retaining the crime programme in Vienna as "a Branch without a tree", at the end of 1996 it was upgraded to be the Crime Prevention and



Picture 31. Pedro David, former Interregional Adviser, 1981-1992 (first on the right) with Minoru Shikita, former Chief of the Crime Prevention and Criminal Justice Branch, with Eduardo Vetere (Executive Secretary of the Eleventh United Nations Congress), the late Vincent del Buono (former Interregional Adviser, 1994-1998) and Irene Melup (former UN staff member, 1946-1990)

³³¹ Mueller & Adler 1995:9.

Criminal Justice Division (CPCJD). The following year, that upgrading, combined with the existence in Vienna of the recently established United Nations Drug Control Programme (UNDCP), prompted Kofi Annan, then the United Nations Secretary-General, to designate Vienna as the centre of the United Nations fight against *uncivil society*, i.e. those elements which take advantage of the benefits of globalization by trafficking in human beings and illegal drugs, laundering money and engaging in terrorism. Accordingly, the CPCJD was elevated to become the Centre for International Crime Prevention, to be further re-absorbed after more than five years in the three existing Divisions of the UNODC as a result of a further restructuring which took place in 2003.

In Vienna the programme had various other masters above its chiefs. Right after its relocation

from New York, it was under Moffak Alaf (Syria), Director-General of the United Nations Office at Vienna, and later under Assistant Secretary-General Leticia Ramos Shahani (The Philippines). She was replaced by another ASG, Tamar Oppenheimer (died in 2010), the first-ever Canadian woman of that UN rank. She was followed (1987-1992) by Under-Secretary General Margaret Anstee (United Kingdom). From 1992 until 2010 it was under the care of three successive Italian Under-Secretary Generals: Giorgio Giacomelli (1992-1997), Pino Arlacchi (1997-2002),³³² and Antonio Mario Costa (2002-2010). Costa eventually formed a new entity under its current name of the United Nations Office on Drugs and Crime (UNODC). In 2010 Yuri Fedotov (Russian Federation; 2010~) was appointed by the Secretary-General as the new USG.

BOX 11

The “Alchemy” of the United Nations

A. Identity

Research publications on large multinational organizations are equivocal on what constitutes their corporate identity, and on how best to develop it and strengthen. Political scientists discuss whether trust, high or low, is at the core of that identity. What is certain is that trust is a necessary component of all human organizations, and certainly organizations with high trust outperform those with low trust. Trust is essential for sustaining the relationships, whether among friends or internationally.

Results of opinion polls asking whether the United Nations enjoys the trust of the world vary from country to country and from year to year. Critical as the respondents may be, the United Nations since its inception produces its own corporate identity and makes its own distinct and genuine contribution to humankind. Metaphorically, the United Nations “alchemy” transforms in its own right global ideas into a new worldwide order.

B. Ingredients

There are several ingredients to this. First, the United Nations Charter. Second, it is indeed the trust that should be instilled by implementing the Charter in the world and inside of the United Nations Secretariat. Third, it is its staff whose performance should meet “the highest standards of efficiency, competence, and integrity” (art. 101.3 of the Charter).

Trust should be measurable in some more objective way than perceptions shown by opinion polls. Researchers point to the number of civil society organizations as a proxy variable for “trust”. According to United Nations data, between 1946 and 2011 there has been an exponential growth of non-governmental organizations in consultative status with the United Nations Economic and Social Council. There are now more than 3,500. Currently, roughly one-tenth of all world international non-governmental organizations belong in one way or another to the United Nations family.



³³² The institutional development of the United Nations crime prevention and criminal justice programme has had its “ups” and “downs”, see further: A/56/83:2. It was during a “down” period that the Secretary-General chose not to appoint any Executive Secretary for the Tenth United Nations Congress.

C. Chronology

Faithful to its mandate, the United Nations in its annual calendar has its own hymn and official holidays. They have been gradually introduced by the General Assembly since 1947, first by establishing the United Nations Day (24 October) to commemorate the entry of the UN Charter into force two years earlier. However, particularly after the Economic and Social Council in 1956 adjourned its debate on the United Nations calendar reform *sine die* (without fixing a day for future action or meeting), several more days became official holidays in the UN Secretariat, including “Easter Monday” and “Christmas Day”, “*Eid-al-Fitr*” and “*Eid-al-Adha*”. But in every country where the United Nations has its offices, all its staff celebrate also that country’s National Day.

D. Celebrating criminal justice by the United Nations

In the United Nations work-day calendar there is also the International Day of Human Rights, the International Day of Non-Violence, the International Day against Drug Abuse and Illicit Drug Trafficking, the International Anti-Corruption Day, the International Day for the Elimination of Violence against Women, the International Day in Support of Victims of Torture, the International Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade, the International Mother Language Day, the Time of Remembrance and Reconciliation for Those Who Lost Their Lives during the Second World War, and - last but not least - the World Day of Social Justice and the International Justice Day.

E. Sociology and theology of the United Nations

The United Nations is complex and unique. There is no other multinational organization in the world which thanks to its 193 Member States can give staff members a job of no less (but often more) than eight hours a day, as well as the possibility of interacting on a daily basis in such as multinational, multicultural and multi-lingual context. These every-day interactions on their own create the “chemistry” which contains every ingredient of this human organization, whether internal or external.

Whether in Addis-Ababa, Bangkok, Beirut, Geneva, New York, Santiago, Nairobi, Vienna or away

from these major locations, in dozens of field locations throughout the world in which the United Nations staff serve, there are various such ingredients. On this basis, many political analysts, journalists or memoir writers have provided and will provide their own accounts of the United Nations, but only a very few sociologists have analyzed the Organization’s “chemistry”. Consequently, the conventional sociological terms for assessing the nature of that institution hardly fit it.

In its own “religious” drive the United Nations treats not only dependency on drugs as social deviance, but also in its own premises, dependency on the smoking of tobacco likewise. Tobacco smoking has been banned. Prompted by the World Health Organization, it considered a ban on the sale of tobacco in its premises, so far unsuccessfully. On its own, the United Nations campaigns to withdraw the provision of plastic shopping bags used by commissary patrons to carry home the foodstuff that they have purchased. This was done as a part of an environment-friendly policy (“Greening the United Nations”), as a contribution of the United Nations to the World Environment Day.

Notwithstanding such anecdotal (if not also anecdotic, but seemingly only) campaigns and regulations, the United Nations is working for more common understanding about what the world’s habitat should be. In a way, the United Nations is a whole new “religious” world with its own progressive precepts, strengths, weaknesses and idiosyncrasies. Above all, it is a truly global, cosmopolitan organization.

F. United Nations victims

Between 1945 and 2011 hundreds of persons working under the United Nations umbrella had lost their lives in various missions. Mr Sergio de Veira, the Special Representative of the United Nations Secretary-General, tragically lost his life on a peace-keeping mission in Iraq in 2003. Ms Maria M. Wiewiórska from the International Drug Control Programme (now the UNODC), lost her life in 1998 when serving the peace-keeping operation in Georgia (Caucasus). And in Vienna in 1984, so did Mr Evner Ergun, Director of the Social Development Division of the Department of International Economic and Social Affairs (a precursor part of what is now the UNODC). All of them are commemorated with memorial plates at the United Nations Office at Vienna. But there are also scarcely accountable numbers of “nameless” other civilians - victims, human rights defenders, rank-and-file staff, progressive reformers. They have been detained, im-



prisoned, tortured or harassed for their faith in the United Nations ideals, and in breach of the United Nations standards and norms.

G. Globalization at the United Nations

The United Nations is not hostile to patriotism. But its enemy is xenophobia, poverty and wars. In 2001, the United Nations and its Secretary-General, Kofi Annan received the Nobel Peace Prize for “their work for a better organized and more peaceful world” - the year which marked the 100th anniversary of this venerated award.

In 2006, Ban Ki-Moon, his successor, on accepting his position said:

“The surge in demand for UN services attests not only to the UN’s abiding relevance but also to its central place in advancing human dignity. The UN is needed now more than ever before. The UN’s core mission in the previous century was to keep countries from fighting each other. In the new century, the defining mandate is to strengthen the inter-state system so that humanity may be better served amidst new challenges ... Let us remember that we reform not to please others, but because we value what this Organization stands for. We reform because we believe in its future. To revitalize our common endeavour is to renew our faith not only in the UN’s programs and purposes but also in each other. We should demand more of ourselves as well as of our Organization ... Indeed, our Organization is modest in its means, but not in its values. We should be more modest in our words, but not in our performance. The true measure of success for the UN is not how much we promise, but how much we deliver for those who need us most. Given the enduring purposes and inspiring principles of our Organization, we need not shout its praises or preach its virtues. We simply need to live them every day: step by step, program by program, mandate by mandate.”¹

H. Toward United Nations citizenship

The United Nations blue-cover travel document *Laissez-Passer* belongs to those very rare passports in the world that do not feature the nationality of its holder, thus showing that no matter from which Member State its holder comes, everyone is equal. Although currently there is no “UN citizenship”, there is evidence that through its legal instruments on civil, political and social rights, the Organization is moving towards that concept.² This is because “the very values of an enlightened and civilized society demand that privilege be replaced by universal entitlement – if not ultimately by world citizenship then by citizens’ rights for all human beings of the world”.³

I. From theology to praxis

Professor Manuel López Rey, one of the ten top officials implementing the United Nations crime prevention and criminal justice mandate (1952-1961), believed in and pursued until his death the utopian idea of the New International Economic Order. Professor Gerhard O. W. Mueller, the chief (1974-1981) of the then United Nations Crime Prevention and Criminal Justice Branch, wrote in his personal account of his United Nations work that it has been a tradition that one cannot really ever retire from the United Nations, just as priests can’t stop believing in God after retirement.⁴ Minoru Shikita, his successor (1982-1986), expressed yet another idealistic conviction, that of “Striving for prosperity without crime”.⁵

While in academic criminology and in *Realpolitik* such idealistic convictions cannot be fulfilled, their endurance in the United Nations clearly communicates that the “United Nations peoples” should treat themselves more humanely, and that the United Nations should continue making progress in the humanization of the treatment of victims and offenders, according to the letter and spirit of the United Nations Charter and other legal instruments. ■

¹ Acceptance speech by H.E. Mr. Ban Ki-Moon on his appointment as the eighth Secretary-General of the United Nations, http://www.un.org/News/dh/infocus/sg_elect/ban_speech.htm

² See further: É. Auvachez, Supranational citizenship building and the United Nations; Is the UN engaged in a “citizenship” process, *Global Governance. A Review of Multilateralism and International Organizations*, Vol. 15, No. 1, Jan.-Mar. 2009:43-68.

³ R. Dahrendorf, A precarious balance: economic opportunity, civil society, and political liberty, (in:) A. Etzioni (ed.) *The Essential Communitarian Reader*, Rowman and Littlefield Publishers, Inc., Oxford 1984:77.

⁴ G.O.W. Mueller, F. Adler, A very personal and family history of the United Nations Crime Prevention and Criminal Justice Branch (in:) M. Cherif Bassiouni, *The Contributions of Specialized Institutes and Non-Governmental Organizations to the United Nations Criminal Justice Programme in honour of Adolfo Beria di Argentine*, Martinus Nijhoff Publishers 1995, p. 7.

⁵ M. Shikita, *Striving for Prosperity without Crime – 50 years of Internationally Oriented Prosecutor*, Delhi, GPD Books 2004.

Gerhard O. W. Mueller and F. Adler¹

Demystifying the United Nations



Introduction

Highly sophisticated personalities, diplomats, criminologists, and others often express great surprise when learning that the United Nations is concerned with problems of crime and criminal justice. At the opposite end of the spectrum, especially in developing countries, there is an almost mystic belief in the power of the United Nations to come to grips with all social and economic problems, including the problem of crime. The former reaction calls for propagation, the latter for demystification. Neither has been done well by the United Nations or its past and current officials.

A. The Secretariat

There is human drama and comedy in the United Nations, there are human triumphs and defeats, jealousies and ambitions, life and death. Yet the international civil service is not permitted to indulge in human emotions, or even the mention of names.

During its first quarter century, the work of the Social Defence Section — as that of the entire Secretariat — suffered greatly from the world political climate. Political blocks were opposing each other during these cold war years, yet the Secretariat had to maintain effective working relations with all countries. On principle, the Secretariat had to remain a coherent organization, on the basis of equality. Yet some governments introduced a certain amount of disunity by introducing politically reliable officers to the international civil service. The reporting procedures of the Secretariat became somewhat bizarre, with a system of document approvals and editing required so that if any block's interests were threatened, passages could be removed from documents at any one or more of many levels.

This routine has not changed much over the years. But while the demands have significantly increased in

number and complexity, staff increases have not kept pace with the demands. Past Secretaries - General or Under Secretaries - have generally been unaware of the incredible workload handled by the section, or of the enormity of the task. For as long as the Social Defence Section was seen as an appendage of social welfare, the chances for increased support, material or otherwise, from Member States, legislative bodies, or superior officers remained slim.

B. The Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

[In 1975], preparations for the Fifth Congress were intensified. Despite some initial doubts, all documentation (by now thousands of pages in six languages) was ready on time. The congress facilities and hotels in Toronto were ready and waiting. Delegations had booked their group flights. But dark clouds began forming. Pressure groups in Canada besieged the government to exclude the delegation of the Palestine Liberation Organization ("PLO"). Yet the Canadian government had joined in granting the P.L.O. governmental status in the UN. While the debate in Canada raged, the Branch made discrete inquiries in Geneva about the availability of the *Palais des Nations*, about the number of available hotel rooms and about the conference staff needed to service the meeting in Geneva just in case. Four weeks before the scheduled Fifth Congress, the Canadian ambassador addressed the General Assembly, requesting postponement of the meeting. That being found unacceptable, the Executive-Secretary (Chief) was requested to make a statement on an alternative solution. To everybody's relief, he could report that Geneva was ready to receive the Congress. The Congress placed problems of crime and criminal justice clearly within the context of socio-economic development. It emphasized transnational and international criminality. There was an



¹ Abridged from: G.O.W. Mueller, F. Adler, *A very personal and family history of the United Nations Crime Prevention and Criminal Justice Branch* (in:) M. Cherif Bassiouni, *The Contributions of Specialized Institutes and Non-Governmental Organizations to the United Nations Criminal Justice Programme in Honour of Adolfo Beria di Argentine*, Martinus Nijhoff Publishers 1995:3-13.

extra-ordinary solidarity among all delegations. The much-dreaded (by Canada) P.L.O. was represented by a local Geneva attorney and never made a statement. The non-governmental organizations, for the first time, were given their own forum, and, also as a first, the issue of the role of women in crime and criminal justice was given full attention. Never before had we seen the staff as beaming, efficient and happy.

But this happiness was to last only two years. By 1977, the Government of Austria had just about completed construction of a proposed United Nations headquarters building on the left bank of the Danube, across from the old city of Vienna. Anti-United Nations feelings in America in general, and in New York in particular, were so strong that it would not have taken much to move the entire Secretariat to Vienna.

C. The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

The Branch was in the middle of preparations for the Sixth Congress, scheduled for Sydney, Australia, 1980. At an unexpected moment, in 1979, in the General Assembly, Australia withdrew its invitation and Austria offered its hospitality. Yet when Venezuela took the floor and invited the Congress to Caracas (for the first in a developing country) the Venezuelan offer was unanimously accepted. Caracas became a great United Nations success. Not even death threats against the head of the Italian delegation and the Chief, the disarming of the U.N. body guards, and the protective placement of heavily armed Venezuelan commandos around the Congress building could mar the event. Prophetically and appropriately, the Caracas Congress examined crime in its relation to power. Power may corrupt and, thus, lead to crime. A new emphasis was given to crime committed by powerful figures as it is perhaps more detrimental to human welfare than the traditional crimes committed by others. Among the resolutions adopted by the Sixth Congress, none is historically more significant than the "Caracas Declaration", the world's first comprehensive document to relate the concern for crime prevention to all other human concerns and efforts. In its first operative paragraph, the Member States declared that "the success of criminal justice systems and strategies for crime prevention, especially in the light of the growth

of new and sophisticated forms of crime and the difficulties encountered in the administration of criminal justice, depends above all on the progress achieved throughout the world in improving social conditions and enhancing the quality of life ... On that, All Governments of the world were in agreement, despite their often fundamental disagreements of an ideological, economic or political nature.

D. The Chiefs and their staff

By early 1981, all but one had moved to Vienna. None of the staff regarded Vienna as any kind of a hardship post. All appreciated the ambiance of this great and historic cultural centre. But then there came that inevitable day. In March 1982, Minoru Shikita (agreed upon by the entire staff and accordingly recommended) took over the office. Gradually improving conditions of Vienna, he motivated his staff toward great cordiality and effectiveness in preparing the Seventh United Nations Congress at Milan, Italy, in 1985. There was, of course, Adolfo Beria di Argentine who had arranged for the Italian government to provide superb hospitality, and his own staff of the *Centro Nazionale di Prevenzione e Difesa Sociale* worked tirelessly toward the success of the Congress. The climate of the congress itself had changed considerably. The old antagonism between East and West had eased with the advent of Gorbachev in Russia. The administration of the Congress had been largely taken over by the Secretariat's professional conference services. The Chief of the Branch, as always serving as the Executive Secretary, had lost some of the aura of omnipotence, being eclipsed by political representatives of the Secretary-General. Minoru Shikita returned to his government, and Eduardo Vetere of Italy was a very good appointment.

Many colleagues have come and gone. There is, and was, not one among them who was not totally devoted to the ideals of the United Nations. All worked harder than colleagues in most other departments of the UN, often burning the midnight oil. There is one among them who deserves special recognition, a staff member who has been with the Branch since its inception and who, to this day and beyond retirement, serves the Branch on a voluntary basis; Irene Melup, the walking archives and conscience of the Crime Prevention and Criminal Justice Branch.



E. Conclusion

Looking back at the accomplishments in the UN's crime prevention and criminal justice efforts during the past half century, what is it that the Branch has accomplished? During the first third of this era, the Section created a solidarity among the world community, which is the cornerstone of all international efforts to deal with the global crime problem, whether or not associated with socio-economic development. During the second third of this era, the Branch created the scientific bases for all crime prevention

and criminal justice efforts, including the statistical infrastructure in the world surveys of crime and criminal justice. In the final third of the era, the Branch excelled in the production of the norms, guidelines, and standards. These documents contain what the world regards as minimum requirements with respect to all crime prevention efforts, regardless of divergences in culture. The standards they set out apply to all cultures because all of these efforts deal with human beings, who are equally protected by the Universal Declaration of Human Rights. ■

XIII The current constellation and integrity issues

There is an incoherent vision of the UNODC work programme, despite its smooth slogan of *"Making the world safer from drugs, crime and terrorism"*. The development of the programme is first of all dependent on the regular budget of the United Nations. Extra-budgetary contributions to the UNODC work programme modify, almost in real time, its objectives and influence its personnel policy. The theory and practice of countering crime by the United Nations blends every day together into a conglomerate of issues which create considerable challenges. For example, countering the problem of sea piracy along the coast of Somalia, or crimes against protected species of wild flora and fauna, have been made recent UNODC programme priorities, after the necessary extra-budgetary funds have been given to it by concerned Governments. New staff have been recruited and projects instituted. In comparison, for years regularly budgeted crime prevention activities that are "the first imperative of justice" (in the words of the Secretary-General), in fact have always been behind any such ex prompt priorities.

Successfully meeting such challenges and implementing programmatic priorities (extra-budgetary/budgetary) require versatile staff competencies and integrity – values that are quite a challenge in themselves. The United Nations *Charter* stipulates that

"The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity" (art. 101.3). The new recruitment and promotion policy that started in 2002 focuses on "fresh blood" – the young generation, and those with political influence in their Governments. In that year the traditional seniority-based promotion system had been abandoned, and gradually replaced, at least in theory, by the performance-based system, that is employment orientated towards measurable, accountable, career-rewarded results.³³³

Radical as this change is, its first weakness is that it ceased to be supported by the remuneration principle proposed by Noblemaire, the French parliamentarian, chairman of the Committee of Experts of the League of Nations. In 1921 that Committee (called later the "Noblemaire Committee") stated that *"It would be most unfortunate if the scale of salaries were fixed at a rate which made it impossible to obtain first-class talent from those countries where the ordinary rate of remuneration is above the general average"*.³³⁴

In effect, this principle holds that an international organization must remunerate its professional staff equally for work of equal value, irrespective of differences in pay levels in the various countries from which they are drawn. It must also be able to recruit and retain staff from all its Member States. Consequently, the uniform level of pay it provides must be sufficient to attract staff from the country or coun-

³³³ To understand the scope of change one should add that between these two extremes, there are at least two other systems, one which is seniority-based with some performance indicators, and another one which is performance-based with some seniority factors.

³³⁴ ACC/1993/PER/R/11/Add.1:4.

tries where national pay levels are highest. The principle has been applied in practice since the establishment of the United Nations system by taking, as the single point of reference for setting the level of United Nations remuneration, the pay of the home civil service of the United States of America, which is still officially considered to be the highest paid at present. Indeed, for a long time (until the mid-1980s), that was the case. Currently, however, these salaries are about 30% lower than in the US private sector, and are lower than in for example the German civil service.

Presently, an entry-level lawyer after apprenticeship in a respectable international law firm, in the third year of his/her work, earns as much as does a United Nations professional staff member at the P-4 level after 25 years of service. The conditions of employment in the United Nations are no longer competitive.³³⁵

Against this decline, the Secretary-General submitted to the General Assembly a report, *Investing in the United Nations: for a stronger Organization worldwide*.³³⁶ In this report he proposed a personnel recruitment policy seeking quality candidate staff in *“the broadest pools of talent”*.³³⁷ This personnel proposal was seconded by the academics critical of the old recruitment policy: now, *“bright” / “younger and hungry”* candidates for the UN jobs are needed rather than *“the deadwood” / “old-timers”*.³³⁸

This reinvigorating but mostly theoretically proposal is, in fact, narrowed to the *“second-best-pool”* talented candidates, i.e., as mentioned above, only to those who have not entered into better paid jobs in the private sector. They are *“younger and hungry”* as are others who took up jobs in the private sector, but are they so talented, as has been called for since the time that the Noblemaire principle was formulated?³³⁹ This is not merely a question of the weakening of the interstate ethos. This is rather a broader question of the fledging State ethos with undersalaried

officials who may be prone to corruption, hence of undermining the statehood process in general. This is contrary to what Noblemaire and his supporters intended by their *first-class talent*.

A very extensive literature has emerged on the selection, appointment and performance of international civil servants.³⁴⁰ Many issues raised there can, in fact, be traced back to the time of the League of Nations, and have continued to re-emerge in the recent years of the United Nations. New United Nations employees are usually more susceptible to the instructions of Member States, even though receiving or giving such instructions is prohibited by the United Nations *Charter*.³⁴¹

Since it is impermissible to issue staff regulations that reduce the rights of international civil servants and apply them retroactively, the emerging contractual system must honour the rights of the permanent appointees. However, no permanent appointments will be granted when the new system becomes fully operational. They are replaced by continuing appointments, i.e., an open-ended appointment without an expiration date specified in the letter of appointment, unless terminated by the Organization or a staff member for reasons not related to contractual reform. In accordance with the new UN Staff Regulations and Rules and applicable UN policies, this means that such a staff member may be fired on three months' notice. Once the last holder of a permanent contract departs, the transient remaining permanent staff, already an *endangered species*, will become an *extinct species*. Consequently, the conclusion that *“genuine identification with the goals of the Organization and detachment from national interests is almost impossible in situations of this kind”* – the conclusion of commentators on the United Nations *Charter*, from which the General Assembly's normative power is drawn to authorize the Secretary-General through his staff rules to phase out permanent appointments

³³⁵ A/C. 5/52/28.

³³⁶ A/60/692 and Corr.1.

³³⁷ A/60/692 and Corr. 1, § 25.

³³⁸ Weiss 2009:205-206.

³³⁹ With the expansion of the global private sector since the 1990s, broadening the United Nations *“pools”* could not be successful. Unfortunately, it cannot be successful today, either. Following the 2008 global financial crisis, which, first of all, started to affect the private sector, the United Nations would have had a chance to improve the quality of recruited staff, had the Organization itself not already begun to experience the impact of this financial crisis on the project budget (i.e., through a decrease in the non-regular voluntary contributions budget). As the case of the UNODC shows, its project budget expenditures from 1992 to 2010 have not only led in 2008-2010 to a drastic fall in voluntary funding of general purpose staff posts (the holders of which are likely to entertain common United Nations ideas) in comparison with earmarked posts, but also to the reduction of the former in number. This implies an absolute and proportional decrease in general purpose staff posts, in effect a smaller contribution in genuine *blue blood* to the United Nations chartered mandate. The second weakness is making the United Nations work as if it were a private sector company. The United Nations work has principally a political value. The assessment of deliverables cannot be measurable as is the case in private business.

³⁴⁰ Reviewed, inter alia, by Lemoine (1994).

³⁴¹ Mathiason 2008:128-130.

– has been even more pertinent now than at the time of its writing.³⁴²

After very vexing United Nations General Assembly debates (1946-2009) on the meaning of the independence and integrity of its international civil servants, the *sentiment of the house* has changed. The United Nations, which preaches the independence of judiciary as a virtue for all Member States, has itself not lived up to that high standard of professionalism in its Secretariat by the very same Member States. Although “*the standard bearer must abide by the standards that it has set for the rest of the globe*”,³⁴³ in 2009 the idea of supranational independence and integrity of the Secretariat was put to rest. Since then, the Secretariat has started officially (through D-2 post appointments) to consult with Member States on them, even though such appointments are its sole prerogative. Roosevelt, who not only gave life to the *Four Freedoms* idea, but was also the man who proposed the name of the “*United Nations*”, would probably turn in his grave, had he learnt how Member States eventually disjointed the most important supranational ingredient of the Organization.

By doing away with some of its essential staff, the example of whom could show to the changing personnel environment the permanent integrated values that lie above national interest, as of 2010 the United Nations has become a fully client-dependent international organization, especially for those who pay most to its budget, whether regular or not. Depending on the type of voluntary contributions – earmarked for a particular purpose or general – the political influence of Member States in the former case is targeted, and in the latter case is less obvious. In 2010, at the time of the nineteenth session of the Commission on Crime Prevention and Criminal Justice, major UNODC donors (altogether 20 countries plus the European Commission), have jointly contributed less than 10 % to the general purpose fund, while more than 90 % went for the earmarked crime prevention and criminal justice projects.³⁴⁴

Reading this situation in yet another way: in the former case, funds are given because of the trust a country has in particular staff members, while in the latter case this trust is rather perfunctory, especially when the proportion of the earmarked funds increa-

ses and general-purpose funds decreases. Occasionally, it happens that new posts are created for a very specific extra-budgetary purpose.

Metaphorically speaking, while it would be ideal that United Nations “*fresh blood*” would have appropriate ingredients, consistency and a blue colour – that of the United Nations *Charter*³⁴⁵ – in practice its implementation has become even more problematic than before. The blood is diluted: while no more than 10 % of the entire budget of the UN crime programme before 2003 consisted of extra budgetary funds, the entire UNODC budget for 2010 was the reverse: no more than 10% of it consisted of regular budget funds. In the entire United Nations budget for 2010-2011 the regular budget amounted to 36%.³⁴⁶ These proportions speak for themselves. Consequently, “*He who pays the piper calls the tune*”, but will this really be the “*UN tune*” and “*blue blood*”?

United Nations staff will become more dependent on Member States, and the States’ influence within the Secretariat will be felt more than before. Non-compliance with external influential policy instructions may lead to abusive practices inside the Secretariat. UN top officials have overly sensitive ears and tend to be extremely politically correct in terms of what major or even minor sovereign Member States find acceptable, which is a critical weakness,³⁴⁷ especially for the career staff with *continuing appointments* that carry the expectation of contract renewal. Can they be honest brokers? The institutional and personal memory of the “*old times*” may sound somewhat irrelevant for the new generation of United Nations *career appointees*. They will project their new values into the *Charter*, in which its original critical idea of the independence of the Organization is almost a foregone conclusion. Programmed to deliver in this way, new staff members will change the colour of the United Nations Charter into the colour of the donor’s card. They will “*sing and dance*” according to the new tunes.

The way to reverse this trend is to realize that the independence and integrity of the UN Secretariat are essential to performing its core functions, among which, for example, is the implementation of United Nations treaty law. This implementation will be compromised by the lack of objectivity invited by the extra-budgetary staffing of the Secretariat or, let

³⁴² Commentary 2002:1244.

³⁴³ Weiss 2008:119.

³⁴⁴ Another effect of fund-driven programming is establishing UNODC field offices in countries where major donors have their own field offices.

³⁴⁵ Hochschild 2006:293-294.

³⁴⁶ A/64/6:28.

³⁴⁷ Weiss 2008:122.

alone, financing for it the field projects, in case either of the above involves the implementation of treaty law.³⁴⁸

The diminishing independence and integrity of the Secretariat can be seen already now in a matter even less sensitive than treaty law – that of the implementation of the United Nations soft law instruments. These soft law instruments weakened the *Covenant's* objective of the eventual abolition of the death penalty, not shared by the staff from retentionist Member States. Between 1973 and 2005 this objective had been jointly pursued by the Human Rights Council (formerly the Commission on Human Rights) and the Commission on Crime Prevention and Criminal Justice,³⁴⁹ in line with Economic and Social Council resolution 1745(LIV) of 16 May 1973.

Before the fourteenth session of the Commission (2005), to which the seventh report³⁵⁰ was submitted, the UNODC secretariat that administratively handled that submission had to address its own internal problem, created by the initial insistence of a newly appointed influential staff member from a retentionist country, who thought that the report could be taken off the Commission's agenda and the quinquennial reporting discontinued. Notwithstanding that internal opposition, since the Commission did not want to vote over the question of the death penalty, it eventually "decided" on its own (there was no ECOSOC resolution) to continue with the submission to itself of the quinquennial reports³⁵¹.

The above example does not mean that only such staff members interact with Member States, and those who are more integrated into the Secretariat do not. Idealistic as the rules requiring independence and integrity of the staff by not accepting or giving advice to Member States (lobbying) are, in reality frequent informal interactions of any UN staff member with Member States are the order of the day. However, this does not mean that independence and integrity are legally fictitious concepts, because the difference between one and the other situation rests with valuing the interest of the Organization above any single Member State's inter-

est, and negotiating the former in the spirit of the United Nations *Charter*.

Independence and integrity issues project into the perception of *who owns what* in the United Nations Secretariat (as shown by, e.g., the case mentioned above of handling the death penalty question) and in Member States. In the latter case, the best example is the question of ownership of technical assistance projects. It has been now taken for granted that crime prevention and criminal justice must ensure national and local ownership and build national/local support for it. Often, in the past, international crime prevention and criminal justice efforts did not focus on assisting in genuinely building broad public participation in the design and implementation of the reform itself. Too often foreign legal models have been imposed on diverse political and cultural settings and consequently had a negligible impact, if not a negative one. Truly effective crime prevention and criminal justice work must therefore avoid the *one-size-fits-all* approach and should build on local needs, politics and legal, social and cultural traditions, while retaining the centrality of universal human rights principles.

However, it is also now recognized that, paradoxically, although national ownership is a central and key principle to be observed and respected, caution should be exercised lest over-reliance on such a principle result in the consequence that where there is no *demand* from governments for criminal justice reform, this may not occur.³⁵² In such cases it might also be worth considering options for UN leadership at the field level to help to *build* a demand for criminal justice reform among civil society and the general public, by fostering the necessary political space. But who will build the demand for criminal justice reform in a client-orientated Organization, in which the transactions do not go through an honest broker, but a donor and recipient? Which progressive criminal justice ideas will be promoted: those of a donor mostly or those which the United Nations Secretariat considers in line with the Organization's crime prevention and criminal justice standards and norms?

³⁴⁸ Independent implementation of treaty law by a full-fledged Secretariat may include financing such activity through a "statement of financial implications" made by it at the request of a programming body, e.g., by a functional commission of ECOSOC. A Member State interested in meeting the implications provides the amount stated by the Secretariat, but does not exercise any direct control over the expenditure of funds, as is also the case with the regular biennial budget of the United Nations. That external control and/or audit is exercised by relevant UN collective bodies consisting of representatives of Member States, including the Joint Inspection Unit.

³⁴⁹ Formerly the Committee on Crime Prevention and Control.

³⁵⁰ E/CN.15/2005/16.

³⁵¹ That staff member left the UNODC in 2009. In 2010, the Commission, which had before it the eighth quinquennial ECOSOC report, took no action whatsoever on it. Retentionist/abolitionist debate aside, the ninth quinquennial report (2015) will be submitted to the twenty-fourth session of the Commission, on the strength of its 2005 decision.

³⁵² Open Society Report 2008:6.

The risk of programmatic reductionism is imminent. In this connection, the success of technical assistance in crime prevention and criminal justice reform will be put to a new test, because most of the UN project staff will be employed on a short-term basis, while reforms usually take time, because they are in-depth and long-term. *Quick fixes* do not work. How the UNODC will account for this increasingly pronounced contradiction of terms remains to be seen.

Therefore, as can already be seen, implicit in the above *personnel questions* (as they are termed in the United Nations language), are very intricate programmatic issues. United Nations analysts may start asking whether it risks shallowness, as if it could no longer reach a certain objective, but only can pursue it (cynically, *"It is not so important to catch the rabbit as it is to go after it"*).

The risk of shallowness is indeed considerable. Also geographic and occupational mobility – another new feature of United Nations personnel policy – contribute to this risk. No single professional staff member can occupy the same position for more than five years. He or she must be rotated after that time.

But rotation is a double-edged sword: while it prevents the staff member from learning well the substantive *tools of trade*, it is a good instrument for capacity-building. Japan, a country with a well-established rotation policy provides a good example of its benefits. Prosecutors and other civil servants in Japan can stay in a specific position for only a fixed term, and are then transferred to another position. The position of the Director of UNAFEI is occupied by career prosecutors who after three years must move on. They take with themselves international experience which can be projected into domestic affairs, thus strengthening the statehood and the role of their country in the world.

The United Nations rotation policy has a similar aim. It allows the world body to project internally and externally (once the staff member leaves the Organization) its global programmatic objectives. There is a trade-off between merit and capacity-building.

Further information about the current UNODC work programme may be found in the annual reports of the Executive Director of the UNODC, submitted to the Commission on Crime Prevention and Criminal Justice and the Commission on Narcotic Drugs. These reports provide information about the level of voluntary contributions and the evolving United Nations policy context.

XIV Comparative assessment of forms and dynamics of crime and the convergence of criminal law systems in a changing world

A more incisive and reflective analysis of the United Nations crime prevention and criminal justice can be drawn from three studies³⁵³ and two other publications.³⁵⁴ Three of these four publications are listed in the front inlay of this book (Figure 1, row no. 11).

The front inlay also contains basic information on the development of international criminal statistics, including references to the General Statistical Congress (Brussels, 1853) held in the Royal Academy of Fine Arts. The convening of the Congress was the success of Adolphe Quételet (1796-1864), one of the first criminal statisticians, who since 1825 had started publishing analyses of the dynamics and patterns of crime. That Congress called for the introduction of *"unity in official statistics, so that the results may be compared"*, something which was to be addressed with the development of comparative prison statistics.³⁵⁵

Figure 1 (row no. 11) also lists the publications of Veli Verkko (Finland), a member of the Committee on Crime Prevention and Control (1950), who conducted comparative homicide studies (1931, 1937 and 1950).³⁵⁶

Against this larger picture, one can more fully understand the attempts of criminologists to design statistically comparable measures of crime around the world, and the troubles with which they grappled.

³⁵³ Alper & Boren 1972; López-Rey 1985; Clark 1994.

³⁵⁴ Walters 2001 & 2003.

³⁵⁵ Beltrani Scalia 1871:275. The comparative method quickly spread elsewhere in criminology: from Quételet, Alphonse Bertillon (France; 1853-1914), the first anthropologist and a person who also had served as a police officer, had learnt and introduced it into criminal anthropology. Between 1885, when the first International Congress on Criminal Anthropology was held in Rome (also the Third International Penal and Penitentiary Congress was held in 1885 in Rome; at this latter Congress the biometric method of Bertillon was discussed) and 1911, seven such anthropological congresses were organized.

³⁵⁶ His expertise channelled into the United Nations (E/CN.5/AC.4/L.6) inter alia lessons from the history of international criminal statistics since 1874, when Georg von Mayr, a German statistician, published his famous figure showing the correlation between the price of rye and the level of reported theft in Bavaria (see also Alvazzi del Frate 2006:5-6).

BOX 13

Anna Alvazzi del Frate

Statistical Analysis and the United Nations Crime Trends Surveys as Capacity-Building



A. Introduction

The international community has long perceived the need for reliable and comparable indicators of crime as a necessary element for policy making. Attempts at the collection of comparable crime statistics started during the mid-1880s. The 1846 International Congress of Penitentiary Sciences (Frankfurt am Main, Germany) represents the first documented occasion in which delegates from different countries agreed to start the international exchange of criminal justice information. A few years later, at the 1853 International Congress of Statistics organized in Brussels (Belgium) by Adolphe Quetelet, a major topic of discussion was how to make national statistics comparable across countries. After him, many European and American statisticians continued promoting international cooperation in the collection of statistical data. A “Mixed Committee for the comparative study of criminal statistics in the various countries” was established in 1930 by the International Statistical Institute and the International Penal and Penitentiary Commission.¹ The collection of data for this purpose lasted for seven years. In 1939 the work of the Committee concluded with the production of guidelines for “a gradual harmonization of criminal statistics”. The Committee, after looking at crime statistics from 40 different countries, reported that “a material comparison of these statistics has been judged impossible from the very beginning because of the diversity of penal law and of the statistico-technical methods in the various countries”.²

Most of the current limitations in comparing administrative statistics across countries were already known at that time. It was clear that political and/or judicial data were not suitable for the assessment of the extent of crime. It was known that a “dark figure” existed. In 1931, debating the possible development of a “crime index”, Thorsten Sellin established that, among

the available administrative data, police statistics were those that could best reflect the crime situation since they were closest to the actual occurrence of the crime (“the value of a crime rate for index purposes decreases as the distance from the crime itself in terms of procedure increases”³). Indeed the International Association of Chiefs of Police started developing a plan for a national system of police statistics, including known offences and arrests, as long ago as 1927. The plan included data on a series of offences, which were consistently collected across countries and represented the basis of the Interpol collection of international crime statistics, continued until 2004.⁴

B. The United Nations and international crime statistics

Immediately after its establishment in 1946, the Economic and Social Council adopted a resolution entitled “*Questionnaire on the prevention of crime and the treatment of offenders*”, promoted by the Section of Social Defence, Department of Social Affairs, of the United Nations.⁵ In 1947, at the Second Session of the Social Commission, a Preliminary Report on the Prevention of Crime and Treatment of Offenders was presented.

Many important events marked the history of crime prevention at that time. In 1948 an International Group, consisting of seven internationally recognized experts, was established to act as an advisory body to the Secretary-General and the Social Commission, to assist in devising and formulating programmes and policies for international action in the prevention of crime and the treatment of offenders.⁶ The study of the problem of crime at the international level represented the basic mandate of the Group. It decided to launch a broad survey of crime statistics to inform



¹ See: The Rules for Drawing up Criminal Statistics, 1937, *Bulletin of the International Penal and Penitentiary Commission*, XII, 3-4, March 1947:253-270.

² Ibid: 254.

³ Thorsten Sellin, The Basis of a Crime Index, *Journal of Criminal Law and Criminology*, Vol. 22, No. 3. (Sep., 1931) : 337.

⁴ In 2006, the General Assembly of Interpol decided to discontinue the collection of international crime statistics (AG-2006-RES-19).

⁵ See E/CN.5/30/Rev.1.

⁶ E/1065, Resolution of the Economic and Social Council, 1948:33.

its work.⁷ The “Statistical Report on the State of Crime 1937-1946”, presented to the Social Commission in 1950, revealed more gaps and problems than expected and resulted more in an analysis of the difficulties of collecting international crime statistics rather than in a real assessment.⁸ “It became apparent that national criminal statistics were so lacking in uniformity that meaningful comparisons among countries were virtually impossible”.⁹

On 1 December 1950, by its resolution 415(V), the General Assembly mandated the establishment of an Ad Hoc Advisory Committee of Experts, which first nucleus was represented by the International Group of Experts. At its meeting in December 1950, the International Group of Experts adopted a recommendation on crime statistics, focusing on three main areas:¹⁰

1. Criminal statistics to be published by the United Nations;
2. Standard classification of offences;
3. Survey of national statistics and preparation of a Manual.

It was felt urgent to continue work towards the comparability of crime statistics, and for this purpose it was necessary to ensure the full involvement of the Statistical Commission. The outcome of the discussion on crime statistics at the sixth session of the Social Commission in 1950 resulted in a Memorandum on “Suggestions for development of criminal statistics”¹¹ and - after an extensive exchange of notes and memorandums between the Social and the Statistical Commissions - a Recommendation of the Secretary-General. The S-G commented that “the topic in its evolution has changed from a social study employing statistical procedures to a question of establishing improved statistical standards and services in the area of the social problems of crime”, and recommended coordinated work between the two Commissions.¹²

In 1951, the Economic and Social Council adopted two resolutions on Criminal Statistics as part of the respective reports of the Social and Statistical Commission.¹³ Within the area of competence of the Social Commission, the Council requested the Secretary General:

“a) To undertake a survey and analysis of national statistics on crime with a view to the preparation of a Manual which would suggest minimum standards for the collection, analysis and presentation of criminal statistics, to assist governments in the improvement of their national statistics (...);

b) To explore the possibility of achieving an agreed definition of the three following offences, in order to determine the practicability of an ultimate compilation of comparable international statistics:

- i) criminal homicide,
- ii) aggravated assault,
- iii) robbery and burglary”.

Within the framework of the Statistical Commission, the resolution asserted the willingness of the Statistical Commission to assist the Social Commission “in the discharge of the task it has undertaken in the field of criminal statistics”. It was agreed that the Statistical Commission would take care of part (a), while the Social Commission would deal with part (b). Indeed the crime prevention environment speedily proceeded to work on part (b) of the resolution. A working paper on “Standard classification of offences” was presented in 1957.¹⁴ The paper elaborated on the definition and classification of the three offences (homicide, assault and robbery – burglary), on the basis of an in-depth study of the criminal codes of 65 countries and territories.

Work on (a), in turn, did not produce the expected results. After the fifth session of the Statistical Commission (1951), further sessions did not deal with



⁷ E/CN.5/30/Rev.1 – Annex A, “Questionnaire on the prevention of crime and treatment of offenders”. Part I of the questionnaire requested Member States to provide annual police and court figures for the period 1937-46 on five types of offences: against the person, against property, against the family, against public health and against the State.

⁸ E/CN.5/204, United Nations Social Commission, Economic and Social Council, *Statistical Report on the State of Crime 1937-46*.

⁹ E/CN.5/AC.4/L.3, Note by the Secretariat on “Crime statistics” for the 1950 meeting of the International Group of Experts on the Prevention of Crime and the Treatment of Offenders.

¹⁰ E/CN.5/231, Report of the International Group of Experts on the Prevention of Crime and the Treatment of Offenders, 15 December 1950.

¹¹ E/CN.3/102, 17 April 1950.

¹² E/CN.5/233, Recommendation of the Secretary General on “Criminal Statistics”, Social Commission, Seventh Session, 8 January 1951.

¹³ See E/2152, Economic and Social Council, Official Records, Resolutions 30 July – 21 September 1951, Supplement No. 1. Resolutions 380(XIII), Report of the Statistical Commission, 30 August 1951 and 390 (XIII), Report of the Social Commission, 9 August 1951.

¹⁴ Criminal Statistics - Standard classification of offences. Working paper prepared by the Secretariat. Social Defence Section, Bureau of Social Affairs, United Nations, New York, July 1957.

crime statistics until (marginally) 1960,¹⁵ probably because the emerging broader social statistics area was a priority of the Commission. However, the 1960 short reference to crime statistics was just to highlight the inherent problems (“Statistics on crime might also be included in future issues [of a Compendium of Social Statistics], although difficult problems of comparability were involved”, § 93) and to indicate that the Commission was taking a distance from the issue which would not be dealt with for many years. Finally in 1993, the topic of crime statistics reappeared within the framework of the Siena Group for Social Statistics, the mandate of which was to function “as an independent, focused and flexible think tank for the development of social statistics at the local, national and international levels by filling gaps not being addressed through international organizations and by identifying frontier issues not currently receiving enough attention”.¹⁶ Among other tasks, the Siena Group considered the concept and measurement of crime, justice and safety. In the meantime, the Manual for the Development of Criminal Justice Statistics¹⁷ finally appeared in 1986, solicited by a resolution of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1980).¹⁸

The ad hoc expert group continued working towards the regular exchange of information on crime statistics. In 1971, in response to the Fourth UN Congress on the Prevention of Crime and Treatment of Offenders (1970), the Ad Hoc Committee of Experts was transformed into the Committee on Crime Prevention and Control. Its mandate was broader and it decided to give new impetus to the collection of international crime statistics.

Further to a 1972 request from the General Assembly,¹⁹ Member States agreed to share general information on the situation concerning crime prevention and control, and measures taken. The first “Questionnaire on crime prevention and control”, consisting

of 16 pages, was sent to Member States in 1976 and covered the period 1970-75 (inclusive). Subsequently, a detailed questionnaire for data collection was developed and the *United Nations Survey of Crime Trends and the Operations of Criminal Justice Systems (CTS)* started in 1983. Initially, it was carried out at five-year intervals. Over the years, several ECOSOC resolutions²⁰ dealt with various aspects of the Survey, including its content and periodicity. The Survey started as a quinquennial exercise,²¹ then it was felt that more frequent surveys would be more beneficial to the international community, and so ECOSOC resolution 1990/18 on “United Nations surveys of criminal justice” at point 1 recommended that “...subsequent surveys should be carried out at two-year and ultimately one-year intervals”. The two-year periodicity was reiterated by ECOSOC resolution 1992/22 that at § f) requested the GA to commit the necessary human and financial resources to (inter alia) “carry out the surveys at two-year intervals”. However, despite the previous indications and probably in order to take into account accumulated delays, ECOSOC resolution 1997/27 recommended that “... subsequent core surveys be conducted every three or four years ...”. In the period 1999-2009 it was repeated every two years, and has become an annual exercise since 2010. Twelve surveys have been concluded so far, representing data for the period 1976-2009.²² The CTS collects police and judicial statistics, virtually from all member States. Replies to the Survey were received from a variable number of countries over the years (see Figure 1). The rate of response, however, is low and predominantly from developed countries. In developing countries, the lack of information is not only an obstacle to the development of evidence-based policies and crime prevention strategies, but also represents a limit to the possibility of accessing international development aid.

Extensive discussion on the content, format and analysis of the results of the CTS was the object of a



¹⁵ E/3375 – E/CN.3/282, Statistical Commission, Report of the Eleventh Session (1960).

¹⁶ <http://unstats.un.org/unsd/methods/citygroup/sienna.htm>

¹⁷ <http://unstats.un.org/unsd/pubs/gesgrid.asp?id=36>

¹⁸ Sixth UN Congress on the Prevention of Crime and Treatment of Offenders, resolution 2 on the development of crime and criminal justice statistics, 1980. UN Manual for Development of Criminal Justice Statistics, Series: F, No. 43, Sales number: 86.XVII.16 (out of print). An updated Manual for the Development of a System of Criminal Justice Statistics was finalized in 2003 (Series: F, No. 89, Sales number: 03.XVII.6 - http://unstats.un.org/unsd/publication/SeriesF/SeriesF_89E.pdf). Two expert group meetings for updating the Manual took place in Buenos Aires under the auspices of the Ministry of Justice of Argentina (1999 and 2001).

¹⁹ GA resolution 3021, XXVII, 1972.

²⁰ Namely 1984/48, 1990/18, 1992/22, 1996/11 and 1997/27.

²¹ As mandated by ECOSOC resolution 1984/48 on Crime prevention and criminal justice in the context of development.

²² Data are available on the UNODC website <http://www.unodc.org/unodc/en/data-and-analysis/United-Nations-Surveys-on-Crime-Trends-and-the-Operations-of-Criminal-Justice-Systems.html>

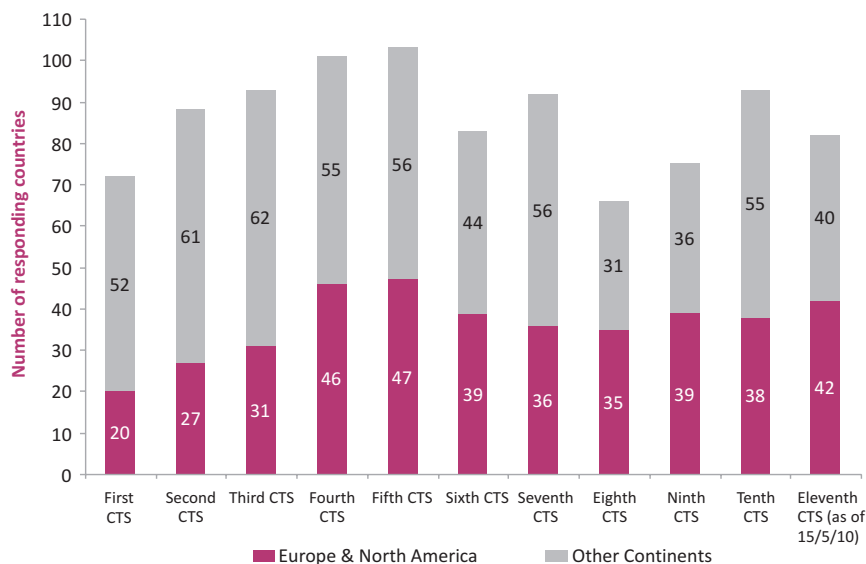


Figure 1 – Number of States responding to the United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (1977-2010)

series of meetings of experts.²³ The current format of the Survey questionnaire was revised in 2010, on the basis of a set of questions agreed upon by a group of experts who met for the purposes of the Sixth Survey. It requests information, primarily statistical, on the main components of the criminal justice system for the reference period. It is composed of four sections, dealing respectively with the police, prosecution, courts, and prisons / penal institutions. Each section can be filled in separately by the responsible agency.

Results from the CTS have been regularly presented on the occasion of the United Nations congresses on crime prevention and criminal justice and in many scientific publications. Data from the Fifth Survey provided the basis for the first-ever *Global*

Report on Crime and Justice (1999).²⁴ Analysis of European and North American data from the Sixth, Seventh, Eighth and Ninth CTS has been carried out by HEUNI, and resulted in a series of publications on *Crime and Criminal Justice Systems in Europe and North America*.²⁵ Further analysis has been published in articles appeared in issues of the journal *Forum on Crime and Society*.²⁶ In 2010 UNODC and HEUNI published the volume *International Crime and Criminal Justice Statistics*²⁷ containing an analysis of the Tenth CTS and trend data at the global level. Despite the relatively low response rate, the CTS database is the most comprehensive collection of available international criminal justice statistics.



²³ Ad Hoc Meeting of Experts on the Implementation of the Second UN Survey of World Crime Trends and Crime Prevention Strategies, Rutgers University, NJ, 1981 (mandated by the Sixth Congress); The UN Expert Group Meeting on the Second UN Survey of Crime Trends, Operations of Criminal Justice Systems and Crime Prevention Strategies, Huntsville, 1983 (mandated by the Sixth Congress); The Feasibility of a European Information System on Trends in Crime and Criminal Justice - Ad Hoc Expert Group on a cross-national study on trends in crime and information sources on criminal justice and crime prevention in Europe, Helsinki, 1983; Ad Hoc Expert Group on a cross-national study on trends in crime and information sources on criminal justice and crime prevention in Europe, Helsinki, 1990; United Nations Surveys of Crime Trends – Ad Hoc Expert Group Meeting, Rome, 1991 (UNICRI - mandated by ECOSOC resolution 1990/18); Expert Group Meeting on Criminal Justice Management and Information Projects: Improving National and International Data Collection and Exchange, Buenos Aires, 1997 (mandated by ECOSOC resolution 1997/27); Expert Group Meeting on the Analysis of the United Nations Data Set on Crime and Criminal Justice Systems, Washington, DC, 1997; Expert Group Meeting on National Capacities for the Collection of Criminal Justice Information and Statistics, Veldhoven, 1998 (mandated by ECOSOC resolution 1997/27); International Conference on Surveying Crime: A Global Perspective, Rome, 1998 (UNICRI); Expert Group Meeting on Crime Statistics, Vienna, 2006 and follow-up, Vienna, 2009 (mandated by ECOSOC resolution 2005/23); Expert Group Meeting on Crime Statistics, Buenos Aires, 2010 (mandated by ECOSOC resolution 2009/25).

²⁴ <http://www.uncjin.org/Special/GlobalReport.html>.

²⁵ Kauko Aromaa, Seppo Leppä, Sami Nevala and Natalia Ollus (eds., 2003), *Crime and Criminal Justice Systems in Europe and North America 1995-97*, Helsinki, HEUNI Publication No. 40.

²⁶ *Forum on Crime and Society* (2001-ongoing) is the successor to the *International Review on Criminal Policy* (1952-1999). Articles on the CTS appeared in issues 3:1,2 (2003) and 5:1 (2006).

²⁷ Stefan Harrendorf, Markku Heiskanen, Steven Malby (eds., 2010), *International Statistics on Crime and Justice*, Helsinki, HEUNI Publication No. 64. http://www.unodc.org/documents/data-and-analysis/Crime-statistics/International_Statistics_on_Crime_and_Justice.pdf

C. Towards comparable crime statistics

Many attempts at “harmonizing” data and developing international statistics of crime have been undertaken, until some agreement was reached that *comparability* rather than *harmonization* should be pursued as a goal. The international community, almost two centuries after Quetelet’s initial efforts, is still struggling to achieve internationally comparable data on crime.

D. Building capacity for the collection of international crime and criminal justice statistics

The collection of crime and criminal justice statistics has historically rested with the relevant law enforcement and criminal justice agencies. Although this can be considered a core function of any of such agencies, statistical capacity is generally scarce, especially in developing countries, and UN attempts at enhancing it have been a challenging objective for many years. In 1986 a Manual on criminal justice statistics was developed (which was subsequently developed and published in 2003 as the UN Manual on the Development of a System of Criminal Justice Statistics).²⁸ The Manual was used as a guide for the compilation of the UN Survey of Crime Trends and Criminal Justice Systems. Some training (workshops and meetings) were carried out, targeting police officers and personnel of ministries of justice and interior. In some countries, it was decided to create dedicated statistical units, composed of trained statisticians, to ensure that data were collected, disseminated, maintained and analysed in the most accurate way. In some other countries, data collected by law enforcement and criminal justice agencies were transferred to the national statistical institution to be processed and disseminated. As of today, there is no prevailing model for dealing with crime and criminal justice statistics at the national level.

Sharing data at the international level represents a further challenge. Individual countries may have established practices for measuring crime and criminal justice issues which may not be consistent with the

information requested for sharing through the questionnaire of the UN-CTS. The need for building capacity in this respect was first identified during the 1950s, when the Social Commission mandated the development of a Classification of Offences and the standard definition of three types of offences for the purpose of the collection of statistics comparable across countries.

In 1997, resolution 27 requested the establishment of an advisory steering group and the development of an operational plan aimed at ensuring that requesting countries could access relevant capacity and obtain training if needed. The plan should have included:

- i) The provision of assistance to Member States in the strengthening of their national capacities to produce, process and disseminate criminal justice statistics (derived both from official and non-official sources, including victimization surveys) within the framework of an integrated information system. Where appropriate, modern technology should be used;
- ii) The provision of assistance to Member States in connecting regionally and globally with systems of modern technology, and support to the United Nations Crime Prevention and Criminal Justice Programme in the design, implementation and analysis of the United Nations surveys of crime trends and operations of criminal justice systems, including the proposed supplemental surveys, as well as the issue of transnational crime.

Although the group as such was never established, some initiatives took place at the regional level. For example, UNAFRI convened a group of experts from African countries, all responsible for responding to the UN-CTS, to provide them with training in how to fill in the questionnaire. In the years 2000-, more emphasis on building capacity was placed through the allocation of UN Development Account funds to a project targeting African countries.²⁹ Finally, in 2008 a statistical section was established at UNODC, which regularly responds to requests for capacity-building assistance from Member States. ■

²⁸ <http://unstats.un.org/unsd/pubs/gesgrid.asp?id=293>

²⁹ Collection and analysis of data and trends in drugs, crime and victimization, <http://www.un.org/esa/devaccount/projects/2006/0607R.html>

After the Second World War, the idea of comparative crime statistics was resurrected. A call was made to the UN international group of experts (1949/1950) for “*the international standardization of criminal law itself*”, hopefully but idealistically expressed in a memorandum on “*International Comparison of Criminal Statistics*” by Mark Ancel (1952), then the United Nations consultant on this subject. Following that call, in 1957 Albert G. Hess, another UN consultant, attempted the material comparison of statistics on reported/recorded crimes (homicide, heavy bodily injury, robbery, burglary) by proposing in a draft questionnaire that Member States provide data according to tailored definitions of crimes, i.e. in accordance with a limited number of their elements to be agreed cross-nationally.³⁵⁷ This attempt failed. Member States, in a Montesquieu-like fashion (regarding his *credo*, see below), criticized that draft severely as an inappropriate way to align their legislation. Indeed, that critique could have been foreseen if and when the study by Hess would have followed the pre-war recommendation.

Thus, scientific methodology met with criminal policy resistance emphasizing the specificity of laws. This should not have come as a surprise, not only because of the neglect of the pre-war recommendation referred to above, but also because of much stronger national reservations eloquently expressed in the Report by Her British Majesty’s Commissioners on Criminal Law (1839). There the material comparison vs. national diversity argument came out fullest. Looking from the inside out, the Commissioners observed that criminal law comparisons had not been of any interest two centuries earlier. At the time of the Commissioners’ Report they had become of interest, but only to the extent that they catered to the specificity of English law rather than tailoring it to other foreign laws.

Accordingly, the Report initially reminds its readers that:

“Writers on English law have seldom compared the provisions of foreign systems of criminal jurisprudence with our own; and it has been a commonly received opinion that the laws of England are founded upon principles so peculiar and characteristic, that no advantage could be derived from the comparison. Thus Lord Hale [1609-1696 – added] after alluding to certain subtle distinctions respect in homicide contained in the laws of the civilians and canonists, says,

‘But as the laws of several nations, in relation to crimes and punishments, differ, and yet may be excellently fitted to the exigencies and conveniences of every several state, so the laws of England are excellently fitted, in this and most other matters, to the conveniences of the English Government, and full of excellent reason; and therefore I shall not trouble myself about other laws than those of England’.

The Report adds, however, that:

*“In composing a mere treatise of English Law, intended for practical instruction, it would no doubt be impertinent and useless to allude to the laws of other countries and the opinions of foreign jurists; but where the existing laws of England are discussed, with a view to defining and improving them, their comparison with those of other nations will often be of material advantage. It is true, as Lord Hale observes, that the criminal laws of different nations vary; but at the same time, among many differences, many points of resemblance will always be found, because the object to which they are directed, being the prevention of crimes resulting from the common passions and tendencies of human nature, must be universally the same. The forms of procedure differ in different countries, but the characteristics of crimes are remarkably similar in all. Besides, the difficulties of definition and classification are, to a certain extent, common to all attempts to digest or codify criminal laws, though the laws themselves may vary; it must always therefore be useful to those engaged in undertakings of this kind to observe and consider the means used by others to overcome such difficulties. With this in view we have thought it right to consult most of the numerous codes which have appeared in Europe and America in modern times, as well as the writings of foreign jurists, and we are bound to acknowledge that in some instances they have furnished us with useful suggestions for the improvement of our law, while in others they have illustrated and confirmed our own previously conceived opinions.”*³⁵⁸

In order to provide an ideological assessment of the negative experience of the United Nations with attempts to unify criminal law provisions, the above can be summed up by stating that while there still remains a narrow margin for such attempts, the prevailing view is that reception of law from foreign legal systems is useful only insofar as this benefits one’s own legal system, rather than others. However,

³⁵⁷ E/CN.5/337.

³⁵⁸ Quoted after Radzinowicz 1945:467-468.

observers such as the United Nations, with its concept of multilateral and supranational criminal law work³⁵⁹ – observers which are at a greater distance and whose perspective is that of looking from the outside into the internal legal system (as Hess did) – have had an even narrower margin of tolerance than does a country desiring to benefit on its own from outside comparisons.

This prevailing view can be traced to the continuation of the strength of the principle vis-à-vis the United Nations. Furthermore, up to the present considerable stress has been laid on the unique spirit or culture of a people, which is reflected in a country's normative order. This is best summarized in the following statement: “Obviously the more one stresses the inner character of a culture, the more difficult it is to move on to comparison and generalization”.³⁶⁰

This is quite a debilitating argument, one that is also articulated by Montesquieu (1689-1755) and Friedrich Carl von Savigny (1779-1861), the founder of the legal historical school. He wanted to jettison all elements of Roman law from Germanic law on the grounds that they did not reflect the German mindset.

But such an argument in favour of “purification” is based on a misreading,³⁶¹ at least as far as Montesquieu is concerned. In his *De l'Esprit des Lois*,³⁶² he wrote that the laws of different countries “should be so specific to the people for whom they are made, that it a great coincidence if those of one nation can suit another”.³⁶³ Still troubled by the master's credo,³⁶⁴ which underlies the relativity/specificity of laws, contemporary comparativists seem to stretch his view emphasizing that laws should be adapted to the people for whom they are made. In other words, laws are made from the general to the specific, rather than only from what one sees locally.³⁶⁵ But perhaps the most conclusive and synthetic vision of Montesquieu's work is advocated in the following statement: “Montesquieu ... attempted, through comparison, to penetrate the spirit of laws and there-

by establish common principles of good government”.³⁶⁶

Since the time when the United Nations started making its international comparisons, there have been many discouraging misunderstandings and encounters of that sort with Member States, restraining what would otherwise be a great and promising potential for comparisons. *Diversity or specificity* seemed to be the least of the “problem”. At its core seemed to be the reluctance of many States to share crime statistics at all, because of the principle of non-interference in internal affairs. Some Member States even argued held that “there is no crime problem” in their jurisdictions. As a result of this reluctance, since the beginning of the 1970s the United Nations has no longer sought to be as incisive and intrusive materially in its ongoing work on comparative surveys.

Starting with the first United Nations survey of crime trends (1970-1975), the United Nations has been developing and gradually recommending more refined *technical definitions* of offences, merely to provide a general guide to what is meant by a particular type of crime regarding which statistical data are being requested. Since that same time, the official publications and reports of the United Nations have avoided supranational ratings or rankings of crime indicators, unless these can be recalculated and grouped as sub-regional, regional or global averages. On its own terms, Interpol has pursued comparative homicide statistics (1975-2009). Those statistics have solely rested on the national definitions of that crime. Comparisons between the UNODC, Interpol and other international crime statistics have shown a number of discrepancies between them.³⁶⁷ Certainly, the path taken by the UNODC of adhering to its technical definitions has been the least problematic in that comparison.

However, the UN's parallel interest in more sophisticated research projects of substantive interest to its work programme had eventually to be discon-

³⁵⁹ E/CN.5/337.

³⁶⁰ Kuper 1983:194.

³⁶¹ But not for some of his interpreters. For them “The Montesquiean approach emerged as a perfect model also for the nationalists and ethnological comparative law of the 19th century. It had all the qualities of a persuasive socio-historical analysis. The claim regarding the autonomy of the nation suited many purposes perfectly” (Kiikeri 2001:16).

³⁶² Graziadei 2003:119.

³⁶³ *De l'Esprit des Lois* 1748, ch. 3.

³⁶⁴ As translated by Robert Lunay (2001:23).

³⁶⁵ This critical passage then continues: “They should be relative to the physical qualities of the country: to its frozen, burning or temperate climate: to the quality, location, and size of the territory; to the mode of livelihood of the people. Farmers, hunters, or pastoralists; they should relate to the degree of liberty which the constitution can admit, to the religion of the inhabitants, their inclinations, to their wealth, to their numbers, to their commerce, to their mores, to their manners ...” (Lunay 2001:23).

³⁶⁶ Graziadei 2003:119.

³⁶⁷ David & Brieley 1978:2.

tinued, for example the comparative work by Marvin Wolfgang (1967), a student of Thorsten Sellin, and a colleague of G.O.W. Mueller. Wolfgang, prompted by his Second World War military experience with violence in Italy,³⁶⁸ focused on elaborating a standardized index of the seriousness of crime. Such an index ascribed to different offences their de facto weight and not their nominal definition. This would have been a qualitative improvement over the legal material work of Hess. However, that work failed as well because the seriousness of offences has a different weight in the criminal law of Occidental and Oriental countries. For example, while in Occidental countries homicide is perceived as the most serious crime, in many Oriental countries the most serious crime is apostasy, in accordance with Islamic Shari'a.³⁶⁹

However, even if this argument was unscientific, its rejection could not change the grouping of the Occidental index of offences nor could it change the perception of the severity of crime by Muslims. In Islamic law the gravity of offences is confirmed by their sanction. Accordingly, apostasy is punished unconditionally by death, but an offender guilty of homicide may be pardoned by the victim's family. Consequently, one really needs to apply an internal law comparative methodology in order to develop a standardized index of the seriousness of offences: not the one derived from the Occidental "law of the land", but the Oriental "law of the land", that is of Shari'a itself, where their comparative classification may differ among Islamic countries, hence also their comparative gravity.

Another comparative approach was started on a criminological basis during the 1970s by Clinard & Abbott (1973). This approach has been continued during the 1980s, inter alia, by Shelley (1981) and Freda Adler (1983). Their studies were read by the United Nations circle of experts. Their authors had in one or another capacity been involved in the implementation of the United Nations crime mandate.

The comparative method pursued by Adler in her book "*Nations Not Obsessed with Crime*" (1983) involved the selection of ten developing and developed countries known for their low level of reported crime, and seeking among them a common denominator according to which, in each country separately,

that level of crime was conditioned. The author argued that countries with a low level of reported crime owe this to strong social cohesion, more precisely to the sharing of norms and customs in the framework of an undisturbed social control system able to ascertain such a sharing.³⁷⁰ For this she coined the term "*synomie*" – the opposite of Durkheim's anomie, that is the process of normlessness, the decomposition of social norms. The reviewers of the book doubted the utility of this new term.³⁷¹ A new book is under preparation by another author which seeks to verify the thesis of *synomie*.

A broader thesis, that a common denominator in comparative criminological research is the theory of modernization, has been less critically reviewed. As a result of the component elements of modernization (industrialization, urbanization, the breakdown of family ties, socio-economic development, and population growth), there is an increase in crime.

This comparative thesis emerged on the basis of the theory of anomie. Its popularity started when in 1963 William Clifford – later to be a UN staff member – published an article in the *United Nations International Review of Criminal Policy* on the modernization thesis in criminology. Since then there have been numerous publications in the academic world on modernization theory. Among them is the book by Shelley (1981). This book was criticized for what some argued was its overly lax concept of modernization. Moreover, substantiating the growth of crime that resulted from modernization, the author had based the argument on official definitions of violent and property crime, and not on the *behavioural* definition of such crimes.³⁷²

This is a typical academic critique by an armchair criminologist, especially as far as the lack of behavioural definitions of crime is concerned, that is the lack of criminal victimization statistics. Such statistics, which were scarcely available during the 1970s in developed countries, were completely absent in developing countries. Even the presence of official criminal justice statistics was limited, as evidenced by research by G.O.W. Mueller (1994), based on the replies of Member States to the United Nations surveys of crime trends (1974-1985).

The first United Nations handbook for developing countries on criminal statistics, including con-

³⁶⁸ A/CONF. 144/6, §6 (g).

³⁶⁹ Kaufman 1998.

³⁷⁰ Al-Takheb & Scott 1981.

³⁷¹ Adler 1983:157; Adler 1995:272-275.

³⁷² Beirne 1985:286; Philips 1984:1432-33.

victions, was not published until 1986,³⁷³ and the first United Nations international questionnaires on criminal victimization were not distributed until 1989. Since 2007, the UNODC has been implementing a project called “Data for Africa”, designed to improve the capacity of developing countries of that region to collect official criminal and victimization statistics.³⁷⁴

Notwithstanding the above, the conclusions from Shelley’s book have been quoted in United Nations documentation up to 2007.³⁷⁵ There they have been offered as solid evidence of some stable difference between the patterns and dynamics of crime in developing and developed countries.

Thanks to her book, there has been a growing awareness that despite the common denominator of modernization, the level of reported property crime in cities in developed countries was higher than in cities of developing countries, apparently because there was more to steal in those cities as a result of the higher standard of living. The reverse was true regarding the proportion of violent crimes in the two types of the cities. As she noted later on in a UN publication: “Once it was possible to speak of distinct features of crime in the developed and developing nations”,³⁷⁶

For a long time similarly iron evidence had been suggested by an even more general modernization thesis, that an increase in crime is roughly correlated with modernization. So argued, for example, Clinard & Abbot,³⁷⁷ following the experience with growing crime rates in nineteenth century Europe. Clifford, who shared this thesis, wrote in his “An Introduction to African Criminology”³⁷⁸ that this is an inevitable process.

An increase in crime appears to be correlated with urbanization. An increase in property crime and a decrease in violent crime were reported in the cities of England, France, Germany and Russia. Stockholm (Sweden) was the exception. That exception was apparently due to extensive emigration to the United States, and many potential offenders were among the émigrés.³⁷⁹

The reverse trend, according to which urbanization is correlated with more reported crimes against

the person than property, had been found in the cities of developing countries. This could be explained by a relatively early phase of urbanization with a fast growing rate of new inhabitants.³⁸⁰

Now that some 40 years have passed since these findings were first made, it would be difficult to confirm if the above proportions still hold. One may draw the conclusion from the fragmentary United Nations data (1998-2003) that a negative correlation ($r = -0.85$) between the degree of development and the level of reported crime was found only in cities in developing countries. In other words, fewer burglaries were reported in cities in richer countries than there were in cities of poorer countries.³⁸¹ This contradicts dominant criminological wisdom. But not only that, since this mechanical thesis on the criminogenic role of modernization had been popular also in political science, at least since the time of Clifford. Political scientists argue that the modernization theory cannot be interpreted linearly, as if developing countries would have to follow the path of developed countries.

It is false to assume that developing countries will inevitably assume the respective features and attributes of statehood (as had been the case, e.g., among the European countries). Such an assumption follows from uncritically accepted legitimacy of the centrally-introduced New International Economic Order (which in political science is regarded as the quintessence of the theory of modernization). However, the modernization process is conditioned locally, through structural and social factors rather than from imported attributes of statehood.³⁸² Consequently, developed and developing countries cannot share the same socio-economic problems, such as the same structure and dynamics of crime. East and West are different from one another. Basically, as far as crime is concerned, one knows *what* (what forms of crime), but is not sure *how many* (the historical dynamics of criminality).

Generalizing this problematic further, there is still one more conclusion to make for academic and United Nations criminology: in a long historical perspective (from 1200 until the present), the

³⁷³ Jones 1984:1118.

³⁷⁴ Manual 1986.

³⁷⁵ Together with the United Nations Economic Commission for Europe, the UNODC published in 2010 the “Manual on Victimization Surveys”.

³⁷⁶ E/CN.15/2007/CRP.3,§28.

³⁷⁷ Shelley 1990:119.

³⁷⁸ Clifford 1973.

³⁷⁹ Clifford 1974:viii.

³⁸⁰ Shelley 1981.

³⁸¹ Clinard & Abbot 1973.

³⁸² Handbook 2008:92-109.

dynamics of crime (especially violent crime, such as homicide) has been declining in the Western world (Europe), if one accepts the various methodological limitations that qualify this conclusion. This generally decreasing trend has been found in comparative homicide statistical studies.³⁸³ Their authors draw from them conclusions about the civilizing and pacifying function of the rule of law in Europe. This must have increased respect for the right to life, perhaps even a greater degree of “*individual synomie*”, but in any case individual *cooperativism* and *social inclusion*.³⁸⁴

This decreasing trend in homicides does not contradict the thesis of the criminogenic function of modernization. That thesis covers only the last 150 years of socio-economic development.

Those who promoted it in criminology, such as Clinard and Abbot (1973), may be recognized for a far greater and less contentious contribution to it. Two of their valuable accomplishments should be reviewed.

First, they formulated a new thesis on the principle of comparative studies. Since that time the still dominant criminological view has been formed that “*The goal of a comparative criminology should be to develop concepts and generalizations at a level that distinguishes between universals applicable to all societies and unique characteristics representative of one or a small set of societies ... should proceed ... first in a single culture at one point in time ... second in societies generally alike ... and third in completely dissimilar societies*”.³⁸⁵

This is a static principle of comparisons, surprisingly short of any further refinement called for by the modernization theory that they otherwise develop. It was justified up to the 1990s, when with the exception of the two world wars and regional conflicts (which had an international criminogenic impact), the comparisons of dynamics and the structure of crime had not been done on the principle of interconnected vessels, when the similarities or the absence of them were not so evident.

In those earlier times, most comparisons were purely academic, and there was little evidence of any practical connectivity.

Other comparativists have developed transformative principles, in line with the modernization theory, which calls for overcoming the peculiarity of

the comparative perspective. Originally academic as static comparativists tend to be, they separately set out to investigate the content of law; next, they compared this content with modern law; finally they reconstructed the former along scientific lines. Within those lines there may be committee work, missions, evaluations, and, ultimately, the production of documents.³⁸⁶

If engaged in practical legal reform projects, those early modernists were, first of all and at best, only “*independent bureaucrats*” involved with the development of *universal common law* for transnational business. Far from envisioning the *Four Freedoms*, and even farther away from *sustainable development*, and more often than not Euro-Anglo-centred, those bureaucrats acted at the request of their Governments to pursue their colonial or anti-colonial, but mostly imperialist, economic interests.³⁸⁷ Those comparativists hardly realized that the way to make business is first by making peace – an objective that is contrary to the world of colonial conquest and domination. They hardly realized that humanitarian law, let alone criminal law (domestic or international), is a concomitant instrument for the development of that universal common law, and is a part of the greater picture of global peace and security.

In the United Nations, a post-colonial independence-inspired bureaucracy, and comparative practical legal and criminological work with its commitment to universals, goes further than mere *production of documents*. It aims at elaborating model and other soft laws with *State practices* and conventions. Moreover, it aims at institutional crime prevention and criminal justice reform that should make those legal instruments work in local circumstances. This is the furthest one can get from the assertion that the law suitable for one people is probably not suitable for another (Hale, Montesquieu, Savigny). It is also the furthest one can get in establishing the rule of law with genuinely and globally democratic objectives.

From the United Nations observatory, the comparative reference point for this study is therefore different: crime as a universal and global phenomenon may be studied from the standpoint of general principles that have already been worked out, in line with the principle *think globally, act locally* and seeing the world as a global village. This approach,

³⁸³ Ginther 1995:153.

³⁸⁴ Eisner 2003; Ellis & Walsh 2005:171; Thome 2007.

³⁸⁵ Thome 2007:186.

³⁸⁶ Clinard & Abbot 1973:2.

³⁸⁷ Riles 2001:16-17.

that of moving from the macro- to the micro-level, may be compared to the contemporary technology instrument offered by Google mapping. First, we find a satellite view of the world. From there, by gradual approximations, we can zoom in on concrete localities and individual topographic elements. And we can continue to look for commonalities. If they are not found, we may suspect that the failure lies in the heuristic apparatus rather than in the real uniqueness of situations. And if the unique situations are beyond reasonable doubt, we can still wonder if several of them together could have a common denominator. In the same way as idealistic Ancel, I myself would like to be counted among those who believe that people are all the same.

The second valuable feature of the book by Clinnard and Abbot is that it draws attention to the criminogenic function of migration, another common element in the genesis of crime. Since the 1990s, that thesis, already well documented at the time, has become quite prominent along with the transnationalization of crime, enabling the comparison of crime on the principle of interconnected vessels.

During the 1990s it was fully clear that the transnationalization of crime will determine its forms and dynamics. The first signal was the publication in 1995, in a new journal called *Transnational Organized Crime*, of an article by McDonald, announcing the globalization of criminology. Interestingly, this article mentions the establishment of the electronic United Nations Crime Prevention and Criminal Justice Network, mandated by United Nations Economic and Social Council resolution 1986/11 (and thus at the very early, pre-internet, stage of computerization), and created with the assistance of the Institute of Applied Computer Science and Information Systems at the University of Vienna (Austria). This electronic clearing-house, now incorporated into a much larger and comprehensive multi-media web-based UNODC communication network, represented the culmination of several years of incremental efforts. They were originated by the Centre for International Crime Prevention, prompted by already then-retired Irene Melup, one of its former staff members, and for whom relentless advocacy of connecting academic

research with the UN crime programme has been a driving motif.

One of the first global criminological books that devoted an entire chapter to the transnationalization of crime was published in 1999 as the first United Nations Global Report on Crime and Justice.³⁸⁸ This was preceded by a series of United Nations reports on various aspects of crime trends and operations of criminal justice systems in the world, initiated by G.O.W. Mueller. Mueller also rendered assistance to academic researchers interested in comparative crime studies. Since the end of the 1970s, more and more studies of this type emerged, initially in the western world, and later in Central and Eastern Europe, as documented by two Polish members of the Committee on Crime Prevention and Control, Jerzy Jasiński (1973 – 1992) and Jacek R. Kubiak (1986 – 1990). Both published impressive articles on that subject, quoted in the UN documentation.³⁸⁹

From amongst more recent publications which quote United Nations crime survey data, reference can be made to a Russian book by Luneev³⁹⁰ and a book by van Dijk (the Netherlands; 2008), a former UNODC staff member. In the United States, comparative criminology textbooks began to appear. One of them³⁹¹ has been a valuable source in the United Nations Crime programme on evidence-based comparative crime research.³⁹² Other textbooks were, in turn, informative about the UN crime program mandate within a broader architecture of international cooperation in the response to crime,³⁹³ the analysis of the structure and dynamics of crime from the academic perspective,³⁹⁴ or from more practical perspectives.³⁹⁵

In parallel, legal comparative work and praxis has developed. Marc Ancel, who had been a United Nations consultant on international criminal statistics, published in 1971 in France a book on international comparative law. In this he formulated a thought-provoking opinion: “*Let’s not forget that the comparative method should play in social science broadly a role which experiment has in natural science*”.³⁹⁶

One of those who kept this advice in mind was G.O.W. Mueller. Before joining the United Nations, he was an editor-in-chief of a unique series of na-

³⁸⁸ Ibid.:13-15.

³⁸⁹ Vetere & Newman 1977:251.

³⁹⁰ A/CONF.144/6, § 23 & 36.

³⁹¹ Luneev 1997.

³⁹² Ellis & Walsh 2005.

³⁹³ UNODC 2005.

³⁹⁴ Natarajan 2010.

³⁹⁵ Winslow & Zhang 2008.

³⁹⁶ Reichel 2005.

tional criminal codes. Under his editorship, twenty English translations of such codes appeared between 1960 and 1973. About twenty years after that remarkable accomplishment, a further step in comparative method was made in the U.S. Model Penal Code,³⁹⁷ elaborated originally from 1951 to 1962, at the request of Roosevelt.³⁹⁸

This model penal code has been the basis of the unification of criminal law in two thirds of the U.S. states. For a long time it has been, for the international community, an example of how to model unification efforts, even if in some countries such efforts had begun much earlier than in the U.S. Those had their beginning when Carl Stooss conducted in the 1880s a vast comparative study of criminal legislation in all the Swiss cantons, which then had different criminal codes. By methodologically arranging the entire material which then became a model for others, in 1890-1893 he published a one-volume federated analysis, meaningfully titled *Die Schweizerischen Strafgesetzbuch zur Vergleichung zusammengestellt* (*The Swiss Criminal Code for Comparison*), followed by two volumes that dealt with, respectively, the general and special part of the Swiss criminal codes.

Drawing on the comparative method developed by Stooss, Franz von Liszt (Austria; 1851-1919), professor of German criminal law, the founder of the sociological school of criminal law ("not an act but its perpetrator is subject to punishment"), influenced by the ideas of Beccaria and Bentham, enlisted the contributions of 48 other criminal lawyers for a two-volume work. Von Liszt was the first person who applied that method to a cross-national study. In its starting phase (1894-1899), he published the two-volume *Die Strafgesetzgebung der Gegenwart in Rechtsvergleichender Darstellung* (*The Contemporary Criminal Code in a Comparative Legal Presentation*). In the first volume he dealt with the criminal law of European States. In the second volume he dealt with non-European States. In the following phase (1905-1908), he published a fifteen-volume comparative study of general and special parts of criminal legislation as well as the methods of criminal policy.

The major outcome of this monumental effort was the finding that it was possible, and even highly

desirable, to establish general principles of criminal law of international applicability and to arrive at unified criminal legislation. Although von Liszt was not successful in operationalizing his idea of establishing institutes of criminological research in German universities,³⁹⁹ he was successful in internationalizing it otherwise. Apparently inspired by the work of Stooss,⁴⁰⁰ and together with Adolphe Prins (Belgium) and Gerard Anton van Hamel (The Netherlands), von Liszt managed to establish in Vienna the Internationale Kriminalistische Vereinigung (IKV, 1888-1937). IKV was a private organization which promoted the systematic and scholarly comparative study of the major branches of criminal science, including the publication of German translations of foreign codes and statutes.

But the European comparativists of that pre-First World War time were so much out of touch with the global realities that they blamed the lack of progress in the unification of law on the local wars and other conflicts of the nineteenth century. They could not know that the wars on which they could really lay the blame had yet to come in the twentieth century, for, really, the two "world wars have weakened, if not destroyed, faith in world law".⁴⁰¹ And when the First World War came, it really made further cooperation impossible, since various comparativists whose States were in conflict with one another found themselves on opposite sides. As noted in the above context by Marc Ancel,⁴⁰² comparative work is an "inseparable element of peace". And yet the result was the opposite of what was expected.

The growth of the unification movement continued after the First World War. That work was resumed in 1924 in Paris, where a new Association Internationale de Droit Pénal (AIDP, the International Association of Penal Law) was established. (The IKV still existed but had no major role.) In 1927 the AIDP held its first congress, in Warsaw, Poland, on the unification of criminal law. That was one year after another congress in Brussels, Belgium (1926), which had adopted a resolution urging the establishment of an international criminal tribunal, as agreed in the Treaty of Versailles ending the First World War, and for which the first proceedings were to have been brought in order to assign individual responsibility to the German Emperor Wilhelm II. Since he obtained

³⁹⁷ Ancel 1979:133.

³⁹⁸ Gainer 1988.

³⁹⁹ Kuhn 1934:541.

⁴⁰⁰ Grassberger 1957:60.

⁴⁰¹ Radzinowicz 1991:77.

⁴⁰² Ancel 1979:42.

political asylum in the Netherlands, that international criminal tribunal idea did not materialize. But there was also no material or procedural criminal law according to which he could have been assigned responsibility, since there was neither an agreed body of law nor a statute for the tribunal.

It was evident that the idea of a tribunal had been premature, but its enthusiasts, such as the French lawyer Donnedieu de Vabres, later a member of the United Nations Committee on Crime Prevention and Control (1949), denied that it was utopian. On the contrary, they argued that it is a "powerful desideratum of the contemporary judicial conscience".⁴⁰³

As said by Ancel,⁴⁰⁴ the early enthusiasts of the unification of penal law had gradually realized that the objective is more complex than originally perceived. While, until about 1900, comparative work mostly involved two continental civil law traditions, the "Roman" (exemplified by the French Napoleonic code) and the German (exemplified by the *Bürgerliches Gesetzbuch*), since 1920 comparativists had gradually realized that the common law tradition differs so much in legal concepts and terms from the civil law tradition, that simple dualistic French-German law comparisons were overly limited. English law was a case in point (UK lawyers did not participate in the work of IKV). But so was also the case with U.S. common law, against the "Anglican" background of which American John Henry Wigmore published in 1928-1936 a three-volume study entitled "A Panorama of the World's Legal Systems", historically covering a total of sixteen legal systems. After reviewing these systems, he claimed that the survival of ten of them until his time had been due to the creation and persistence of a body of technical legal ideas which regardless of the changing socio-political conditions and addressees that they served, had been intergenerationally transmitted by an ever-vibrant professional class of legal thinkers and practitioners.⁴⁰⁵

It is impossible to say whether it was the internal dynamics of common law work – which is less governed by criminal law as an indicator for torts as is the case for delicts in the civil law system⁴⁰⁶ – and/or its autonomous system logic that held common

law lawyers back from the interest of their European continental law colleagues in comparative law. It may perhaps even be that the civil law system was represented as being "out of line", because since the 1850s the U.S. common law system had become too heavily "Romanized"⁴⁰⁷ – an argument familiar already in Europe from the work of Hale, Montesquieu and Savigny. Consequently, it was claimed that U.S. common law lost its own "organic" ingredients that would have made it work in the twentieth century phase of social interdependence.⁴⁰⁸

In any case, the *Anglican system* ideas of that time had still been confined to themselves. These ideas had not permeated into the global criminal law unification agenda pursued by civil lawyers. Moreover, for the English lawyers at least, the need to respond to the call for their own criminal law reform⁴⁰⁹ apparently must have been more compelling than the feeble call for global unification of criminal law advocated in continental Europe.

Nonetheless, the separate emergence in the United States of its own perspectives on the unification of law must still have given the European comparatists new vigour in seeking to attain a broader objective of unification, that of "global law of the twentieth century".⁴¹⁰ "This ambitious universalistic path which was a peculiar combination of scientific soul, nobleness and naivety [should have – added] led to giving the nations one unified law which will be the sign of mutual understanding, the guarantee of peaceful agreement between them". When one sees⁴¹¹ how, in fact, fragmentarily and autonomously all branches of law have been moving toward this universalistic objective, no one should wonder why it had ultimately remained out of bounds.

Particularly during the *Belle Époque*⁴¹² inspired by French legal thinkers, spanning, roughly, from 1900 to 1950 (with the two intermittent World Wars which reset the basic parameters of comparative legal thought and action), this idealistic universalism had found new ways of expression. In 1928, shortly after the Second International Congress on the Unification of Penal Law, at the initiative of Italy and prompted by Enrico Ferri and Raffaele Garofalo

⁴⁰³ Bassiouni 1980:viii.

⁴⁰⁴ Ancel 1979:34-42.

⁴⁰⁵ Wigmore 1936, Vol. III:1129.

⁴⁰⁶ Wagner 2008:1010.

⁴⁰⁷ Pound 1917:218-221.

⁴⁰⁸ Kennedy 2003a:660.

⁴⁰⁹ Radzinowicz 1991:78.

⁴¹⁰ Ancel 1979:39.

⁴¹¹ Reimann & Zimmermann 2008.

⁴¹² Fauvarque-Cosson 2008:3.

(1851-1934), the League of Nations opened in Rome the International Bureau for the Unification of Penal Law. In 1932, the Secretary-General of the League of Nations received a resolution, signed by the Bureau, IKV, AIDP, the Howard League of Penal Reform, the International Law Commission, the International Criminal Police Organization and the International Penal and Penitentiary Commission. It, *inter alia*, called for the standardization of criminal laws across member states. It further called for the setting up of “*ad hoc committees of experts for the ongoing provision of research*”, and reconstituting the Bureau, a hybrid entity with expert individuals and State officials, into still a hybrid entity but with more inter-governmental involvement, through *ex-officio* representation of the League of Nations.⁴¹³

The reception of this call was mixed. While a number of States⁴¹⁴ were sympathetic to the idea, other countries were less so or not at all. For instance, South Africa felt that involving the League of Nations in answering that call would yield limited results. Hungary was troubled by the difficulty of reconciling Anglo-American law and the laws of European countries with regard to criminal acts committed abroad. Therefore it advocated that the League of Nations only start working on the punishment of crimes and offences committed in a foreign country. The United Kingdom, echoing the 1839 report of its law reform commissioners, felt that criminal law was rooted too deeply in the history and customs of peoples to submit to unification, with the exception of certain nations whose law was based on “*similar juridical principles derived from a common source and which possess the same social outlook and customs*”. In the view of the United Kingdom, the League of Nations should rather limit itself to specific topics, such as the traffic in women and children, the traffic in dangerous drugs, and the counterfeiting of currency.⁴¹⁵ In the text of the replies one can find resounding doubts whether the proposed new arrangement would produce the practical unification goal that it sought.

In 1933 Germany and Japan withdrew from the League of Nations. The advent of Nazism was imminent. Governments were not ready to take on board

unification, let alone, standardization work.

Nonetheless, the AIDP continued its own work on the first draft of an international criminal code, which was written by its member, the eminent Romanian lawyer Vespasian V. Pella (1897-1952), the Secretary-General of the Bureau.⁴¹⁶ The idea of the creation of the international criminal court had received material legal backing. However, the threat to peace dashed hopes for its further advancement. *Inter arma silent leges*.

In addition, codification work was not really a kind of *global law*, but rather *regional*, at best in the sense of continental Europe. It was to a much lesser degree unifying than is currently the case with European Union law. The more so, this inseparable element of peace could not be advanced further, because of the growing threat of the Second World War. Shortly after it, the new idea emerged of drafting a code of offences against peace and mankind, submitted to the United Nations by the same author, Vespasian V. Pella.⁴¹⁷

Between 1954 and 1979 it had been considered by the General Assembly, and in 1975 it was presented at the Fifth United Nations Congress.⁴¹⁸ In 1980, Cherif M. Bassiouni proposed a *Draft International Criminal Code*. The first introductory sentences to the draft read, “*Universal peace has been one of the great historical dreams of humankind. Unfortunately, it remains a dream whose realization eludes the desperate needs of man*”.⁴¹⁹

Starting with the early post-Second World War years and continuing until 1980, against the background of the intergovernmental discussion on the definition of State aggression, there had been more and more governmental initiatives, so passionately pursued for example by Bassiouni. They had a sympathetic ear with governments, as did Pella’s proposal, which in 1954 was adopted as a draft by the International Law Commission.

The work of Bassiouni and like-minded experts appears to be unique not only in respect of its breadth and impact, but also because post-war comparativism had adhered to a certain ideological agnosticism. Unlike the pre-war comparativists, their post-war successors have been careful to stay away

⁴¹³ League of Nations, 1933.

⁴¹⁴ Belgium, Bulgaria, Colombia, China, Czechoslovakia, Denmark, Estonia, Finland, France, Latvia, Lithuania, Nicaragua, Netherlands, Poland, Romania, Sweden, Turkey, Venezuela and Yugoslavia.

⁴¹⁵ League of Nations, 1933.

⁴¹⁶ Bureau 1938:6.

⁴¹⁷ A/CN.4/39.

⁴¹⁸ Bassiouni 1980:ix.

⁴¹⁹ *Ibid.*:vii.

from the question of governance, obeying the *credo* that “comparative law today is about knowing, not doing”.⁴²⁰

As documented above, the UN crime programme had been only marginally involved in this codification idea, and originally only in so far as the treatment of prisoners is concerned. But even within that narrow margin it was doing what it could on the question of governance. Therefore, the Fifth United Nations Congress took on board the idea of the prohibition of torture. It defined such a prohibition and adopted the *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, subsequently adopted by General Assembly resolution 3452 (XXX) of 9 December 1975. Eventually, this became the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* adopted by the General Assembly resolution 39/46 of 10 December 1984 – originally, an item from the 1954 *Draft code of offences against peace and mankind*.

The criminal codification question has again become important since the adoption of the *United Nations Convention against Genocide* (1948), right after the inception of the UN crime programme. The *Convention* foresees the establishment of an international tribunal to try individual alleged perpetrators of genocide, and obliges its State Parties to ensure the responsibility of individuals under criminal law. At that time, the programme had not been involved in any way in implementing this humanitarian law priority. Only after the Security Council had established the two ad-hoc criminal tribunals mandated to bring to individual responsibility the perpetrators of violations of international humanitarian law in the former Yugoslavia and Rwanda (1993/1994),⁴²¹ it was hoped that the UN crime programme could re-enter the criminal law unification agenda. At that time Barbados, Dominica, India, Jamaica, Sri Lanka, and Trinidad and Tobago⁴²² proposed to the Preparatory ICC Committee the inclusion in the ICC’s statutory jurisdiction of crimes involving illicit trafficking in

drugs and psychotropic substances. This proposal was rejected by the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court⁴²³ (Rome, Italy), and such cases so far can only be tried by domestic courts.

Nonetheless, the ICC Statute made very considerable advances in the unification of criminal law. It sets out the principles of individual criminal responsibility for a number of other crimes from the humanitarian law field, including the definition of the subjective elements of guilt (*mens rea*) of the perpetrator. They are different, but key, from the perspective of common law, continental law and Shari’a law. God’s law, the law of Islam, which operates, in most countries alongside other legal traditions, in altogether 53 Member States,⁴²⁴ including India and Nigeria (the second and tenth most populous countries in the world), only recently has been included into the truly global comparative perspective, earlier anchored in the nineteenth century vision of the “civilized world”, especially Western. In article 30 of the *Statute* of the ICC, the contemporary international law comparatists (Oriental and Occidental) have finally agreed on a psychological definition of guilt (the *mental element*) as a general requirement for individual criminal responsibility. Moreover, article 30 seeks to set a uniform standard — intent and knowledge — for the mental element, applicable to all crimes under international criminal law. According to it “a person shall be criminally responsible and liable for punishment for a crime ... (a) In relation to conduct, that person means to engage in the conduct; (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events ... For the purposes of this article, ‘knowledge’ means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. ‘Know’ and ‘knowingly’ shall be construed accordingly”. This quite widely accepted definition of guilt will influence domestic legislation, also through the *Statute*.⁴²⁵ This agreement, even if tenuous,⁴²⁶ is a colossal unification success, one that shows that mankind understands one sense of guilt.

⁴²⁰ Kennedy 2003b:346. This academic detachment from the question of “law and development” is, however, countered by more practically-oriented comparativists. They argue that “the understanding of, respect for and engagement of foreign legal systems rather than their mere tolerance will not only facilitate discussions with foreign counsel or clients but will also allow us to respect cultural gender-based, religious and legal differences at home to a great extent. In that respect, comparative law could live up to its promise of providing a domestic as much as foreign perspective” (Demleitner 1998:665).

⁴²¹ That is, at the time of work on a draft statute by the International Law Commission (1994), and the Preparatory Committee for the International Criminal Court (1998/1999).

⁴²² A/CONF.183/CI/L.27/Rev. I.

⁴²³ A/CONF. 183/13/Vol. I: 71.

⁴²⁴ Esmaeli & Gans 2003:148.

⁴²⁵ Fletcher 2007:309 & 340.

⁴²⁶ See further Kelly 2010.

Pedro David

Making the United Nations Standards and Norms in Crime Prevention and Criminal Justice Work in the International Penal Tribunals for the Ex-Yugoslavia and Rwanda: A Technical Assistance Perspective



Introduction

The United Nations standards and norms in crime prevention and criminal justice, starting with the Standard Minimum Rules for the Treatment of Prisoners (1955), have had a profound and lasting impact on both the international and national scenarios of crime prevention and judicial processes.¹

Fifty-five years after the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, some 60 UN crime prevention and criminal justice instruments are now in operation. A few will be examined here briefly in terms of their relevance to the structure and functions of the international penal tribunals for the former Yugoslavia and for Rwanda.

A. The tribunals

The late Professor G.O.W. Mueller, former Chief of the United Nations Crime Prevention and Criminal Justice Branch, wrote in 1991 in *Criminal Justice* (which he co-authored) that the United Nations does not have a police precinct to which one can report a crime. But he added that the closest resemblance to such a precinct would be the United Nations Security Council.² In 1992 in *Criminology*, another book co-authored by him, he further added that likewise the International Court of Justice did not have any jurisdiction over criminal cases.³

When in 1993 and 1994 the Security Council created, respectively, the International Tribunals for the Former Yugoslavia (ICTY) and for Rwanda (ICTR) it opened the avenue for the internationalization of criminal justice, starting from prosecution and going all the way to sentencing of certain criminal cases. But

with this breakthrough the Security Council embarked upon uncharted waters.

Apart from the Nuremberg and Tokyo Tribunals following the Second World War, which functioned in a totally different environment and under dramatically different circumstances, no international criminal established in connection with conflicts such as those in the former Yugoslavia since 1991, or in Rwanda during 1994, had ever existed. To be sure, much thought had been devoted after the Second World War to the subject of an international criminal court by organs of the United Nations and others, which contributed to shaping the contours of the ICTY and ICTR statutes. The International Court of Justice had no jurisdiction in criminal matters. But, as will be seen, without (and, perhaps, even with) the benefit of actual practical experience, the creation by the United Nations under its Charter of prosecutorial and judicial organs almost inevitably presented issues either unforeseen or not fully appreciated, issues that would unfold only through the often costly process of trial and error.

Both statutes were adopted by the Security Council, acting under Chapter VII of the Charter of the United Nations. ICTY's competence encompasses "the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, in accordance with the provisions of [its] Statute".⁴ ICTR's competence encompasses "the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994, in accordance with the provisions of [its] Statute".⁵ Since their creations, the two tribunals



¹ Pedro R. David, *Globalización, Prevención del Delito y Justicia Penal*, Zavalia Editor, Buenos Aires 1999, ch. 14.

² Freda Adler, G.O.W. Mueller, William S. Laufer, *Criminal Justice. An Introduction*, McGraw-Hill, Inc New York 1991:356.

³ Freda Adler, G.O.W. Mueller, William S. Laufer, *Criminology*, McGraw-Hill, Inc. New York 1992:448.

⁴ Article 1 of the ICTY Statute (S/25704, annex, as revised by Security Council resolution 1166 (1988) of 13 May 1998.

⁵ Article 1 of the ICTR Statute (Security Council resolution 955 (1994) of 8 November 1994), as revised by Security Council Resolution 116 (1998) of 13 May 1998.

have functioned under their respective statutes and have experienced substantial growth in personnel and budgetary requirements.⁶

In establishing and supporting ICTY and ICTR, the United Nations has taken measures both noble and far-sighted. Although events in Kosovo and elsewhere have shown the continuing gulf between such aspirations and realities, history will record that the international community, through these ad hoc tribunals, has sought to defend humanitarian values and has striven to restore and maintain peace in parts of the world that have been beset with unspeakable violence.

B. The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

On the eve of the creation of the ICTY by the UN Security Council, Amnesty International had submitted a paper noting, *inter alia*, that guarantees for the independence of the Tribunal will depend, partly, on factors already established in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.⁷

In fact, many articles of the Statute of the ICTY articulate provisions established in the UN Declaration. For instance articles 20-21 of the Statute of the ICTY stipulate the right to a public hearing subject to the protection of victim and witnesses.

Rule 75 of the ICTY establishes that a Judge or a Chamber may order appropriate measures for the privacy and protection of victim and witnesses provided that the measures are consistent with the rights of the accused.

These measures include, among others, closed and private session, voice and face distortion or testimony via video-link.

Rule 69(a) provides for the disclosure of the identity of the victim in sufficient time prior to the trial. However, this provision was interpreted by the Appeal Chamber as being subject to Article 75. The UN ad-hoc tribunals (ICTY and ICTR) have so far consistently achieved a fair balance between the rights of the victims, their dignity and safety while maintaining full protection of the rights of the accused.

C. Fair trial and provisional release

The ICTY has consistently confirmed the application of fair trial requirements in the ECHR and the ICCPR to both substantive and procedural regulations.

The report of the Secretary General which was attached to the Statute of the Tribunal, adopted in 1993, envisages that the Tribunal must fully respect internationally recognized standards with respect to the rights of the accused at all stages of its proceedings, observing that these rights are in particular sustained in Article 14 of the ICCPR.

An issue of great relevance, inspired by the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), was the evolution of the rules on provisional release of the accused in the jurisprudence of the ICTY.

Rule 65 of the Rules of Procedure and Evidence originally mandated that release may be ordered by a Chamber only in exceptional circumstances. It was then a system based on mandatory pre-trial detention.

The provision was modified in 1999, in order to avoid the contradiction between customary international law, which supports the use of pre-trial detention, and the view of the European Court of Human Rights that pre-trial detention constitutes “an exceptional departure from the right to liberty”.

Let us recall that the Tokyo Rules established that pre-trial detention shall be a measure of last resort.

D. Standard Minimum Rules for the Treatment of Prisoners, the pre-trial detention and the presumption of innocence

In relation to the conditions of detention of the accused, both the ICTY and the ICTR are regulated by the UN Standard Minimum Rules for the Treatment of Prisoners (1955), subsequently expanded to cover those in remand (1957). Detention facilities exist both in Arusha and in the Hague. Both detention units are highly secure, modern and well-designed facilities. But the operation of the rules in those facilities had been



⁶ In 1999 ICTY's annual budget reached US\$ 94,103,800; its total number of personnel was 838 (assessed budget) and 10 (extra-budgetary). ICTR's 1999 budget was US\$ 68,531,900 and its personnel numbered 779 (assessed budget) and 41 (extra-budgetary).

⁷ See: Morris Virginia and Michael P. Scharf, *Guide to the International Criminal Tribunal for the former Yugoslavia*, Transnational Publishers Inc. New York 1994:417-18.

another matter, because of uncertainty over whether the warden is in a position to cooperate with the prosecution which conducts criminal investigation.

In 1999, the UN Secretary General, aware of several matters requiring such a clarification, appointed the Expert Group (before joining the ICTY, I was one of its members), to review the functioning and structure of both Tribunals. The group listed 46 recommendations, many of which were adopted by the tribunals, as we have said in the report (A/54/634, § 198):

“[T]here has been minor tension between the ICTY Detention Unit and the Office of the Prosecutor under rule 66 of the ICTY Detention Rules. The latter provides for certain types of cooperative assistance when the Prosecutor has reason to believe that conduct by one or more detainees could prejudice or affect ICTY proceedings or investigations. When the Prosecutor has sought the assistance of the Detention Unit with respect to electronic interception of such conduct, which the Prosecutor had reason to believe was authorized by rule 66, the Detention Unit and the Registry were reluctant to cooperate.

In the view of the Expert Group, the presumption of innocence in judicial proceedings does not conflict with the legitimate interests of law-enforcement authorities as they affect detainees. This point appears to have been embodied in the language of rule 66 of the ICTY Detention Unit Rules (rule 64 of the ICTR Detention Rules). The Expert Group concludes that once the Prosecutor shows reasonable grounds for cooperative assistance by the Detention Unit under this rule, such assistance should be forthcoming from the Registrar without delay in accordance with the decision of the President ..., or the matter should immediately be referred either to the President or to the Trial Chamber as provided in that decision. Communications between detainees and outsiders, other than their counsel, are not privileged. Once sufficient grounds for detention exist, the presumption of innocence, while fully applicable in court proceedings, does not insulate detainees from investigation of potentially unlawful conduct while they are in detention. Nor does it provide detainees with any expectation that unprivileged communications will not be intercepted. Accordingly, in matters arising under rule 66 of the ICTY Detention Rules, or rule 64 of the ICTR Detention Rules, it appears to the Expert Group that the focus of the Detention Unit and the Registry should be on the legitimate law-enforcement requirements of the Prosecutor rather than on the presump-

tion of innocence which can safely be confided to the protection of the court should the Prosecutor stray beyond proper bounds.

The commander of the ICTY Detention Unit has invited the attention of the Expert Group to an additional issue: the need, apparently for speedier procedures under rule 65, in short-term provisional release of detainees. The Expert Group concurs in the Commander’s view that such procedures could be studied to provide for emergencies such as funeral arrangements or the terminal illness of a close relative under conditions of adequate guarantees from the detainee’s country governing removal and return to detention. The Expert Group understands that such arrangements have been made”.

E. *Post scriptum*: Technical cooperation and the UN Inter-regional Adviser in Crime Prevention and Criminal Justice (1982-1993)

In 1979, the ECOSOC had expressed its concern over the negative impact of crime on the efforts of member Governments, mainly those in serious situations of economic and social disadvantages, to improve the well-being of their population. The ECOSOC requested the Secretary General to appoint, through UNDP, the services of an Inter-regional and Regional Adviser in the area of Crime Prevention and Criminal Justice.

The Caracas Declaration was approved by the General Assembly in its resolution 35/171 of 15 December 1980. In that resolution, the General Assembly requested the Secretary General to reinforce the activities of technical and international cooperation at the regional, sub-regional and inter-regional levels.

The Secretary General in his report (A/36/442) announced the establishment of the post of Inter-regional Adviser in the field of crime prevention and criminal justice.

By resolution 36/21 of 9 November 1981, the General Assembly requested the Department of Technical Cooperation for Development, and UNDP, to increase the level of assistance to programs of technical cooperation in the area of crime prevention and criminal justice and to implement, in its totality, the Caracas Declaration with a view to the preparation of the Seventh Congress on the Prevention of Crime and the Treatment of Offenders.



In July of 1982, the post of Inter-regional Adviser in Crime Prevention and Criminal Justice was established and I was invited to submit my CV for the recently created post.

In the same month, with the support of the Office of the Director General, the Crime Prevention and Criminal Justice Branch, and the ASG of the UN Office in Vienna, Ms Leticia Shahani, I was appointed to that important function. During my tenure as Inter-regional Adviser (1982–1993), a post that was vacant after the departure of Don Manuel López Rey and Edward Galway, I visited more than 120 countries in all regions, upon their request.

At the invitation of Professor Gerhard Mueller, I have prepared as an expert consultant, together with Edward Galway the Sixth Congress paper on “New perspectives in crime prevention and criminal justice and development: the role of international co-operation” (A/CONF. 87/10). Working with Galway was a great pleasure. His criminological competence, reinforced by field expertise, showed that through their joint combination, the recommendations on the new perspectives in international cooperation on crime prevention and criminal justice in developing world have been practical and viable. That Secretariat paper had received enthusiastic support at the Sixth Congress (Caracas, 1980). In that paper, we, with Galway, tried to restore the important role of customary legal systems to bring solutions to legal conflicts through the role of probation, mediation and arbitration. We recall also the important dimension of technical and international cooperation to bring, into reality, all over the world, the UN crime prevention and criminal justice standards and norms.

Not by coincidence therefore, I would like to note that in another Sixth Congress paper on “United Nations norms and guidelines in criminal justice. From standard-setting to implementation, and capital punishment” (A/CONF. 87/9, § 67) there was one remarkable quotation from the works of Samuel Romilly, British penal reformer (1757-1818). It showed how much the present criminological research has advanced from his time when “Penal legislation hitherto has resembled what the science of physics must have been when physicians did not know the properties of the medicines they administered”. Looking back from the first-decade perspective of the twenty-first century with its Twelfth United Nations Congress (2010), penal and other criminological progress is even more pronounced than in 1980.⁸

F. Conclusion

In 1993, after more than 10 years of my appointment, the seeds of an enlarged programme of technical cooperation in crime prevention and criminal justice had been successfully planted and the fruits of those efforts, with the support of all my colleagues are quite visible today *inter alia* with the UN Convention against Transnational Organized Crime and the UN Convention against Corruption being adopted and implemented. However, the creation of the ad-hoc tribunals has been yet further evidence that the UN crime prevention and criminal justice standards and norms have played a useful substantive role in their work. Making them work at this supranational level is a great success by everybody concerned with justice in the world. ■

⁸ At that time and later, I had received the invaluable support of Irene Melup, a renowned official of the UN Programme, and the most decided and learned advocate of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. I have to acknowledge also the collegial support of Eduardo Vetere, Gerhard Mueller, Lamin Sesay, Sławomir Redo and other officers and the Crime Prevention and Criminal Justice Branch.

After that agreement, and the agreement on the criminal responsibility of commanders and other superiors (art. 28), it was relatively easy for Member States at the next conference in Palermo (Italy) to agree to relax the provision concerning the responsibility of members of a transnational organized crime group, including its superior. In article 5 of the UNTOC they introduced the principle of enterprise responsibility, i.e., responsibility not only for the commission of a particular crime with the above precise subjective “*mental element*”, but also of other crimes, if “*committed intentionally ... by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in: a. Criminal activities of the organized criminal group; b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim*”. The article continues, that “*knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances*” (art. 5.2).

Moreover, in the spirit of connecting common law and continental law principles, UNTOC managed to extend the concept of enterprise responsibility. It did so in art. 5 by adding to the above continental law form (German *Komplott*, French *association de malfaiteurs*) of a transnational organized crime a common law form of “*conspiracy*” which, in principle, may require only “*Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit*” (art. 5.1.(a)(i)). This example shows that rather than talking of “unification” or “harmonization” of criminal law systems, surely one can talk of their convergence through the bridging of the two partly different concepts by one legally binding provision.⁴²⁷

Less spectacular but still very symptomatic legal results have been achieved by the UN crime programme after the first peace-keeping mission in Cambodia (UNTAC, 1992-1993), the first country under direct UN transitional authority. Cambodia had no written laws. To prevent corresponding situations from happening again, Gareth Evans, then the Foreign Minister of Australia, and, earlier, Attorney-General (1983-1984), proposed in his book *Cooperating for Peace: The Global Agenda for the 1990s and Beyond*, also

known as the *Blue Book*,⁴²⁸ the idea of developing a “*justice package*” containing a set of basic transition laws for a country, including “*a body of criminal law and procedures, drawing on universal principles*”.⁴²⁹

Its development started in the United Nations Crime Prevention and Criminal Justice Branch. In 1994 the Branch published the handbook *United Nations Criminal Justice Standards for Peace-keeping Police* (also dubbed the *Blue Book* to commemorate Evan’s idea). The handbook provided a compact overview of relevant international standards and norms, readily accessible to those with monitoring functions in the field of criminal justice. It synthesized from 20 international criminal and humanitarian law instruments the principles of law enforcement with regard to crime perpetrators and victims. In a way, this was a concise code of criminal law and criminal procedure, which went beyond traditional United Nations criminal justice reform work. The handbook, which was published in the six official languages of the United Nations, has been successfully used in several training courses for civilian components of United Nations missions, such as the ones in Mozambique and in the Former Yugoslavia. UNODC, in cooperation with the Police Division of the Department of Peacekeeping Operations, revised and updated the handbook so as to include new areas not covered in the 1994 edition, such as the issues of integrity, sexual misconduct, and assistance to child victims and witnesses.

The update was also motivated by the fact that over the preceding twelve years new criminal justice standards and norms had been developed and they would need to be taken into consideration. Altogether 47 legal instruments setting out such standards and norms have been incorporated in the new edition of the *Blue Book*. The revised version of the handbook is accompanied by a set of commentaries that could be the basis for developing a training module for police officers who are to be deployed in peacekeeping missions. The new *Blue Book*⁴³⁰ serves as a handy concise model law.

The work on more elaborate model criminal laws started after a review of the 1990s mission experiences. In 2000, the Report of the Panel on United Nations Peace Operations,⁴³¹ otherwise known as the Brahimi Report, postulated that “*it would have been much easier if a common United Nations justice package had allowed ... to apply an interim legal code to which mission person-*

⁴²⁷ See further Almir Maljević, ‘Participation in a Criminal Organisation’ and ‘Conspiracy’. Different Models against Crime Collectives, Band S 124, Max-Planck-Institut für ausländisches und internationales Strafrecht, Freiburg i. Br. 2010.

⁴²⁸ Leaver 1995:89; Charlsworth 1995:133.

⁴²⁹ Evans 1993:56.

⁴³⁰ United Nations Criminal Justice Standards for United Nations Police, New York 2009.

⁴³¹ A/55/305-S/2000/809, §§ 81-82.

nel could have been pre-trained while the final answer to the 'applicable law' question was being worked out". The Report noted that although no work is currently under way within Secretariat legal offices on this issue, interviews with researchers indicate that some headway toward dealing with the problem has been made outside the United Nations system, emphasizing the principles, guidelines, codes and procedures contained in several dozen international conventions and declarations relating to human rights, humanitarian law, and guidelines for police, prosecutors and penal systems.

The Report further noted that such research aims at a code that contains the basics of both law and procedure to enable an operation to apply due process using international jurists and internationally agreed standards in the case of such crimes as murder, rape, arson, kidnapping and aggravated assault. Property law would probably remain beyond the reach of such a *model code*, but at least an operation would be able to prosecute effectively those who committed arson on their neighbours' homes while the property law issue was being addressed. In fact, a number of United Nations organs have already made progress in the field of practical criminal procedures, notably the Centre for International Crime Prevention of the United Nations Office at Vienna, the Office of the United Nations High Commissioner for Human Rights, UNDP and UNICEF (in the area of juvenile justice), and the Office of the Special Adviser on Gender Issues / Division for the Advancement of Women in the Department of Economic and Social Affairs. Finally, the Brahimi Report recommended "to conduct a needs assessment of the areas in which it would be feasible and useful to draft a simple, common set of interim procedures (referred to in legal parlance more precisely as interim 'rules' of criminal law and criminal procedure)".

The new report of the Secretary General on the *Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* reiterated this pressing need.⁴³² The need has also been echoed by the multitude of practitioners involved in law reform in post-conflict states, clearly aware of the difficulties they faced in the reform process.

Four such *epoch Model Codes for Post-Conflict Criminal Justice* were published in 2007-2009 by the United States Institute of Peace and the Irish Centre for Human Rights, in cooperation with the United Nations High Commissioner for Human Rights and the United Nations Office on Drugs and Crime. Their drafting involved some 250 leading experts from all

around the world and from a variety of backgrounds, including international and national judges, prosecutors, defence lawyers, police, prison officials, human rights advocates, military lawyers and international, comparative and criminal law scholars.

The *Model Codes for Post-Conflict Criminal Justice* consist of a set of four integrated codes: the *Model Criminal Code*, the *Model Code of Criminal Procedure*, the *Model Detention Act* and the *Model Police Powers Act*. The *Model Criminal Code* is a criminal code (or "penal code"), similar to those found in many states, and focuses on substantive criminal law. Substantive criminal law regulates what conduct is deemed to be criminal, the conditions under which a person may be held criminally responsible and the relevant penalties that apply to a person convicted of a criminal offence. The *Model Code of Criminal Procedure* focuses on procedural criminal law, which is a body of rules and procedures that governs how a criminal case will be investigated and adjudicated. The *Model Detention Act* governs the laws and procedures to be applied by the criminal justice system to persons who are detained prior to and during a criminal trial and also to persons who are convicted of a criminal offence. Finally, the *Model Police Powers Act* sets out relevant powers and duties of the police in the sphere of criminal investigations, in addition to relevant procedures to be followed in investigating criminal offences. Moreover, the *Model Police Powers Act* contains provisions on additional police powers and duties and the relevant procedures to be followed by the police in the maintenance of public order.

These codes have been drafted on the basis of some 80 international and United Nations treaty and soft law crime prevention and criminal justice instruments. The reason why the codes are generic was that any code designed to be enforced would imply imposing from the top certain legal solutions which may fail in local practice. Clearly, the drafters drew lessons from the earlier applications of the modernization theory in countering crime, thus limiting possible negative criminal policy side-effects. One can appreciate the epoch difference between the *Blue Book* and the model codes.

The earlier failures in the application of the modernization theory changed its design. It has been renamed in political science⁴³³ as a theory of "transitions to democracy", colloquially termed as "transitionology". A flagship example of countering crime in societies in transition to democracy has been the above-described model criminal codes.

⁴³² S/2004/616, §§ 30 & 57.

⁴³³ Pye 2006:803.

XV United Nations standards for responding to crime

Row no. 12 in Figure 1 shows the development of United Nations standards and norms in crime prevention and criminal justice. As may be recalled, the concept originated at the First Penal and Penitentiary Congress (London, 1872). A draft for what eventually emerged as the *Standard Minimum Rules for the Treatment of Prisoners* was submitted to the League of Nations (1934), adopted by the First United Nations Congress on Crime Prevention and Criminal Justice (1955) and, eventually, the Economic and Social Council (1957). In 1990, at the Eighth United Nations Congress in Havana a community-based equivalent in the form of the *United Nations Standard Minimum Rules on Non-Custodial Measures* (the Tokyo Rules) was adopted, subsequently also by the United Nations

General Assembly. The most progressive piece of soft legislation has been adopted by the Economic and Social Council in 2002: the *Basic Principles on the use of restorative justice programmes in criminal matters*.⁴³⁴

The utility of such legislation has been enormous. It has made a significant contribution to promoting more effective and fair criminal justice structures in three dimensions. First, it can be utilized at the national level by fostering in Member States in-depth assessments leading to the adoption of necessary criminal justice reforms, including improving their practices in line with internationally recommended standards. Second, it can help them to develop sub-regional and regional strategies for responding to crime together. Third, it can be pursued by the ICC, to enhance its sentencing policies that should include restorative justice outcomes.⁴³⁵

⁴³⁴ ECOSOC resolution 2002/12, Annex, of 21 July 2002. See also BOX 3.

⁴³⁵ Findlay & Henham 2010. This idea has been first advanced by Nils Christie. He argued for the transformation of international criminal courts from “institutions of pain delivery to institutions for mediation” (Christie 2009:203).

Part III – Back to the Future



XVI The biosocial school in academic and United Nations criminological thought and action

The remaining nine rows in Figure 1 show the strictly academic development of criminological thought around the world before and after the Second World War. In addition to what has been written above, one more development should be noted: the renewed interest in the biosocial genesis of crime and deviance, which for a long time was considered as secondary to the social genesis of crime. That earlier interest led the League of Nations to include it in its research agenda criminal biology, and eventually to the conclusion that it had “*medicalized the causes and prevention of criminal conduct*”.⁴³⁶

The United Nations is far from having reached such a conclusion. In 1986, UNESCO in its Seville Statement on Violence, drafted and adopted by anthropologists, biologists, ethnologists, neuropsychologists, psychiatrists, psychologists and sociologists, declared that:

“it is scientifically incorrect to say that war or any other violent behaviour is genetically programmed into our human nature. While genes are involved at all levels of nervous system function, they provide a developmental potential that can be actualized only in conjunction with the ecological and social environment. While individuals vary in their predispositions to be affected by their experience, it is the interaction between their genetic endowment and conditions of nurturance that determines their personalities. Except for rare pathologies, the genes do not produce individuals necessarily predisposed to violence. Neither do they determine the opposite. While genes are co-involved in establishing our be-

havioural capacities, they do not by themselves specify the outcome”.⁴³⁷

This Statement sums up and assesses post-Second World War political, economic and scientific developments. In their course, social justice and human rights movements demoted innateness as an important feature of human nature.⁴³⁸ And yet, it can no longer be denied that inheritance plays a role in the learning of deviant and criminal behaviour. Subsequent to the 1968 Statement, this has been documented by the works of Moffit (1990/2005) for which in 2007 she earned the “*criminological Nobel Prize*,” the Stockholm Prize in Criminology.

This had its impact on United Nations criminological thought. A number of United Nations staff members published on the neurobiological conditioning of drug abuse attributed to childhood neglect and deficiencies in the parental care of children who were brought up in an “*affectionless control*” rearing style. In comparison with the control groups, those children were found not only to be more prone to disorders related to substance use, but also to be more prone to perpetrating various types of delinquent acts and crime than those who enjoyed emotional parental support.⁴³⁹ In the Organization which treats social problems extremely broadly, often considering them in terms of megatrends, meta-analyses and on a macro scale, the resurgence of the “*miniscule*” interest in biosocial aspects of crime and deviance is noteworthy. This adds to the already acknowledged trends toward the individualization of criminal responsibility a deeper context of socio-economic sustainable development and translates it into practical recommendations for the optimization of the returns on crime prevention.

It may be added in respect of this reinvigorated interest that biosocial criminological ideas may be interpreted in the context of sustainable develop-

⁴³⁶ Walters 2003:28-29.

⁴³⁷ http://portal.unesco.org/education/en/ev.php-URL_ID=3247&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁴³⁸ White, 1949.

⁴³⁹ Gerra et al. 2008:2.

ment. Unbalanced sustainable development leads to pauperization which implies ecologically hazardous living conditions. Some studies argue that those conditions contribute to the over-representation of convicted violent offenders diagnosed with damage of the central nervous system, which in turn is attributed to an excessive level of lead in blood.⁴⁴⁰ Doubts remain if indeed this is true, since lead levels in the blood of people of different races vary. Tests of control groups would verify this. Such an argument has often been repeated ever since it was first made in 1893, when the opponents of Cesare Lombroso's theory questioned its validity due to the lack of a control group.⁴⁴¹

Since the beginning of criminology such doubts have always existed – and they have figured prominently in connection with the research reported and discussed at the international anthropological congresses. At the peak of their popularity (from 1885 until the 1910s), with positivists such as Lombroso and his pupil Ferri at the helm, these congresses had the same importance as the concurrent international penal and penitentiary congresses. They “universalised the study of criminal behaviour”.⁴⁴² Indeed both of them had been started by Quételet, the founder of the sociological school.⁴⁴³

After Lombroso's death, his daughter, Dr. Gina Lombroso Ferri, attributed to his school of thought the broader application of probation measures and the introduction of diagnostic methods for offenders with epilepsy. This launched encephalography and other methods of diagnosis of the brain,⁴⁴⁴ undoubtedly a controversial approach, but one which was a clearly practical demonstration of the influence of anthropology on criminology.

Lombroso Ferri also credited her father's school of thought with the launching of the global juvenile justice court movement, which started in 1899 with the establishment of the first such court in the United States. It seems, however, that this process had probably been initiated independently of criminal anthropologists, as an expression of the transition of criminal law from the classical to the social phase, mentioned above.

What remains less contentious is the broadening of the prospects for new methods for diagnosing impairment of the central nervous system, something which was prognostically relevant for better prevention of drug abuse and violent crime.

The question of methodology will be addressed below. What has been discussed and is shown in Figure 1 has many other clear limits, which restrict our capacity to demonstrate in this study the breadth of criminological thought. Further, not everything that is useful in matters related to criminological thought can be reinterpreted in terms of sustainable development. Moreover, sustainable development is a topic on which very little has been published in criminology.

XVII The sociology of knowledge in respect of academic and bureaucratic knowledge

The above attempt to contextualize newer criminological ideas in light of the concept of sustainable development prompts us to consider the fluid relations between academic and practical intellectualism, the latter of which is manifested in the United Nations. One should recall in this context the work of Robert Merton (1910-2003), U.S. sociologist and criminologist.⁴⁴⁵ He was the author of an article about the incompatibility of bureaucratic and academic intellectualism, and a pioneer in exploring the impact of the former on the latter, an approach that was continued much later by others.⁴⁴⁶

Merton wrote that there are two types of intellectual creativity: theoretical, which is orientated towards meeting general social needs, and practical, which is orientated towards meeting State needs. The intellectual who becomes an integral part of the bureaucratic structure experiences various frustrations. He or she becomes dependent on it and also enters into conflicts with it, since the results of his or her in-

⁴⁴⁰ Stretsky & Lynch 2004; Niven 2007.

⁴⁴¹ Mannheim 1965, Vol. I:130.

⁴⁴² Knepper 2010:191. Another author notes that at the end of the period 1886-1914 during which altogether seven international criminal anthropological congresses were held, on the balance they had been well regarded by various participants (physicians, jurists, social reformers) as fora for jointly advancing progressive ideas (Kaluszynski 2006: 301-316).

⁴⁴³ Campion 1949.

⁴⁴⁴ Alper & Boren 1972:48-50.

⁴⁴⁵ As is widely known, he was the author of the structural theory of “means and ends” (“strain theory”). He argued that crime is the effect of imbalances in the functioning of the society (once more an example of how sustainable development can be disturbed), when the goals are overly emphasized, in comparison to the means (See the row “sociological theory/theory of social structure”).

⁴⁴⁶ Cohen 1988; Foucault 1991; Walters 2003.

tellectual work can not only be impoverished, but can also be deformed and even depreciated. His or her bureaucratic supervisors usually value practical knowledge more than academic knowledge. In their opinion, an academic theory is irrelevant in bureaucracy, which tests the facts against the knowledge of life.

Merton is basically right, but not entirely. Life experience is, of course, a very important signpost showing where, how and when one can apply academic knowledge in order to solve a practical problem. For many years, such academic knowledge for me could be verified only during short field visits involving various technical assistance issues in crime prevention and criminal justice.

There is only one measure of this success, which is that of the successful application of knowledge in science and practice. This thought was probably captured best by Mahatma Gandhi (1869-1948), one of the most prominent thinkers and political activists, the precursor of the concept of sustainable development and the propagator of the global antiviolence movement. His name has been enshrined by the General Assembly resolution which in 2007 declared 2 October of every year to be the “*International Day of Non-Violence*”.⁴⁴⁷ In his words:

*“Whenever you are in doubt or when the self becomes too much with you, apply the following test: Recall the face of the poorest and the weakest man whom you may have seen and ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny? In other words, will it lead to *swaraj* for the hungry and spiritually starving millions? Then you will find your doubts and yourself melting away”.*

In this famous quotation, Gandhi (nominated shortly before his tragic death to receive the Nobel Prize) made two basic recommendations. Combined, they both well address the relationships between academic and bureaucratic intellectualism, including criminology and practical responses to crime. These are: the usefulness of a crime prevention / criminal justice project for a disadvantaged person (be it a potential victim, prisoner etc.), verified by the evidence that it worked.

In academic criminology *evidence-based prevention*, that is prevention supported by the objective evidence, is something that is in the order of the day. As recalled by academics,⁴⁴⁸ this catchphrase made

headway into crime prevention and criminal justice policy when Donald Campbell advised the “*government science policy makers*” to “*give up the notion of a single new evaluation designed to support a single administrative decision regarding expanding or curtailing a program and substitute for this the development of a disputatious mutual monitoring, applied scientific community that will advise governmental decisions on specific programs from its general wisdom about research in the problem areas.*”⁴⁴⁹

This is hardly the case in United Nations criminology. Since its inception, the deliverables of the United Nations crime mandate have not been evaluated thoroughly enough. Among several explanations for this is the fact that evaluation of crime prevention and criminal justice projects has been a relatively recent practice, perhaps dating to the early 1980s. In the United Nations crime mandate, this has been even more recent, perhaps because of its international character which is greater than in any other place, and hence to the greater number of factors which cannot be controlled through more refined evaluation methods available in the academic world. That job is technically very demanding in experimental criminology. But it would be even more demanding within the United Nations framework, due to its developmental focus. In the former, the criteria are more rigid and outcome-oriented, in the latter they are less rigid and process-oriented. The former are also base-line data-oriented, while the latter are oriented towards capacity-building, including base-line data. The *control group* method in the former differs in part from the latter, and hence the concept of *randomization* partly means different things in those two types of projects.

The rigorous requirement of randomized control trials, which is recommended in academic criminology, is impossible because of the far greater multitude of factors in United Nations criminology that interplay with the implementation of the project. Thus, tongue-in-cheek, United Nations criminology has earned a qualifier: *could/would criminology*. This not only emphasizes its much greater relativity,⁴⁵⁰ but also its complexity and interdisciplinary character, which is far greater than in the academic world. Both qualify the academic findings to the extent that *specificity* is the rule, and the principle is an exception. This has best been shown by the

⁴⁴⁷ General Assembly resolution 61/271 of 27 June 2007.

⁴⁴⁸ Knutsson & Tilley 2009:5.

⁴⁴⁹ Campbell 1999:169.

⁴⁵⁰ Indeed implied by so many “*mays*” in this text, as per the reader-responsible narration that involves using qualifiers.

Sixth United Nations Congress, which elevated specificity to the level of the *Caracas Declaration* by affirming that “*crime prevention and criminal justice should be considered in the context of economic development, political, social and cultural systems and social values and changes, as well as in the context of a new international economic order*”.⁴⁵¹ Recently, but certainly not lastly in the United Nations, the General Assembly that endorsed the *Salvador Declaration* of the Twelfth Congress, invited “*Governments ... to implement the principles contained therein, taking into account the economic, social, legal and cultural specificities of their respective States*”.⁴⁵²

Paradoxical as the question may now sound, and in the light of the question of the specificity of laws (originally pondered so extensively by Hale, Montesquieu, Pound and Savigny), one may still wonder that, while Member States are jointly affirming the specificity of crime prevention and criminal justice in each country, why do each of them declare the same thing? Is this not then evidence of the commonality of specific problems? If so, is the “specificity rule” a legal disclaimer protecting State sovereignty rather than something that declares real differences? Second, why did each country affirm that only locally-driven modernization can be beneficial to effective and humane crime prevention and criminal justice, while at least some Member States also advocated the contrary view that the entire world should have a centrally led new international economic order?

The probable (if not obvious) explanation for the latter question is the political compromise that needs to be reached by all Member States, if they want to adopt such a document by consensus. For its sake, they agree to leave in the text of the declaration the contradictory statements.

But there are two other plausible explanations. The first explanation suggests that both affirmations (generality and specificity) are not internally con-

tradictory. They are, rather, a collective antithesis of the individual positions. They are a demonstration of legal unity in diversity, for the United Nations law is a universalizing system of “*We the peoples*”. It ordains cultural, political, social and economic specificities. It expresses a collective “*Volksgeist*” or “*Weltgeist*” (Hegel) much in the same way as Hale, Montesquieu, Pound and Savigny independently of one another meant the former only for a single domestic legal system. That “world spirit” is essentially alive and active throughout mankind’s history. “*Hegel identifies the spirit of a people with its historical and cultural accomplishments, namely its religions, its mores, its constitution, and its political laws. They are the work of a people, they are the people*”.⁴⁵³ Nothing less, nothing more.

However, since the above explanation may still be somehow unsettling (the argument of specificity still lingers behind religions, morality, constitution and laws), a second, less troubling, explanation was advanced by Leszek Kołakowski (1927-2009), Polish moral philosopher and historian of ideas.⁴⁵⁴ In his Oxford lectures he argues that it is not the specificity that really matters. What matters is a still-dominant tribal tradition that treats what is “ours” as “good” and what is “theirs” as “bad”. But, across and above this tribal morality of peoples, if not for real than at least nominally, there is an emerging common core of human values. Even if those values are violated by the “barbarians” themselves, he concludes that they, at least half-wittingly, at the bottom of their hearts, know that such violations are indeed barbarous.⁴⁵⁵ And indeed they are, as elsewhere the same philosopher convincingly argues by saying:⁴⁵⁶ “*When one attempts to derive human rights from historical or anthropological material, these will always be the laws of particular groups, races, classes, nations that on the strength of those laws are free to eliminate or enslave other groups. Humankind is a moral concept, and if we do not accept it, we have neither a good*

⁴⁵¹ General Assembly resolution 35/171 (Annex), 15 December 1980.

⁴⁵² General Assembly resolution 65/230 of 21 December 2010.

⁴⁵³ Rotenstreich 2003 Vol. 4:491.

⁴⁵⁴ In his youth, Leszek Kołakowski was a devout communist. After visiting the Soviet Union, he found communism repulsive. He broke with Stalinism, becoming a “revisionist Marxist” and advocating a humanist interpretation of Marx. He became increasingly fascinated by the contribution that Christianity makes to Western, and, in particular, modern thought. In 1968, he emigrated from Poland, first to Canada, then moved to the United States and eventually to the United Kingdom where in 1970 he became research fellow at All Souls College, Oxford. His Oxford lectures were also published in German (Mini-Traktate über Maxi Themen, Büchergilde Gutenberg, 2003).

⁴⁵⁵ Kołakowski 2009:189.

⁴⁵⁶ The above views are the outcome of a major paradigm shift in Western historiography on the ideas that govern world development. Before the outbreak of the Second World War, the main current in that historiography broke away from earlier universalistic ideas and gave in to nationalistic particularities and xenophobic ideas, the (re)occurrence of which was attributed to the overpowering of man by the forces of industrialization that charted on their own the destiny of both individuals and nations (Berdyev, Huxford, Sorokin). After the Second World War, leading thinkers realized that the dropping of atom bombs on Hiroshima and Nagasaki in August 1945 ultimately redefined the common values of mankind. At the time when Kołakowski was still a Marxist philosopher, Karl Jaspers (1883-1969), a German philosopher (and criminologist

basis to question slavery nor its ideology".⁴⁵⁷ Hence, there is no question that "a border is [only] a veil not many people can wear".⁴⁵⁸

In some instances the argument of specificity may well be yet another veil, protecting particular group interests rather than the interests of the State. The example of the UN response to corruption is a case in point. Often related to human trafficking, corruption is very difficult to fight internationally, let alone be assessed in terms of another State's technical assistance needs. The UNODC experience shows that States object to such external assessments based on the UNCAC when State Parties, through their own internal self-assessment, know beforehand how corrupt their apparatus indeed is. In such cases arguments are heard that the specificity of the situation would not allow anyone to make an objective external assessment. In fact, this says that countries with integrity deficits resist being scrutinized by others.

Since that attitude is more or less common, it should be added that the "specificity" argument as a smoke screen may be overcome. One example of this is that the legislation and practices of some countries allow difficult corruption cases to be addressed by a new method, in which the cases are investigated by two autonomous working teams. Such double investigations are more resilient to corrupting influences.

Further, where specificity really matters, the UNODC has started developing recommendations on adapting culture-specific good practices to other cultures, as is being done with the prevention of drug abuse through parental skills training. For that purpose, the UNODC conducted a review of some 130 family skills training programmes and the evidence of their counter-drugs effectiveness worldwide. The review focused on universalistic programmes that target all parents and families, and selective programmes that target parents and families that belong to groups or communities which, by the virtue of their socio-economic situation, are particularly at risk of problems related to

substance abuse. The review concluded with a list of principles that enabled the cultural adaptation of family skills training programmes.⁴⁵⁹ In fact, these recommendations are so generic that they may also be helpful in the cross-cultural prevention of urban violent crime.

This shows that the "specificity" argument may be reduced by such universalistic methods and arguments. This broadens a shared understanding (the "common language of justice") of problems and has nothing to do with limiting State sovereignty, an issue which is often raised by the other defensive and deflecting argument noted above.

Researchers say: "[I]t is not ... to go from the Universal to Particular...[H]uman organizations with the most effective change programs have developed a culture of dialectics. This means that change is best initiated by putting one orientation in the context of the other rather than opposing values. The elegance of this approach is that the existing [legal - added] culture is not threatened but enriched".⁴⁶⁰

These universalistic arguments cut across various "laws of lands". In comparison with the arguments of early legal philosophers denouncing the influence of foreign law on domestic law, and, in fact, purifying the latter from the former, these contemporary universalistic arguments are both global and local, or "glocal" for those technical assistance practitioners who see universalism and specificity as one concept (as did Montesquieu). In fact, they go to the heart of the *United Nations Convention against Transnational Organized Crime* with its two protocols against trafficking in humans and the smuggling of migrants, where there cannot be any derogation of slavery. They also cut across various cultures because of the target populations: exploited, disadvantaged or vulnerable peoples who because of this problematic status are the same everywhere. These arguments lead to an additional common denominator for all of these peoples – that of the different levels of statehood of the countries in which they live.

by education) who was persecuted up to the end of that war for his anti-Nazi sentiments, wrote in his book: "*The atomic bomb created an entirely new situation. Either all of mankind will be physically destroyed or there will be a metamorphosis of the moral-political situation of man*" (Jaspers 1958:5). There has to be a superior value for mankind (see also Box 7). In parallel, Arnold J. Toynbee (1889-1975), a British historian, the author of a twelve-volume "*History of Civilizations*", an intelligence analyst during the First World War, and editor of the annual *Survey of International Affairs*, wrote that the only intelligible subjects of historical cognition are not the nations or States, but entities of a higher order, separate civilizations or societies, for only on such a macro scale may one capture essential regularities of social and cultural dynamics (Thornhill 1966:25). The ideological differences during that early *Cold War* time between Kołakowski and the other two philosophers document how Marxist ideology, and, in fact, *Realpolitik* had quickly forgotten the horrors of the Second World War, indeed to the point where, as should be recalled, the representatives of the States of the socialist block voted against General Assembly resolution 415 (V) of 14 December 1950 by which the United Nations crime programme was mandated.

⁴⁵⁷ Kołakowski 1990:87. However, Kołakowski was aware of the shortfalls of the United Nations. In his essays he occasionally lamented its politicized human rights machinery which does not do justice to human rights abuses in the developing world.

⁴⁵⁸ Danticat 1998:364.

⁴⁵⁹ UNODC 2009, ch.4. See Glossary.

⁴⁶⁰ Tromenaars 1997:27-46.

It is in this humanistic and capacity-building context that one should read what “specificity” means when it is invoked in United Nations General Assembly resolutions. These resolutions remind us that specificity involves every civilization, every country and every level of statehood. They also remind us that in each civilization, tolerance is one of the fundamental values essential to international relations in the twenty-first century. Tolerance should include the active promotion of a culture of peace and dialogue among civilizations, with human beings respecting one another, in all their diversity of belief, culture and language. There should be neither fear nor repression of differences within and between societies but the cherishing of “specificity” as a precious asset of humanity.

If all this is true, then getting to know the idiosyncrasies of United Nations law and thought, studying their internal logic, “reading between the lines” of the *ius gentium* in order to assist in strengthening the statehood process, emphasizing such “blue” ingredients, and – last but not least – winning the hearts and minds of domestic decision-makers by international criminal justice reformers, all this may warrant pursuing it in the broader context of the United Nations Studies. This is the next topic.

XVIII United Nations criminology and Criminal Justice Studies and mandates

In 1940, Leon Radzinowicz together with the noted criminal lawyer J. W. C. Turner published an article about the “Language of criminal science” – the “language” in which the knowledge of crime may be best communicated and the scope of criminology defined. The authors emphasized that in that language, criminal law is one of the branches of the vast, complex and expanding science of crime. They wrote that its adoption in the curricula of academic education is increasing in proportion to how its practical utility is appreciated.⁴⁶¹ But as should also be remembered, in the immediate aftermath of the Second World War Radzinowicz and other like-minded academics, including the three other Polish criminologists mentioned at the beginning of this study, ignored the criminogenic consequences of war, thus

failing in this respect to contribute to the “language” for the knowledge of crime. Surprisingly, they were immune to it, being partly preoccupied with dogmatic considerations of what should or should not fall within the definition of criminology and partly whether or not Lombroso’s anthropological school made a progressive contribution to the response to crime.

But why has the preoccupation with Lombroso’s school of thought not crisscrossed with Churchill’s view that Hitler should be regarded as a gangster, an organized criminal – “the mainspring of evil”, as if one could not incorporate Hitler among the *homini delinquenti* studied by so many criminologists? In other words, why did the politicians but not the academics have the courage to *call a spade a spade*, and why did Sir Winston Churchill but not Sir Leon Radzinowicz have that criminological thought? In yet other words, and finally, why have the academic sciences shied away for so long from taking on board crime and justice issues involved in the maintenance of peace and security?

Perhaps when criminology as an academic discipline was still in its formative phase (i.e., when Radzinowicz wrote his article seeking to legitimize it as a part of criminal science), that parochial focus had been prior and central. From the retrospective of 2010, that priority and centrality of criminology moved somewhere else, both for criminology as an academic science and in the UN crime programme mandate.

In 1957, when UNESCO published its book on the teaching of criminology,⁴⁶² it included 10 reports about how criminology has been taught in Brazil, Turkey, USA and six other Western countries (plus ex-Yugoslavia), with a summary general report by Dennis Carroll and Jean Pinatel, respectively President and Secretary-General of the International Society of Criminology.

At that time the UN crime programme had only one international legal instrument, the *Standard Minimum Rules on the Treatment of Prisoners*. Quite understandably then, what was between the “blue” covers of such publications was national rather than United Nations, let alone, international criminological thought. The UNESCO merely gave its “blue” imprimatur to that collection which otherwise (in the absence of UN legal instruments and books) would probably not have appeared. What appeared there was simply reflective of the *Cold War* phase of

⁴⁶¹ Turner and Razinowicz 1940:226.

⁴⁶² Carroll 1957.

criminal justice reform (until 1989), as if the brutalization effect of the *Hot War* from 1939 to 1945 had worn off, for nothing in that book deals with the impact of the war on the post-war criminological curricula.

As of this writing, what one may find between such covers are the "blue" ideas, contained either in the numerous United Nations crime prevention and criminal justice standards and norms or in various United Nations reports and books. This "Blue Criminology" had its own formative stage, during which criminological thought – paradoxically enough in the form of "my country" statements, but also in the form of much more substantive and helpful national input that included various research findings as well as "good" and "state" practices – underwent further United Nations review, systemization, syntheses and meta-syntheses. This now constitutes the core of "Blue Criminology". A reciprocal exchange process is now in place between "blue" and academic criminology.

And yet, while only pioneering this process, the UNESCO book ends with a message that may be repeated today almost word for word, now that the UNODC has become the custodian of more than 60 legal crime prevention and criminal justice instruments as well as of related substantive knowledge, thus giving United Nations criminology crucial substance. That message, which should be understood in the context of the preamble of the UNESCO constitution (which states that *if wars begin in the minds of men, then it is in their minds that defences of peace must be constructed*), reads as follows:

*"In this age of effervescence and transition, and in a world which twice in twenty years has been convulsed by war, our ambitions must not be excessive; but we must work with courage and perseverance for the advance of criminology. We must have at our disposal, in all the countries of the world, specialists and savants who, endowed with the same spirit and using a common method, will take up the study of the criminal phenomenon in a new perspective, from the point of view of man and his needs ...".*⁴⁶³

⁴⁶³ Ibid.:51.

⁴⁶⁴ Teitel 2003.

⁴⁶⁵ ECOSOC resolution 2004/25, §1.

⁴⁶⁶ Within the *One Programme*, there are five thematic areas that the UN will concentrate on along with the cross-cutting themes of sustainable development, gender equality and human rights. "Criminal justice" is a part of "human rights". *One UN* entails becoming one in four areas: One Programme, One Leader, One Budget, One Office. These are supported by the Operations Management Team, the Information Technology Team and the UN Communication Group (A/61/583).

⁴⁶⁷ For obvious reason (freedom of thought), there is no comparable global academic mechanism which could have such a transformative potential. It is also clear, however, that the coordination mechanism introduces into the United Nations system new sources of confusion by increasingly intersecting sources of normative guidance. Consequently, there is now a growing number of various intersectoral groups (such as the Rule of Law Coordination and Resource Group in the United Nations Secretariat) the task of which is to streamline substantively and operationally the delivery of various technical assistance projects with those various guiding elements.

⁴⁶⁸ Mueller & Adler 1991:18.

In the above light it is now even more understandable that additional substance comes also from the doctrine of international humanitarian law. This informs the UNODC mandate about the imminent legal changes resulting from moving from the phase of international to global justice.⁴⁶⁴ In turn, the practice of international humanitarian law provides concrete examples in which the UNODC field experience in Afghanistan, the Democratic Republic of Congo, Kosovo, Liberia, the occupied Palestinian territory, Somalia and Sudan has its share.⁴⁶⁵

As shown by Box 15, UN teams there learnt to take an extremely proactive (if not also progressive in the sense of art. 13. 1 (a) of the UN Charter) approach to conflict resolution by seeking avenues to lay the foundation for rule-of-law work after the cessation of conflict.

To enhance that type of work, an interagency cooperation mechanism of "One United Nations" ("Delivering as One")⁴⁶⁶ was established in 2007, involving also the UNODC. This mechanism also provides the UNODC and its partners a great opportunity and transformative potential to contribute to the strengthening of a new discipline: United Nations Studies, to which the emerging sub-discipline of United Nations Criminal Justice Studies certainly belongs.⁴⁶⁷

United Nations Criminal Justice Studies are a mirror reflection of the ever-evolving United Nations crime mandate. This terminology suggests a separation with criminology. In fact, in the United Nations and academia they are interwoven. To draw on the comparison between academic criminology with its European roots, and criminal justice studies with their American roots, while both are multidisciplinary and use the same scientific methods,⁴⁶⁸ United Nations criminology and United Nations Criminal Justice Studies are similarly interwoven. What differs is their focus: in the former, research on crime, its control and prevention, and in the latter involvement in and the application of criminal policy; working on a decision-making process, attaining ef-

iciency in the criminal justice system, and making the treatment of offenders, the protection of victims and crime prevention work.

The essential difference between academic and United Nations criminology / criminal justice studies rests in the commitment of the United Nations to the promotion of social justice. Both are value-laden pursuits that may not necessarily (if at all) be supported by their academic counterparts, and by

the students, scholars and lawyers in the Western world claiming political neutrality for liberal education.⁴⁶⁹ This qualitative difference with the academic world (i.e. the promotion by the United Nations of social justice objectives) stems from its *Charter*.⁴⁷⁰ Otherwise, in short, and simplifying, in both worlds “criminology” is more about education (“knowledge” / “what?”), while “criminal justice studies” is about “skills” / “how?”

BOX 15

John Pace

From Roman to “One UN” Times: Silencing Arms through the Identification of Root Causes of Conflict and Developing New Legislation In Countries Emerging from it¹



Introduction

In-country experiences from Afghanistan, Chad, Colombia, Darfur, the Democratic Republic of Congo, Kosovo, Liberia, Nepal, the occupied Palestinian territory, Serbia, Somalia, Sri Lanka, and Sudan, suggest that it is often possible, depending on circumstances, to undertake measures already during ongoing conflicts aimed at laying the foundation for the rule of law in post-conflict situations, based on a sound understanding of the nature of the conflict and its drivers, its level of intensity, and an assessment of the actors. Measures taken to lay the foundations for the rule of law during ongoing conflicts have included partnering with national stakeholders to deliver justice services to war-affected populations, implementing strategies to prevent and respond to sexual and gender-based violence, implementation of civic education activities, and support to civil society and media in promoting transparency and holding all parties accountable for their actions.

A. Entry points

Rule of law assistance should not be to the detriment of emergency needs to ensure survival of victims of conflict. However, this should not delay the search for entry points which should be undertaken at the earliest stages, before or during the conflict, to address the root causes of the conflict. For example, it was observed that while many conflict-affected countries have elaborate constitutions, charters, criminal and civil codes and justice systems, the rule of law is nevertheless undermined by a culture of corruption and impunity, so that the distance between the law on paper and conduct of the state and other power holders becomes a source of conflict. Too often, as energy is exerted in the deployment of peacekeeping operations, peace negotiations and basic humanitarian assistance, discussions on power and wealth sharing among the parties to the conflict are allowed to take centre stage, while attention to the root causes of conflict and adherence to the rule of law take the back seat. The repeated failure of such an approach



¹ The title paraphrases the maxim *Inter arma silent leges* (“In times of war, the law falls silent”), credited to Cicero (106 - 43 BC), a Roman philosopher, statesman, lawyer and political theorist. It seeks to communicate that in comparison with the mandate of the League of Nations, the mandate exercised by the United Nations builds up on the lessons learnt from the former’s failure to prevent military conflicts. The text following the title is the excerpted and abridged version of John Pace’s summary of the on-line discussion forum *Rule of Law in Conflict and Post-Conflict Situations* (cprp-net@groups.undp.org) [Editor].

⁴⁶⁹ But eventually “many graduates, both legal professionals and others, also come to understand the limits of law as an agent of social change. In most societies, mere changes in the substance of law do not by themselves create a deeper connection between lives of citizens in their local communities and the overall community of the nation” (Gallant 1999:228 & 232).

⁴⁷⁰ Preamble and art. 55.

has demonstrated the need to address root causes of conflict and to rebuild the trust in the affected populations, in order to avoid relapse into conflict.

B. Partnership

Partnerships with affected populations are an essential aspect of delivering services during and after conflict situations. People affected by the conflict, including internally displaced persons and refugees, need to be empowered, especially in those rule of law activities which are aimed at restoring their protection and enabling them to resume their lives. Traditional leaders often play a vital role where the powers of a state are weak or non-existent, exercising their role as facilitators in settling disputes and providing war-affected groups with the means to reclaim justice and exercise their rights.

C. Assessments and consequence

It was felt that international support was best developed when it is based on accurate in-country knowledge of the needs and priorities of the affected national partners and populations, and draws upon their

existing capacities. Further, according to the findings of an assessment of the state of post-conflict recovery in some African countries, it was emphasized that discussion on the rule of law should be expanded to the regional and global levels, to identify and tackle negative extra-national factors that impede the rule of law at the country level, such as corruption in multinational trade and shady banking practices that encourage the embezzlement of natural resources by corrupt officials and leaders in developing countries.

D. Conclusion

In conclusion, the discussion has reflected a distinct trend towards earlier and more punctual involvement in taking steps to strengthen the rule of law - even when conflict is still ongoing, but where sufficient space and entry points are identified. Such interventions should be undertaken in partnership with national and local stakeholders, including government, civil society and communities. Moreover, it was the particularities of the conflict situation that ultimately determined the modalities, including timing and entry points, for measures aimed at enhancing a rule of law culture. ■

BOX 16

Delivering UN Justice for One: The Case of Pastino Lubang

Introduction

It is everyone's worst nightmare: getting arrested and being put in prison for a murder you did not commit. That is exactly what happened to 28-year-old Pastino Lubang of Juba, Southern Sudan. After 18 months' incarceration, he was finally pronounced innocent and released from prison. This is his story.

A. Abduction

In December 2007, Pastino's sister was abducted. His family suspected that a certain young man was involved, so Pastino and several relatives went to talk to the young man's family. The discussion became heated and blows were exchanged. Pastino intervened and broke up the fight and his family went home.

B. Custody

Then the police arrived. A member of the other family had been hospitalized with serious injuries. "They arrested 13 members of my family and took us to jail," Pastino says. "After eight days, the person in the hospital died and we were all charged with murder." After an initial screening, eight of Pastino's relatives were released, but he was among the five who were sent to Juba prison, "even though most of us had nothing to do with what happened." It was not until June 2009 that two of Pastino's relatives were convicted of murder and he and the others were released.

In police custody "detention conditions and treatment were very, very bad," Pastino says, whereas in prison "we were treated well and we did not face corporal punishment or beatings. There were some con-



¹ Adapted from the UNODC press release of 10 June 2010.



flicts among prisoners because there were no guards inside the prison, but beside that we were fine.” But physical conditions were abysmal: the prison lacked sanitation and bedding, and even food and water were in short supply.

Today Pastino works as an electrician at Juba prison and says that conditions for prisoners have gradually improved. Before his incarceration, he was unemployed for many years, so he is glad to have the job, but he wants more training. “I have only one hope,” he says, “to get out of poverty so that I can better take care of my family”.

C. Treatment of prisoners

Pastino’s experience is not unusual. Southern Sudan’s criminal justice system has been all but destroyed by two decades of civil war. The legal framework and prison policies still require extensive reform, and both prison administrators and prisoners need a better understanding of the law. Very few prison facilities survived the war and those that did are mainly staffed by demobilized soldiers and officers with little if any relevant training. Many people are held without due process or are incarcerated unnecessarily, exacerbating prison overcrowding.

D. Reform

UNODC, in partnership with the United Nations Mission in the Sudan and in cooperation with the International Centre for Criminal Law Reform and Criminal Justice Policy, is strengthening the capacity of the Southern Sudan Prison Service to institute reforms, meet international humanitarian standards and protect prisoners’ human rights. Since 2007, UNODC has trained nearly 1,500 prison staff in areas such as leadership, policy and regulations, information management, and the treatment of prisoners with special needs, including women, children and the mentally ill. UNODC provides vocational skills training for prisoners so that people like Pastino can learn a trade that will help them find work after their release, and we are helping revive the probation system to reduce prison overcrowding. UNODC also supports efforts to ensure more frequent review of criminal cases so that innocent people like Pastino do not remain unjustly imprisoned. ■

BOX 17

Back to the Future: Towards Development of New Principles of United Nations Technical Assistance in Crime Prevention and Criminal Justice¹



Introduction

Looking back at over sixty years of the provision of United Nations technical assistance in crime prevention and criminal justice gives a wealth of ideas on how it can best be rendered in the future. None of its early-years principles have lost their import. However, not only the political rationale behind them has changed, but also patterns and dynamics of crime, and the views on its aetiology and preventability.

The original legacy of the 1948-1961 United Nations resolutions aiming at eliminating illiteracy, hunger and disease by increasing productivity of people to grow only the gross national product has been broadened since the 1980s. With the Caracas Declaration of the Sixth Congress (1980) it has started addressing such social problems with due account of their national specificities, but also of a general objective of achieving a better quality of life, then, later, through



¹ Adapted from: S. Redo, For a common language of justice: translating words into deeds (in:) E. W. Plywaczewski, *Aktualne Problemy Prawa Karnego i Kryminologii*, Wydawnictwo Temida 2, Białystok 2009; *Promoting sustainability and integrality in alternative development as an important part of drug control strategy in States where illicit crops are grown to produce drugs*, ECOSOC resolution 26/2008 of 24 July 2008. Annex; *Alternative Development: A Global Thematic Evaluation*, United Nations, Sales No. E.05.XI.13; UNODC, *Handbook on Planning and Action for Crime Prevention in South Africa and the Caribbean Regions*, Vienna 2008; S. Chesterman, “Ownership”: The transfer of authority in Postconflict Operations (in:) A. Hurwitz with R. Huang, *Civil War and the Rule of Law. Security, Development, Human Rights*, London, Lynne Rienner Publishers/Boulder 2008:139-162, and G. Bassu, Law overruled: Strengthening the rule of law, *Global Governance*, Vol. 14, No. 1 Jan.-Mar. 2008:21-38.

sustainable intergenerational equitable solutions (1987), with the growing emphasis on good governance (1992), and since 2004 in a general rule-of-law framework with its “common language of justice” for countries in which there are different levels of access to justice.

Within this increasingly holistic approach, the United Nations through accordingly reconceptualised projects has been assisting in counteracting crime-type specific sustainable development problems. On the basis of currently emerging evidence-based knowledge from pilot practice, combined and synthesized from anti-crime and drugs field work, including research meta-analyses and project evaluations (partly also discussed in this essay), the following complementary principles of the United Nations technical assistance can be recommended with regard to counteracting ordinary, especially violent street, crime and some forms of organized crime, especially illicit drug cultivation.

A. Assist in developing an incremental strategy for a sustainable legal change

The main objective is to assist in transforming crime-ridden target communities by limiting their vulnerability to it in a participatory, people-centred way and at a pace appropriate to each stage, to allow the changes to be accepted and introduced by the communities. Depending on that pace, a ten- to twelve-year horizon in a project design may be foreseen.

Sustainability in this context means that the communities develop and renew social and economic resources and are able to maintain equitable social and cultural integrity and contribute to their natural and social environment. With this working definition in mind, ideally, life-chances mechanism should be developed that allows people and a healthy environment to benefit greatly from one another, either by legitimate income generation or meaningful vocational training and education aimed at social inclusion for the culture of prevention.

Continuous education should ensure that future generations will be able to pursue legitimate livelihoods, cope with the pressures of globalization and create for themselves opportunities for growth. The progressive introduction of viable sustainable livelihoods in the broader context of development is needed without severely curtailing available means of survival of the people involved in crime at the initial period of technical assistance. Do not rush.

This may gradually lead to the creation of a viable value chain at the local level. Revenue from value-added goods locally manufactured must contribute to the social benefits of the target communities and society in general. Such social entrepreneurship, which includes the practice of using business profits to generate social goods, can lead to real socioeconomic sustainability, including restoring the sense of justice and to communal renewal of involvement in crime prevention.

Viable livelihoods should be available to all members of the community: the young and the elderly; the fit and the infirm; victims and offenders, and men and women alike. Having a variety of income-generating activities may be a safeguard against weakened interests in an individual product or activity. Livelihood diversification is in fact a major success factor in sustainable alternative livelihood development.

B. Obtain high-level political commitment and acknowledgement of a common cause

When there is high-level political commitment to address a common problem, there will also be the acknowledgment of a common cause, hence there may be support for infrastructure and adequate funding.

C. Develop structures, partnerships and opportunities based on existing capacities rather than creating new ones

Around them can operate government and non-government organisations with a common strategic plan, area-based for a greater concentration of expertise and inputs. Those should include low-cost and yet effective interventions that are already an established social, cultural, institutional or legal practice and can be sustained and replicated with minimal government support. Since many organisations do not have the capacity for ongoing research and analysis, user-friendly ways to share information about good practices from ongoing interventions should be developed and shared. Development activities must be based on continuity: each activity should lead into another, build on the success of previous initiatives and, over time, increase the hope and capabilities of the persons involved.



D. Balance and streamline technical assistance components

It is necessary to achieve a balance between “control” and “prevention” project components, and a bottom-up and a top-down approach. Clear and constant communication is critical, especially at the beginning, for knowledge and experiences to be transferred not only from technical assistance providers but also to them.

E. “Speak in the language” of the donee

When looking for opportunities to render technical assistance, getting to know the donee’s “language” is an advantage for the donor. It is important to use the “language” of a donee, that is to master the logical system of that language,² because it may differ from the donor’s language. E.g., “justice” may mean “mob justice” or “prosecution”, “domestic violence” may mean violence against the elderly only, and “criminal law” may also mean different things in different legal systems.³

F. “Write in” donor’s knowledge of international legal instruments and best practices into the technical assistance project

Once the technical assistance application is successful, it may be necessary to rewrite what needs to be done in an agreed language, upon which the project idea will embrace common values. This is important for a common language of justice and not just for the language of justice of a client (for instance, improving physical prison infrastructure in undemocratic countries).

What is necessary for that common language is: (1) an impartial system of law in which criminal justice and crime prevention contributes to upholding fundamental civil and political rights with mechanisms for conflict resolution and for peaceful regime change and institutional renewal, (2) protection of personal security and provision of a context of consistent, transparent rules for the transactions, (3) a profes-

sionally competent, capable and honest public service which operates within an accountable, rule-governed framework and in which the principles of merit and the public interest are paramount, (4) territorial and ethnocultural representation, (5) checks on executive power, effective and informed legislatures, (6) clear lines of accountability from political leaders on down through the bureaucracy, and (7) an open political system which encourages an active and vigilant civil society whose interests are represented within accountable government structures and which ensures that public offices are based on law and consent⁴.

G. Remain accountable to ultimate beneficiaries

Project monitoring and evaluation hold technical assistance providers accountable for their action, and that is crucial, since people’s lives depend on the performance of those practitioners, and imprudent and uncaring development often has adverse effects.

H. Build donee’s confidence through “quick impact”

Activities that provide people with alternative cash income and/or produce other project-related immediate benefits within the first few months or days (so-called “quick impact”) are vital to building trust and enabling an immediate transition from illegitimate to legitimate sources of income, which can begin to transform the economic prospects of a community. Successful “quick impact” builds confidence and strengthens cooperation among stakeholders at all levels, from people at the grassroots level and local authorities to leaders at the national level.

I. Assess the impact

To ensure that development objectives are realized as expected, mechanisms must be in place to allow frequent assessments and necessary adjustments, starting with comprehensive census baseline data captured through both qualitative and quantitative development indicators.



² Robert B. Kaplan, “Cultural thought patterns in inter-cultural education”, *Language Learning*, 16, Nos. 1 and 2: p.14.

³ See also G. P. Fletcher, *The Grammar of Criminal Law. American, Comparative, and International*, New York, Oxford University Press 2007 (Introduction and chapter 2).

⁴ Department of Economic and Social Development, *Poverty Alleviation and Sustainable Development: Goals in Conflict? Views and Recommendations of the Committee for Development Planning*, United Nations, New York, 1992, ST/ESA/234, sec. 5.

J. Shift implementation power to local institutions and other constituencies

Related to the above locally-focused process is the empowerment of local entities. It is important to unlock the potential of those entities which in the process of improved self-governance may do more for justice delivery than in a centrally planned and executed process. Strong and committed leadership is required to ensure that development policies and activities are based on a true understanding of the needs and concerns of the target communities at the grass-roots level.

Ultimately, the key to sustainable livelihood development is community ownership. Community ownership means not only political and physical ownership of the arrangements but also emotional ownership on the part of the community of its own progress and future, from the very start. Since the issue of sustainability envisages the long-term commitment of all parties

involved, it also calls for longer-term and sufficiently flexible funding from a variety of sources, including Governments, international organizations, multilateral financial institutions and other donors and development partners.

K. Scan locally and globally; reinvent locally

Look for substantive and technical solutions everywhere. Adapt them to local circumstances.

L. Think and act in terms of sustainable capacity outcomes and plan an exit strategy

Keeping in mind the goal of sustainability, technical assistance advisors should see their role as facilitators of progress and should plan their exit strategy to enable the communities to continue the activities without external intervention. ■

With more than 60 legal instruments on most of the basic aspects of crime prevention and criminal justice in the world and with the institutional memory of their development, the UNODC mandate has proven sufficiently broad and incisive as a legislative basis for being a part of United Nations Studies. As mentioned, it contains two conventions against transnational organized crime and corruption, and three drug control conventions. There are also sixteen universal counter-terrorism instruments. In sum, there are about 2000 substantive standards and norms in crime prevention and criminal justice embraced by the UN crime programme. If multiplied by 193 Member States which created and/or are the addressees of those provisions, there is a total of about 400,000 of them to be implemented in specific political, cultural and socio-economic realities. In addition, there are hundreds of substantive programme documents, including reports and publications (journal articles and monographs) of a colossal interest to the outside world (as this study sought to show), be it science or policy and decision-making. This is the core material for United Nations Criminal Justice Studies, inextricably linked to the question of governance – an element of statehood. The degree of academic freedom with which it will be treated will determine in which directions these studies will develop.

From a normative perspective, despite the central role played by the UN standards and norms in

crime prevention and criminal justice in the development and application of international legal instruments and criminal justice policies, it should be noted that they were developed at different times (with some dating back fifty years) and in different contexts.

The world has changed significantly. That change continues at an unprecedented pace, in at least four directions: (a) new and sophisticated forms of crime have emerged, requiring more effective criminal justice responses; (b) the constantly evolving social, cultural and economic environment creates novel challenges for criminal justice and law enforcement authorities, or changes dramatically the approach to, and impact of, traditional and conventional criminality; (c) crime prevention and criminal justice should not only be the precondition for successful restoration of peace and security (as the UNBiH experience documents), but this precondition should also be factored into the mitigation of consequences of natural environmental disasters (as the MINUSTAH 2010 example of gang-related violence in Haiti has documented); and (d) the spread of modern information and communication technologies, as well as the growing transnationality of related criminal activities create a vast range of new opportunities for the commission of crimes.

Therefore, a new approach to the role of crime prevention and criminal justice as central to peace

and security is essential. On a broad policy plane, the United Nations Security Council was and is in a position to bring crime prevention and criminal justice into its central focus, as it has done more than once before.⁴⁷¹

This means: (a) updating or supplementing existing standards and norms in order to ensure that they respond adequately to contemporary needs of all Member States, regardless of the level of development; (b) incorporating the United Nations standards and norms into curricula for international criminal justice education for the rule of law; and (c) developing new teaching and training techniques.

From the UNODC operational perspective, this requires (a) surveying, collecting, reviewing and publishing “good practices” in international crime prevention and criminal justice education, in line with the United Nations standards and norms; (b) moving from their *promotion* (awareness-raising) to *education* by adding to “what” should be taught and trained, “how” to do this; (c) developing training templates, based on both “good practices” and the United Nations standards and norms. If the latter do not exist, then a United Nations publication of “good practices” should be a precondition to pursuing their eventual legal recognition as “State practices” by United Nations policy-making bodies.⁴⁷²

Pursuing “studies” on such a diversified and legally complex material is (still) not very much evident in the UNODC programme. More often than not, project staff, including hired consultants, base their project activities on outside knowledge. In practice, they teach and train the target audiences in what they know from their education and experience, and not from what is encapsulated in the United Nations crime prevention and criminal justice standards and norms. This is a more elaborate version of “my country” statements. It shows that owing to this cognitive dissonance the delivery of the United Nations rule of law message which has defined values tends to be shallow. But the potential for improving the delivery is great. As of 2010 the UNODC has operated ten regional offices, nine country offices and 33 programme offices with alto-

gether some 1,700 staff members worldwide, including 340 core staff. In sum, the UNODC has 52 outposts across the world covering 144 Member States through which it can and does assist in making domestic crime prevention and criminal justice work. There are 18 Programme Network Institutes and specialized centres. Making crime prevention and criminal justice work with the use of international legal instruments in the custody of the UNODC is now taking place there.

This work should be and is being implemented with increasingly diversified teaching and training methods, including psycholinguistic skills enabling the establishment of a relationship with the audience, especially with those from different cultural backgrounds. Crosscutting and interdisciplinary United Nations Criminal Justice Studies should support the above process by generating the ideas, proposals for programme and practical activities of this great world organization which needs more than autonomous academic consideration, and even more than a limited “country” knowledge of the problem. No single domestic legal system, no particular academic school of thought, be it in international law, criminology, political science, etc., but a supranational process combining various approaches, theoretical and practical, should cater to that emerging United Nations Criminal Justice Studies mandate.

And yet, very often at the sessions of the United Nations Commission on Crime Prevention and Criminal Justice, its participants specifically limit themselves to a “my country” statement, making others wonder (if they are at all interested), how much that country’s experience is really relevant to the international issue in question, and what is its benefit for global crime prevention and criminal justice.⁴⁷³

This then is still of too little help. The professional debate at the Commission more often than not remains parochial, hence also of marginal utility for United Nations Criminal Justice Studies. The few exceptions occur particularly at the time of the so-called “thematic debate”, that is a debate on the special theme chosen by the Commission and discussed by

⁴⁷¹ SC 9867.

⁴⁷² In principle, before international “State practice” is recognized in United Nations “soft law” instrument as a pre-existing or desired custom, it may be preceded as “good practice” of a limited territorial nature (local, one-country, subregional, regional). In other words, from the legal point of view “good practice” may then be custom-forming, but does not oblige in any way a State to follow it, unless, e.g. through the Commission on Crime Prevention and Criminal Justice, it eventually becomes agreed “interstate practice” and is recognized in United Nations resolutions (whether declaratory of pre-existing custom(s) or recommendatory). Consequently, United Nations crime prevention and criminal justice education based only on “good practices” falls short of the essential interstate normative component that otherwise would inform the development of UNODC training “templates” with the relevant UN standards and norms (whether generated by the UNCPCJP or by another UN programmatic mechanism).

⁴⁷³ For a similar critique of bilateral legal study and work, see: Schukoske 1999: 240-241.

a panel of speakers selected in advance by the Commission. For such a debate, the panel's moderator is authorized to intervene in order to seek the cooperation of the speaker in preventing the reading of a national statement. Some of the speakers measure up to the international level of the discussed theme, while others still do not.

To mobilize better-quality preparations for and interventions at the Commission, since its nineteenth (2010) session, it has been occasionally web-cast (thematic debate), as has already been the case for the Eleventh and Twelfth Congresses. This thus opens the way to using the webcasts as a part of training materials on the implementation of United Nations crime prevention and criminal justice standards and norms.

Separately, the progress in information technologies has enabled the UN Crime Prevention and Criminal Justice Programme, with the assistance of the Korean Institute of Criminology, one of the PNIs, to create the Virtual Forum against Cybercrime.⁴⁷⁴ The same institute took the lead on the follow-up to the Twelfth Congress workshop on "International criminal justice education for the rule of law". A virtual criminal justice academy may be created which would draw on various source materials.

Last but not least, for the first time, at the Twelfth Congress on Crime Prevention and Criminal Justice in 2010, the Organization in its own "language" and on its own terms considered the vast, complex and expanding United Nations Criminal Justice Studies as a part of the academic curricula dealing with international criminal justice education for the rule of law, and as a part of United Nations Studies. In its *Salvador Declaration* the Congress accordingly stated that:

"We endeavour to take measures to promote wider education and awareness of the United Nations standards and norms in crime prevention and criminal justice to ensure a culture of respect for the rule of law. In this regard, we recognize the role of civil society and the media in cooperating with States in these efforts. We invite the United Nations Office on Drugs and Crime to continue to play a key role in the development and implementation of measures to promote and develop such a culture, in close coordination with other relevant United Nations entities ... We undertake to promote appropriate training of officials entrusted with upholding the rule of law, including correctional facility officers, law enforcement officials and the judiciary, as well as prosecutors and defence lawyers, in the use and application of those standards and norms".⁴⁷⁵



Picture 32. G.O.W. Mueller, Chief of the United Nations Crime Prevention and Criminal Justice Branch (second on the right, lower row) with his staff (Lamin Sesay and Eduardo Vetere, second and third on the left lower row) the late Kurt Neudek, the author and Bill Burnham (left upper row) in the company of Austrian law enforcement officials during a courtesy visit to the provincial police HQ in Eisenstadt (close to Vienna, Austria, 1982)

⁴⁷⁴ KICJP 2006:13-16; 81-259.

⁴⁷⁵ GA resolution 65/230, §§ 43-44.



Picture 33. Commission on Crime Prevention and Criminal Justice (Vienna, Austria, 2009 in the Board Room dedicated to the memory of Prof. John Martinussen (1947-2002), pioneer of sustainable industrial development) while considering the item on the preparations for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice (Salvador de Bahia, Brazil, 2010). Sitting from left to right: Cosmin Dinescu (Romania, Chairman of the Commission), Andres Finguerut (Secretary of the Commission), Dimitri Vlassis (Secretary of the Twelfth United Nations Congress), Sandra Valle, Interregional Adviser on Crime Prevention and Criminal Justice, Sławomir Redo (Coordinator of the Twelfth United Nations Congress Workshops)



Picture 34. Address by Antonio Maria Costa, Secretary-General of the Twelfth Congress. On the podium, sitting from left to right: John Sandage, Executive Secretary, Ambassador Helmut Böck (Austria), Vice-Chairman of the Congress, Vivian Pliner, Secretary of the plenary meeting, Dimitri Vlassis, Substantive Co-ordinator. Below: Maher Nasser, Director of UNIS, servicing the plenary



Picture 35. The “Committee of the Whole” negotiating the draft Salvador Declaration at the Twelfth United Nations Congress on Crime Prevention and Criminal Justice

Drawing in the above context is still important for two reasons. First, it shows that international criminal justice education for the rule of law has been acknowledged for the first time in the *Salvador Declaration* as an emerging topic for the United Nations action. Second, the development of certain crime prevention and criminal justice ideas and topics at the global scale takes time, as shown, for example, by the development of the topic of computer (cyber) crime.

Regarding it, as foreseen (and as mentioned earlier by Wolfgang), legal cyberspace developments are gradually influencing the global security agenda, within which crime prevention and criminal justice issues have increasingly been factored. While not

pretending to be an oracle, one can probably still say that the further development of this agenda will be spearheaded first of all by the question of the legal protection of minors in cyberspace, in line with the traditional considerate look of governments at the lot of *succeeding generations*. Thus after the original development of the question of child welfare in the pre-United Nations period (1846-1945), and the UN child welfare legal and social developments (1946-2010), in the future such global developments will pave the way for various progressive agreements, the contents of which will eventually permeate the global question of the prevention and control of adult criminality.

BOX 18

Emil Wandzilak

Researching United Nations Criminological Ideas: Where to Find United Nations Crime Prevention and Criminal Justice Documentation



The Secretariat is the work force of the United Nations. One of its many functions is to conduct research and prepare reports mandated by United Nations legislative bodies in specific areas such as the treatment of offenders and victims, capital punishment, crime trends, corruption, human trafficking and other forms of organized crime, the independence of the judiciary, and cybercrime, so that Member States will be able to formulate policies and strategies in dealing with crime. The Secretariat may conduct its research by, for example, sending out questionnaires directly to Governments. This unique method of data collection ensures that the Organization receives “raw” information and statistics from a primary source. Then, results are analyzed, synthesized and distributed in reports presented to one of several legislative bodies or specially convened United Nations meetings. Occasionally, the Organization will prepare sales publications and non-sales publications aimed at external institutions and readers. Many United Nations reports and publications capture the world crime prevention and criminal

justice developments in a very comprehensive, facts and figures-based fashion. At the same time, some may be regarded in research, policy-making and operational terms as spearheading and groundbreaking as has been the case of, e.g., economic costs of crime¹, and computerization of criminal justice information².

In order to facilitate the preservation of all its reports and to provide research support for its staff, as well as external institutions and readers, the United Nations has established, in 1946, the **Dag Hammarskjöld Library**³ located at United Nations Headquarters, New York. In that same year, the Dag Hammarskjöld Library took a major step to purvey, at the global level, United Nations documents through the establishment of a **network of a depository libraries**.⁴ Since then, the Dag Hammarskjöld Library continually distributes specific documents and publications to this network. At present, there are over 400 depository libraries located throughout the world, covering 140 countries, maintaining material from the date of designation as a depository to the present.



¹ A/CONF.56/7, *Economic and social consequences of crime: new challenges for research and planning*, working paper prepared by the Secretariat.

² *Guide to Computerization of Information Systems in Criminal Justice*, ST/ESA/STAT/SER.F/58, United Nations, New York 1992

³ See <http://www.un.org/depts/dhl/>

⁴ See <http://www.un.org/Depts/dhl/deplib/index.html>

Historical crime prevention and criminal justice information and documents are archived at the **United Nations Library at Geneva**,⁵ previously the **League of Nations Library** which was established in 1919. It became the United Nations Library at Geneva when the League's assets were transferred to the United Nations in 1946. The archives of the Geneva Library include rare material from the **International Penal and Penitentiary Commission (IPPC)**, the predecessor of the **United Nations Crime Prevention and Criminal Justice Programme**.

Several indexes are available for use by researchers. For example, **UNBISnet**⁶ is the primary online index to United Nations document since 1979. It is indexed by the Dag Hammarskjöld Library and the United Nations Library at Geneva. It also includes a catalogue of non-United Nations books of both libraries and provides access to voting records on resolutions adopted by the **General Assembly (GA)**, since 1983, and the **Security Council**, since 1946. The great advantage of UNBISnet is that it is constantly being kept up-to-date, and is also being expanded retroactively. Documents indexed during the day are loaded onto the system during the night, making the data available to researchers world-wide. Another great feature of UNBISnet is that it links to the full text of recent United Nations documents in all six working languages (Arabic, Chinese, English, French, Russian and Spanish). Texts of resolutions adopted by the GA, Security Council, **Economic and Social Council (ECOSOC)**, and the **Trusteeship Council** going back to 1946 can also be retrieved. The full text of recent speeches can be accessed through the index and the Voting Records database provides easy access to the cited resolution.

UN-I-QUE⁷ is the Dag Hammarskjöld Library's first database launched into cyberspace. It is an electronic research tool that serves as a user-friendly guide to the symbols/sales numbers of tens of thousands of selected documents from 1946 to the present. Among the symbols which can be easily traced through UN-I-QUE are those of resolutions granting countries membership in the United Nations, speeches in the general debate of the GA, sessional reports of major committees/commissions and their terms of reference, reports prepared by Special Rapporteurs in the fields of human rights and international law, periodic

reports submitted by countries in compliance with human rights instruments, and reports of United Nations conferences. More often than not, all these resources contain original data and information on various global and domestic facets of crime prevention and criminal justice.

During the mid-1980s, rapid technological developments regarding personal computers coupled with the emergence of the internet and growing pressure to reduce publishing costs forced what is now the **United Nations Office on Drugs and Crime (UNODC)**, to adopt the web as a platform for disseminating information and to establish its presence on the internet. A second aim was to establish how the web could be used as an information and discussion platform by the international criminological community. In pursuit of these goals and, originally, at the inspiration of Ms Irene Melup, retired senior staff member of the United Nations Secretariat, the creation of the **United Nations Crime and Justice Information Network (UNCJIN)**⁸ was considered and, later, mandated by ECOSOC resolution 1986/11. UNCJIN, established with the assistance of the University of Vienna (Austria), served as an electronic clearing-house and represents the culmination of several years of efforts by UNODC. At that time, the ambition for UNCJIN was to be able to access and download all United Nations documents in the field of crime prevention and criminal justice, which was achieved with limited success. In a sense, UNCJIN was an idea that was simply ahead of its time, but that very idea had sown the seeds for the future development and eventual establishment, by the United Nations, of an electronic storage/retrieval system via the internet.

Similarly, criminological libraries started to feel the pressures of reduced budgets and staff, along with increases in subscription fees for journals. Prompted by other global developments such as UNCJIN, and in order to deal with the new reality, a meeting of librarians and criminal justice information specialist was held in 1991, by the School of Criminal Justice, Rutgers University (U.S.A.), at the initiative of Professor G.O.W. Mueller, then the retired Chief of the United Nations Crime Prevention and Criminal Justice Branch. It led to the establishment of the **World Criminal Justice Library Network (WCJLN)**⁹. The founding members

⁵ See <http://www.unog.ch/library>

⁶ See <http://unbisnet.un.org/>

⁷ See <http://lib-unique.un.org/>

⁸ See www.uncjin.org/index.html

⁹ <http://andromeda.rutgers.edu/~wcjlen/WCJ/>



of WCJLN were unanimous in their recognition of the increasing demands and pressure placed on criminal justice libraries because of the globalization of crime and the information explosion. It was clear that no library could hope to collect everything, or to serve the diverse and increasingly international needs of its clients. Furthermore, the duplication of efforts on the part of all libraries was not cost beneficial in an era of information explosion. The main goal of WCJLN is to develop ways to share services and criminal justice information on a global scale.

At the 1993 WCJLN meeting, hosted by the International Institute of Higher Studies in Criminal Sciences (Siracusa, Italy), a member of the **United Nations Programme Network of Institutes**,¹⁰ the subject for discussion focused on “gray literature” (i.e., United Nations reports), the difficulties libraries experienced in acquiring it and development of strategies to overcome these difficulties. The meeting also recognized that much valuable information is printed as “gray literature”, but not formally published by various organizations and national agencies. In response, participants of the meeting agreed to prepare a list of such literature available at their respective organizations so that these lists could be shared to facilitate future exchange of documents amongst network members. A list of United Nations relevant reports, resolutions, etc., going back 10 years was prepared. As a consequence of the interest expressed in the listed documents, a comprehensive list, going back to 1946, was prepared and initially published in the International Review of Criminal Policy (IRCP).¹¹ Subsequently, an updated list was issued on a CD-ROM¹² and memory stick (the latter distributed at the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, held at Salvador, Brazil in 2010). This compilation lists titles of documents and their symbols. Having these symbols serves as a great asset when trying to download documents from the Official Document System, which will be discussed below in detail.

The *IRCP*, a sales publication, was the main periodical issued by the United Nations since 1952,

dealing with crime prevention and criminal justice topics.¹³ It served as a journal of applied criminology that provided information to the international community on current methods, techniques and approaches in the field and assisted countries in the development of criminal policy and criminal justice practices. Its emphasis was on a pragmatic approach to the prevention and control of crime and the treatment of offenders.

The *IRCP* presented a series of articles by various eminent criminological and world-policy authorities. Themes covered in the *IRCP* include: crime and development; juvenile delinquency; training of criminal justice personnel; role of police and law enforcement agencies; prison labour, to name only a few. The last volume published was nos. 49/50 (1999) on the subject of *The United Nations and Juvenile Justice: a Guide to the International Standards and Best Practice*. The United Nations discontinued the *IRCP* and since 2001 has published, in its place, the *Forum on Crime and Society*,¹⁴ in the six official United Nations languages. To date, six issues have appeared in print covering topics such as organized crime, corruption, computer crime, homicide, imprisonment, human trafficking and terrorism. The most recent issue is Vol. 5, Nrs. 1 and 2, 2006, ISBN 978-92-1-130288-2, E.09.IV.18, published in 2009, on the subject of “Improving knowledge on crime: towards better data”: proceedings of the meeting of the open-ended expert group on ways and means of improving crime data collection, research and analysis with a view to enhancing the work of the United Nations Office on Drugs and Crime and other relevant international bodies, Vienna, 8-10 February 2006.

In preparation for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held at Bangkok, Thailand, in 2005, and to mark the celebration of 50 years since the first Congress was held in 1955, a massive project was undertaken to scan all the documents that were prepared for and submitted to the first to the tenth Congresses, in all the working languages of each Congress. This project culminated at the Eleventh Congress with the release



¹⁰ See http://www.icclr.law.ubc.ca/Site%20Map/Related%20Sites/United_Nations_Network.htm

¹¹ See *The United Nations and Criminal Justice, 1946-1996: Resolutions, Reports, Documents and Publications* (1997), *IRCP*, nos 47/48, ST/ESA/SER.M/47-48 (E.97.IV.4), available in English, French, Spanish and Russian.

¹² To obtain a copy of *Compilation of United Nations Resolutions, Reports, Documents and Publications in the field of Crime Prevention and Criminal Justice*, Revised edition, 2005, send an e-mail to: emil.wandzilak@unodc.org.

¹³ See further: Thorsten Eriksson, *The Reformers: A Historical Survey of Pioneer Experimenters in the Treatment of Criminals*, New York: Elsevier Scientific Pub. Co. 1976, p. 244.

¹⁴ The *Forum* is available in hard copy as a sales publication or on-line at: <http://www.unodc.org/unodc/en/data-and-analysis/Forum-on-Crime-and-Society.html>

of another CD-ROM, entitled *Documentation from the First to the Tenth United Nations Congresses on Crime Prevention and Criminal Justice (1955-2000)*. To make these documents easily available, electronic copies have been posted on the internet at: https://www.asc41.com/UN_Congress/undocs.htm¹⁵.

In 1991, the United Nations started to use an **Optical Disc System** for storage and retrieval of its documentation based on proprietary software and optical disc technology, which were considered state-of-the-art at that time. In 2000, a project was launched to re-engineer the optical disc system with up-to-date technology, non-proprietary standards, and an internet browser. The new system uses magnetic disks which are fast, reliable and inexpensive, even for large amounts of storage space. On 4 September 2001, a new system called the **Official Documents System (ODS)** has begun its operation¹⁶.

The ODS is a full-text retrieval system for United Nations documents which offers two main search areas: "United Nations Documents" and "Resolutions". The "United Nations Documents" area gives access to parliamentary documents of the United Nations in all six working languages. The "Resolutions" area provides access to the resolutions of major United Nations organs such as the GA, Security Council, ECOSOC, and Trusteeship Council going back to 1946. The system also allows full-text searching in all six languages.

The ODS, originally a joint undertaking of the duty stations in New York and Geneva, started as a pilot project in 1992. Addis Ababa, Bangkok, Beirut, Nairobi, Santiago and Vienna joined the system at a later time. Each duty station is responsible for inputting material produced locally. The short-term objective is to bring all duty stations fully online so that United Nations documents issued anywhere

can be accessed immediately upon release by users world-wide. A longer-range goal is to expand coverage retrospectively to 1946. The Dag Hammarskjöld Library in New York is, for example, scanning older United Nations documents on a continuous basis and uploading them to the ODS. As in the case of UN-I-QUE, ODS offers an unrivalled amalgamation of crime prevention and criminal justice data and information from various United Nations bodies which, in line with their mandate, look at socio-economic development in a crosscutting way.

UNODC maintains its own webpage.¹⁷ This page is an amalgamation of three earlier webpages. Up to the end of the 1990s, one page was devoted to the United Nations Crime Prevention and Criminal Justice Programme, the second to the United Nations Drug Control Programme and the third to the Director-General's Office at the United Nations Office at Vienna. But due to several restructuring exercises that lead to the eventual merger of the crime and drug programmes, and the establishment of the United Nations Office on Drugs and Crime during 2002, a unified webpage was created to reflect the new status of the programme and Office at Vienna.

The UNODC webpage is rich with information. It covers the full range of themes that fall under its mandate, such as corruption, HIV and AIDS, human trafficking and smuggling, illicit drugs, crop monitoring, criminal justice reform, crime prevention, money-laundering, transnational organized crime, terrorism, just to name a few. It also provides access to documentation of all United Nations congresses that will have taken place as well as the **Commission on Narcotic Drugs**, and the **Commission on Crime Prevention and Criminal Justice**. Current publications and press releases are likewise accessible, as well as video clips, and information on upcoming UNODC meetings. ■

¹⁵ The United Nations would like to acknowledge that the American Society of Criminology generously funded the scanning of the documents and that without the commitment and support of Dr. Cindy Smith, the tedious hours of scanning thousands of pages by Jennifer Bechtel and Richard Smith, the CD-ROM that this project produced would not have materialized. The CD-ROM contains over 300 documents in each language. They were catalogued and posted on the internet through the technical assistance of Richard Smith.

¹⁶ For access to the Official Document System, go to: <http://documents.un.org/>

¹⁷ See <http://www.unodc.org/unodc/index.html>

BOX 19

Michael Platzer

Connecting United Nations Practitioners and Academics



The gap between criminologists/international criminal justice teachers and the United Nations Crime Prevention and Criminal Justice Programme may not be as great as that between academics and practitioners in other fields of the United Nations. There are several notable examples of academics providing the impetus for supporting, for example, the rights of victims, the international criminal court, and the anti-corruption treaty. In the early years of the crime program, the Crime Committee was made up of real crime experts and the crime programme heads were academics themselves. More recently, the intergovernmental bodies have been composed primarily of diplomats who do not wish to acknowledge either the extent of crime and corruption in their own countries or the weaknesses of their own justice systems.

A wealth of data, good practice, guidelines, and case studies has been developed by the United Nations Office on Drugs and Crime. Unfortunately, the existence of such “knowledge products” is not widely known among academics. The negative impressions of teachers and researchers (cursory as they may be) are partly due to the hortatory language and generalities of the resolutions emanating from the United Nations bodies and the reluctance of its treaty bodies to establish independent critical monitoring mechanisms. Moreover, academics have no direct structured access to the official bodies or to the Secretariat.

The natural hostility of public institutions towards academic skepticism and external criticism has been underscored by Robert Merton, the eminent American sociologist. Those who argue that this hostility is general, Merton says, have simplified the issue because academic skepticism is not a general value but an analytical method only.¹ Hence three questions: Is the United Nations as an international public organization hostile to academia? Is academia hostile to the United Nations? Is there still a way for each to learn from one another?

Responding to the first question, provoked by Merton’s observation, one must concede that while it is probably true that any bureaucracy is self-protective and cautious in accepting external criticism, the United Nations has had many books and articles written about its activities in a critical manner usually with its cooperation. Many attempts have also been made to reach out to the academic world to inform students about the work and the challenges of the United Nations. The most recent “Academic Impact” initiative² is the latest attempt to bridge the practitioner–academic divide.

The United Nations Crime Prevention and Criminal Justice Programme does utilize external academic research. It not only produces a varied and ever-growing number of reports and publications, but also involves academics in their production as well as in projects as consultants. Often the bureaucracy can use academic research as a fig leaf to say things that its bureaucrats can not. However, on a day-to-day basis, the UN bureaucracy is hardly an amicable partner for academia, and the UNODC is no exception. As argued in this book, the reason for this is that academic research is about objective concepts and methods, while the bureaucracy is about its own authority and mandate. To respond to the mandate, as Merton stresses, most institutions demand unqualified loyalty from their staff, while scientific inquiry makes skepticism a virtue, and demands objectivity. Where I differ with this view vis-à-vis the UN bureaucracy is that to believe in the United Nations as an institution is also a virtue.

Responding to the second question, the answer is, surely, negative. Most academics are not hostile per se to the United Nations, although there have been ideological critics in many countries. Academics are, however, largely the prisoners of their own preconceptions,³ theory-driven, and often insensitive to incoming information.⁴ With regard to the UN Crime Prevention and Criminal Justice Programme,



¹ R.K. Merton, Science and the social order, *Philosophy of Science*, Vol. 5, 1938:334, fn. 27.

² <http://academicimpact.org/index.phpis>

³ P.E. Teatlock, Theory-driven reasoning about plausible pasts and probable futures in world politics: Are we prisoners of our preconceptions? *American Journal of Political Science*, Vol. 43, No. 2 (April 1999):335-366.

⁴ Ch. Koopman, J. Snyder, and R. Travis, Theory-driven versus data-driven Assessment in a crisis: A survey of *International Security* readers, *Journal of Conflict Resolution*, Vol. 34: No. 4 (December 1990):694-722.

academia can be accused of being largely indifferent. At the ACUNS international colloquium provocatively entitled “*Can the United Nations be Taught?*”⁵ comparative research showed that in Austria by and large, the “United Nations” is taught as one of many inter-governmental organizations.⁶ And so is, as confirmed by the colloquium’s participants, in the United States, who also saw there a dwindling interest in the United Nations studies, which had earlier been vigorously pursued.

Responding to the third question, it was agreed at the ACUNS colloquium that training should be made much more practical, utilizing the new media and teaching techniques, and that practitioners and academics should collaborate much more closely.

There are new ways of learning from one another. In addition to creating a knowledge-sharing culture in international organizations and incorporating Wiki-based social networks, e-learning across continents could be promoted by all the UN agencies. In the field, far away from headquarters, interactive computer-based courses, practical case studies, moot courts, and video lectures could improve the quality of instruction to staff as well as project counterparts (as top educators can be encouraged to give online courses and proven materials used). These “virtual” courses would have to be supplemented by onsite “resource” persons.

UNODC should also do a much better job of conveying the importance of its criminal justice standards, its wealth of data and criminological findings, and the existence of handbooks, country studies, films and other “knowledge products” to social science students and professors. Academic visits to the UN Office in Vienna, joint seminars, and involvement of experienced multi-cultural teachers in developing UNODC training courses should be increased.

The United Nations Crime Prevention and Criminal Justice Information Network, which once promoted closer collaboration between the academic and the UN worlds, should be reinvigorated to better reconnect teachers of criminology and criminal justice with UNODC officials. UNITAR, UNESCO, UNICEF, UNDP, the OHCHR, the UN Department for Peace-keeping Operations, Office of Legal Affairs, DIESA, UN-Habitat, the World Bank, the UN Regional Commissions, and the United Nations University have Web-based courses pertaining to children’s rights, women’s rights, human rights, governance, corruption, crime prevention, community participation, juvenile justice, post-conflict reconstruction, and rule of law, as well as various assessment tools. As can happen in international bureaucracy, several overlap UNODC mandated subjects. It would mutually advantageous for an inventory of all online education promoting the Rule of Law and Security Sector Reform to be undertaken, a clearing house of information of available open-source criminal justice e-learning courses created, distance degree programs listed, a Web-based forum of useful resources, bibliographies, teaching outlines, and syllabuses established, and comments submitted by instructors. The need for this is great. The goal would be to establish a “Virtual Academy” within the next decade. Engaged scholars and thoughtful practitioners from across the world are those who can do this. They may draw on the “lessons learned” which the United Nations puts at their disposal.⁷ The UN knowledge and technical assistance expertise is a click away from the computer of a scholar or practitioner.⁸ And last but not least, most successful researchers in the biological and physical sciences also tend to have the highest levels of interaction with practitioners.⁹ Hence another provocative question: Are social scientists different? ■

⁵ *Can the United Nations be Taught?*, Proceedings of a Colloquium on Innovative Approaches to Teaching the UN System, held at the Diplomatic Academy of Vienna, Austria, 22–23 November 2008, http://www.davienna.ac.at/jart/prj3/diplomatische_akademie/resources/dbcon_def/uploads/prj3/diplomatische_akademie%7C/UNDidaktik.pdf

⁶ Axel Wustenhagen, Teaching the United Nations at Austrian Universities and Post-Graduate Institutions 23–26, (in:) *Can the United Nations be Taught?*, Vienna 2008:23–26.

⁷ See, e.g., Office of the Higher Commissioner for Human Rights, *Rule of Law in Post-Conflict States. Monitoring the Legal System*, New York 2006: 35–36, <http://www.ohchr.org/Documents/Publications/RuleoflawMonitoringen.pdf>

⁸ Information on its current documentation comes through the RSS (“Really Simple Syndication”) feed, see: http://iseek.un.org/webpgdept1932_4.asp.

⁹ S. L. Rynes, J. M. Bartunek, R., L., Daft, Across the great divide: Knowledge creation and transfer between practitioners and academics, *Academy of Management Journal*, Apr. 2001, Vol. 44, No. 2:343.

To sum up the above developments, one may observe that from about 1995 to 2010 there has been a considerable acceleration of the development of the UN crime mandate. Until 1995, the Secretary-General self-critically acknowledged that the Organization had not really been involved in developing it as a component of its rule-of-law work.⁴⁷⁶

The approach has started to change in 1995 when the Economic and Social Council adopted *Guidelines for the prevention of urban crime*. In 2000–2004 there have been further changes in the UN crime programme and the work programme of the entire United Nations Secretariat. The latter has recognized *structural prevention* which is conceptually closer to crime prevention than *preventive diplomacy*. Thanks to the report of the Secretary-General on *The rule of law and transitional justice in conflict and post-conflict societies*,⁴⁷⁷ work on crime prevention has not only been strengthened by the up to then lingering emphasis on criminal victimization, but also by stating that *prevention is the first imperative of justice*.⁴⁷⁸

The process initiated by the United Nations Commission on Crime Prevention and Criminal Justice with the workshop at the Twelfth Congress to develop United Nations Criminal Justice Studies seems to be the logical consequence of the change in 2000 of the approach to the rule of law question in general. Since then the United Nations Crime Prevention and Criminal Justice Programme has caught up with the system-wide progress on the rule of law, human rights and development. Not only has it become an important component of this general process, but it also spearheads it in some areas. These elements are politically and conceptually not fully compatible with one another.⁴⁷⁹ But surely had they been absent, crime prevention and criminal justice in the United Nations would have been a less successful and promising endeavour.

In line with the thrust of this study, which focuses on the meandering path and idiosyncrasies of criminological thought, one should add that there is some incompatibility of methodologies between academic and intergovernmental crime prevention and criminal justice project evaluations designed to objectively assess the process and outcome of an intervention policy. Rarely can the same measure of

evaluation be applied to academic and bureaucratic project evaluation.

It should be recalled that the evaluation of public policies has progressively been set up as a quasi-systematic requirement under double pressure: the general retreat of the welfare state during the 1980s and 1990s and the rationalisation of public expenditures. Consequently, today, evaluation is a priority. The outcomes of projects do matter. They can be evaluated objectively, if a *control group* is included in those criteria.

This methodological requirement of a control group, a requirement emphasized here so many times, is hard to meet in United Nations crime prevention and criminal justice projects. Consequently, in the flagship document by the United Nations Juvenile Justice Panel (2010), this requirement does not feature among the common evaluation criteria. As noted there, “it is rarely the case that juvenile justice programmes lend themselves to some of the more rigorous evaluation methods (experimental, quasi-experimental designs). Before and after measurements will very often suffer from the near absence of reliable baseline data. Finally, many of the reforms that are being promoted in the juvenile justice area are more likely to yield long-term rather than short-term outcomes”.⁴⁸⁰ Can this be otherwise improved, that is to pursue a control group evaluation, for example in the United Nations alternative development project aiming at illicit drug crop substitution: by introducing it in one community, but not a comparable program in another one, or pursuing it in country A by including country B as a control?

Confronted with this dilemma (after all a common dilemma in the developmental assistance field), experimental research academics involved in the World Bank’s educational development projects argue that new methodological standards for field projects may help to solve this reformist challenge through the randomization of experiments targeted at individuals or communities without a control group, but with additional internal evaluation methods.⁴⁸¹ That sort of “*unscientific*” randomization is a close cousin of a more rigorous randomization through control trials in area-based situational crime prevention projects.⁴⁸²

⁴⁷⁶ This has been shown in his two already mentioned reports (“*Agenda for Peace*”, and “*Supplement*”), which document how marginal it was (A/47/277-S/24111,§55; A/50/60S/1995/1, §§13-14 & 97).

⁴⁷⁷ S/2004/616.

⁴⁷⁸ *Ibid.*, § 4.

⁴⁷⁹ Rajagopal 2008:54.

⁴⁸⁰ UN Panel 2010:23.

⁴⁸¹ Benarjee & Duflo 2008.

⁴⁸² Knutson & Tilley 2009:3.

The main virtue of the randomization of experiments through more internal controls is that it is less politically intrusive, and hence does not create a political backlash. Through close collaboration between researchers and implementers, that sort of randomization allows within one project the estimation of parameters in the face of complex and multiple channels of causality. Otherwise these parameters could only be evaluated through the involvement of a control group. In this case, on average, those who are exposed to the program are no different than those who are not. Consequently, a statistically significant difference between the two groups in the outcomes can be confidently attributed to the project.

For a broad class of development programmes, such randomized project evaluations are a way to obtain credible and transparent estimates of the impacts of projects because they overcome the problems when using other evaluation practices, including control groups. Moreover, the same method of randomization may be used in other (non-UN) projects. Depending on the answer to the question of whether or not one can have better process-data by applying internal controls to the project that may negatively impact the outcome one wants to achieve through it, there will be those who will find that outcome contradictory and untenable and those who might be called pragmatists. The pragmatists have a more open attitude towards what is acceptable and what is not in academic research and reformist work. For them a thin blue line offered by such a randomization may chart the path to follow. The policy and academic worlds can hardly share more common ground than this.

This thin blue line itself has intricacies of its own that internally distinguish the United Nations from the World Bank and the World Health Organization. The WHO promotes rigorous evidence-based violence prevention, in the tradition of what constitutes evidence in medicine. The United Nations in its own work on responding to crime also promotes good practices that may be promising solutions to certain forms of crime, and rights-based practices with no evidence whatsoever. This is because unlike

the WHO with its clear focus on the protection of health, the United Nations promotes social justice values that are based on first acquiring certain rights.

The importance of evaluating programmes, practices or policies took on sufficient scope for the United Nations to have created in 1984 the Inter-Agency Working Group on Evaluation, since 2003 known as the United Nations Evaluation Group (UNEG). In 2005, UNEG published⁴⁸³ the following eight meta-evaluation criteria: (1) Transparency of evaluation processes; (2) Expertise; (3) Independence from the other management functions; (4) Impartiality of evaluators; (5) Intentionality, that is, an intent to use evaluation results, and assuming timely planning aligned with future decisions; (6) "Evaluability", that is, the usefulness of verifying, prior to the evaluation, that the programme to be evaluated has sufficient measurable indicators; (7) Quality of evaluation; and (8) Follow-up of evaluation recommendations.⁴⁸⁴

The focus selected here for United Nations Criminal Justice Studies, – on the United Nations crime prevention and criminal justice standards and norms – should not imply that other approaches to those Studies should not be pursued. On the contrary, in line with the concept of "Delivering as One",⁴⁸⁵ "Security Sector Reform",⁴⁸⁶ "Peace Keeping",⁴⁸⁷ "United Nations Entity for Gender Equality and the Empowerment of Women" / "UN Women",⁴⁸⁸ etc. such mandates open up compatible cross-cutting avenues. These avenues help to develop criminal justice studies further through the feedback they receive from the practical field-oriented delivery of one UN criminal justice message. The number of such UN and international mandates is growing, including those of UN-Habitat, UNESCO, UNDP and the World Bank.

Under different names, each of these entities has its own crime prevention and criminal justice projects or programmes. But in only a very few of them is there a genuine normative United Nations input from its treaty and soft law instruments. "Delivering as One" certainly is a desired goal facilitating the incorporation of the United Nations crime prevention and criminal justice standards and norms in-

⁴⁸³ http://www.uneval.org/normsandstandards/index.jsp?doc_cat_source_id=4.

⁴⁸⁴ UNEG 2005a. These criteria do not mention any particular evaluation method (such as experimental randomization) nor has the UNODC so far pursued this qualitatively advanced evaluation method in its own field projects. It is probably too early for that. Surely, however, independent evaluation, as called by another meta-criterion, has been the issue in the UNODC, which now only has an evaluation unit reporting to the Office of the Executive Director.

⁴⁸⁵ A/61/583.

⁴⁸⁶ A/62/659-S/2008/39.

⁴⁸⁷ A/55/305-S/2000/809.

⁴⁸⁸ GA resolution 64/289 of 21 July 2010.

to such projects or programmes. Last but not least, their implementation implies their testing and evaluation. This would yield returns for United Nations Criminal Justice Studies themselves. Increasingly integrating and comprehensive, they are becoming na-

tural “good practices” resource providers driving the development of course syllabi for United Nations Criminal Justice Studies that should generalize findings from the application of United Nations criminal policy in Member States.

BOX 20

Towards a Common Language of Justice through Intercultural Training Skills



A. Introduction

Shortly before the First World War, the prominent Austrian law sociologist Eugen Ehrlich emphasized that “the centre of gravity of legal development lies not in legislation, nor in juridical science, nor in judicial decisions, but in society itself”.¹ This was written at the time when major Western law philosophers expounded the national virtues of domestic legal systems, and some penal scientists echoed them.²

Shortly before the Second World War, the famous English comparatist Harold C. Gutteridge, as if anticipating that this narrow perspective may soon prove disastrous, argued against “the isolation of legal thought in national watertight compartments ... most prolific in producing that frame of mind which leads to a spirit of national egotism. We have much to learn from one another in legal as well as other departments of human activities, and it is, in a sense, a reproach to the lawyers of all nations that they have been unable, up to the present, to arrive at the free interchange of knowledge and ideas which has been attained in other branches of learning”.³

International legal cooperation of the kind postulated above has been taken over by several post-Second World War ground-breaking events. First and foremost, by the founding of the United Nations with its antiwar developmental agenda. To address it, the objective and the essence of the criminal justice reform work has been reconceptualized. Bilateral legal reform work of a colonial character has been replaced by bilateral and multilateral technical assistance sup-

porting the right to self-determination. Whether economic, legal or social reform, from the very start it involved various forms of advice, including training. To that end, and unlike in colonial times, provision of that advice had to include capacity-building measures. New experiences have led to the gradual development of various technical assistance standards, among which, however, those involving common UN standards have for a long time been in short supply. “Delivering as One” has been a very recent postulate.

B. Precipitating a common language of justice

Against this background, the eventual emergence of the need for a UN common language of justice as a capacity-building measure may now be credited to three distant, but thought- and action-provoking events. Historically, they may be regarded as the antecedents of the UN “*Dialogue among Civilizations*” that since the Millennium Declaration has taken a new turn. These events highlight the importance of operationally focusing the Organization’s agenda on effectively delivering globally its security and justice messages.

The first event (the “*Spandau case*”) dates back to the sentencing of the Nazi war criminals by the International Military Tribunal.⁴ The sentenced war criminals had been imprisoned in Spandau (West Berlin, Federal Republic of Germany) with the right to be attended by a prison chaplain. In 1947, the Allies (France, the Soviet Union, the United Kingdom and the USA) had agreed that such a service may be



¹ Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*, transl. W. L. Moll, Harvard University Press, Cambridge 1912/1936:xv.

² Huber 1916.

³ Harold C. Gutteridge, The comparative aspects of legal terminology, *Tulane Law Review* 12 (1938):410.

⁴ Its verdicts were accepted by the United Nations resolution of 11 December 1946 as binding norms of international law, hence also of United Nations law.

best rendered by French German-speaking protestant chaplains coming from Alsace - the French trilingual (French, German, Alsatian) region. Apparently the decision to appoint French prison chaplains had been taken after considering that such persons not only have a good command of the German language, but also know better the German mindset (Alsace has had a common French-German history). In sum, this enabled more effective communication with the prisoners of war, if not also learning about their personal attitudes vis à vis the official guilty verdicts.⁵

The second event (the “*Japan case*”) occurred at about the same time. Then, the US forces occupying post-Second World War Japan had to solve the question of the criminal responsibility of the Japanese military commanders. They did so, following the recommendations of Ruth Benedict, US cultural anthropologist.⁶ She advised them on the basis of research carried out on the “guilt culture” with which the West is familiar from its criminal justice system, and the “shame culture” of Japan.

The third event (the “*Korean war case*”) could be traced to miscommunication in one of the battles of the Korean War (1950-1953)⁷ which had led to tragic results.

On April 23, 1951, no fewer than three Chinese divisions attacked one British brigade. Four hundred men from one of its battalions, the Gloucestershire Regiment, were cut off and surrounded on the crest of Hill 235 (“Gloster Hill”), located south of the Imjin (The Republic of Korea). The battle at the Gloster Hill started badly, then got worse. One British commander - with characteristic understatement - described the Glosters’ situation to his US counterpart as “pretty sticky”. This was misinterpreted on the American side as a situation other than critical. Reinforcements did not reach the British in time. Only 39 British soldiers escaped. The rest were either killed or taken prisoner.

C. Questions

Exemplary as such events here are, they certainly lead to certain general questions. If within one language culture there may be obstacles to communicate effectively, might it not be that in any language one can only express certain thoughts, and that these thoughts differ from culture to culture? If law lives in and through language, what happens to it when it is transferred to another language? If the structure of the language influences, or even determines, the mode and content of thought, how others can communicate and understand in their own languages with their own characteristics what is meant for them,⁸ let’s add, in the global justice and security terms? And last but not least: since “guilt” and “shame” culture are different, how then can one be able to pursue common principles of responsibility for offences against peace and security of mankind?

D. A call for the answers

The above questions signal how the United Nations, tasked since its inception through its Charter “to save the succeeding generations from the scourge of war”, has been looking for effective answers. Some of them, tenuous as they may be (e.g., the definition of “guilty mind” in the ICC *Statute*), are already in place. In the anticipation of further answers, this so far has resulted in an interim call for a common language of justice in the United Nations.

One may see it as a modest outcome. However, achieving something common by the United Nations has to be estimated as a multiplication of recommendations of 193 Member States. Their sum will still not give a grand total and will not capture the letter and spirit of the Organization without the inputs of hundreds of intergovernmental organizations, thousands of non-governmental organizations, and the rest of civic community.



⁵ See further: Laure Joanin-Llobet, *Les 7 De Spandau. Les Secretes Révélés des Derniers Criminels Nazis*, Oh! Editions, Paris 2008.

⁶ Ruth Benedict, *The Chrysanthemum and the Sword: Patterns of Japanese Culture*, Houghton Mifflin Company, New York 1946/2005.

⁷ A bitterly contested conflict inspired by intense Cold War geo-strategic rivalry and competing West/East ideologies. The war fought against North Korea and China was a truly international affair: on the UN side, 40% of combatants were South Korean (ROK), 50% American and 10% other, including forces from the British Commonwealth, Belgium, Luxembourg, Colombia, Ethiopia, France, Greece, the Netherlands, the Philippines, Thailand and Turkey. Eventually, a UN coalition of 16 countries, led by a 1.3 million strong US force, reinforced ROK’s desperate defence. After a British proposal for a Unified UN Command, US General MacArthur was UN commander (Ronan Thomas, *The war that won’t end*, *Asia Times*, 25 May 2010). Although this form of UN command exists up to the present for that military operation, it does not imply the UN peacekeeping authority mandated to it by the Security Council. The absence of it is due to the absence of the Soviet Union – a permanent member of the Security Council when the voting on the UN command took place (Peter Malanczuk, *Modern Introduction to International Law*, Seventh Revised Edition, Routledge, London 1996:391-392).

⁸ Bernhard Grossfeld, *The Strength and Weakness of Comparative Law*, trans. T. Weir, Oxford Clarendon Press, Oxford 1990:101.

E. The key objective and guiding notions of intercultural training: pluralism, convergence and multivalent logic

Since peace and justice between peoples are not gained at the level of personal adjustment but through the reform of political and economic institutions,⁹ the key objective of United Nations intercultural training is to contribute to that reform with a view to facilitating achieving by the Organization common understanding and outcomes for the strengthening of peace and justice between peoples.

Among the notions that can advance criminal justice reform are two that are only seemingly incompatible, legal *pluralism* and *convergence*.

Pluralism can be achieved by: (a) inscribing the legal reform objective into relatively content-neutral legal tools, and (b) adapting the United Nations legal concepts in a way acceptable to the addressed legal culture.¹⁰ By and large, United Nations criminal justice reform handbooks and manuals are such content-neutral tools. United Nations legal concepts, such as transnational organized crime or money laundering are formulated relatively broadly, and some are purposely left ambiguous or even undefined (e.g., *corruption*). This can facilitate convergence of: (a) views on the criminal justice reform needs and, in some cases, (b) legal convergence (see, e.g., common law conspiracy and civil law *Komplott*, *association de malfaiteurs* in the name of one common concept of enterprise responsibility, formulated in the UNTOC).

Such advances are possible because the application, in the pursuit of the United Nations common language of justice, of multivalent logic - another guiding notion. It tolerates ambiguity.¹¹

F. Conclusion

Coming back to the three thought-provoking cases, the following observations may now be in place. First, and obvious as this may seem, in intercultural criminal justice training (as in so many other things) it is in language that messages are communicated. Regarding the *Korean war* case, in “England and America (...) two countries separated by a common language” (George Bernard Shaw), command of English, and logical reasoning - bivalent in principle (“yes”/“no”) - in practice exemplifies how even within one legal culture the use of one and the same language may lead to the drawing of a false conclusion. Second, a particular way of thinking, as, e.g., explicit for the English commander, is implicit for others,¹² and thus may be misunderstood, as was the case with the US commander. Surely, the *Spandau* case exemplifies explicit communication that can be effective, at least in principle. Third, and regarding the influence of the Second World War on intercultural West-East communication (the *Japan* case), it prompted not only American (Western) experts to study deeper the intricacies of Eastern culture, but also Japanese intellectuals to undertake new analyses of their culture and nation¹³ in broad Eastern ways of thinking, including comparative rules of logic and logical systems.¹⁴

With the knowledge we now have, training skills are needed to deliver effectively criminal justice messages from West to East, East to West and across the entire world. “Delivering as One” for the “*Dialogue among Civilizations*” by the United Nations requires this. ■

⁹ Alfred G. Smith, Content decisions in intercultural communication (in:) Gary R. Weaver (ed.), *Culture, Communication and Conflict. Readings in Intercultural Relations*, Pearson Publishing 2000:79.

¹⁰ See further Denise Réume, cited in: Esin Örüçü, *The Enigma of Comparative Law. Variations on a Theme for the Twenty-first Century*, Marinus Nijhoff Publishers, Leiden 2004:130.

¹¹ “It will be not be possible to be and not to be the same thing, except in virtue of an ambiguity” (Aristotle, quoted by H. Patrick Glenn, *Legal Traditions of the World. Sustainable Diversity in Law*, Oxford University Press, Oxford 2000:325).

¹² Ibid.

¹³ Arthur F. Wright in the Foreword to: Hajime Nakamura, *The Ways of Thinking of Eastern Peoples*, compiled by Japanese National Commission for UNESCO, Greenwood Press, New York 1960/1988:v.

¹⁴ Nakamura 1988:3.



Picture 36. Delegation of Poland at the Twelfth United Nations Congress on Crime Prevention and Criminal Justice (from left to right: Ambassador Jacek Junosza-Kisielewski, head of delegation, Dr Wojciech Filipkowski, Rapporteur of Committee II of the Congress, Prof. Emil Plywaczewski, Vice-Chairman of the Congress)



Picture 37. Eleventh Congress Workshop “Measures to Combat Computer-related Crime” which opened the way for the creation by the Korean Institute of Criminology of the Virtual Anti-Cybercrime Forum. Among those sitting at the podium from right to left: KIC President Dr. Taehoon Lee, Prof. Peter Grabowsky (Australia), Jo Dedeayne (UNODC), Iskander Ghattas (Egypt, Chairman), Sławomir Redo (UNODC), Mark Shaw (UNODC), Gareth Sampson (Canada)



Picture 38. KIC/UNODC Expert Group Meeting on the Development of the Virtual Anti- Cybercrime Forum (Seoul, 2006). Hosts: in the middle Dr Taehoon Lee (Director of the KIC), first on the right side and Dr Joon Oh Jang with the experts and the KIC and UNODC staff



Picture 39. Twelfth Congress Workshop "International Criminal Justice Education for the Rule of Law" organized by the KIC, HEUNI, ISISC, ISS and RWI



Picture 40. Considering the Salvador Declaration of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice at the follow-up session of the Commission on Crime Prevention and Criminal Justice (Vienna, Austria, 2010). Behind the name plate of Qatar (the host of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, 2015): General Dr Abdulla Al-Mall, Advisor to the Minister of Internal Affairs, head of delegation. On his right the delegation of San Marino, on its left the delegations of Portugal and Poland. Behind the front row (left) two representatives of the United Nations Office of the Higher Commissioner for Human Rights (Geneva, Switzerland) and other international representatives

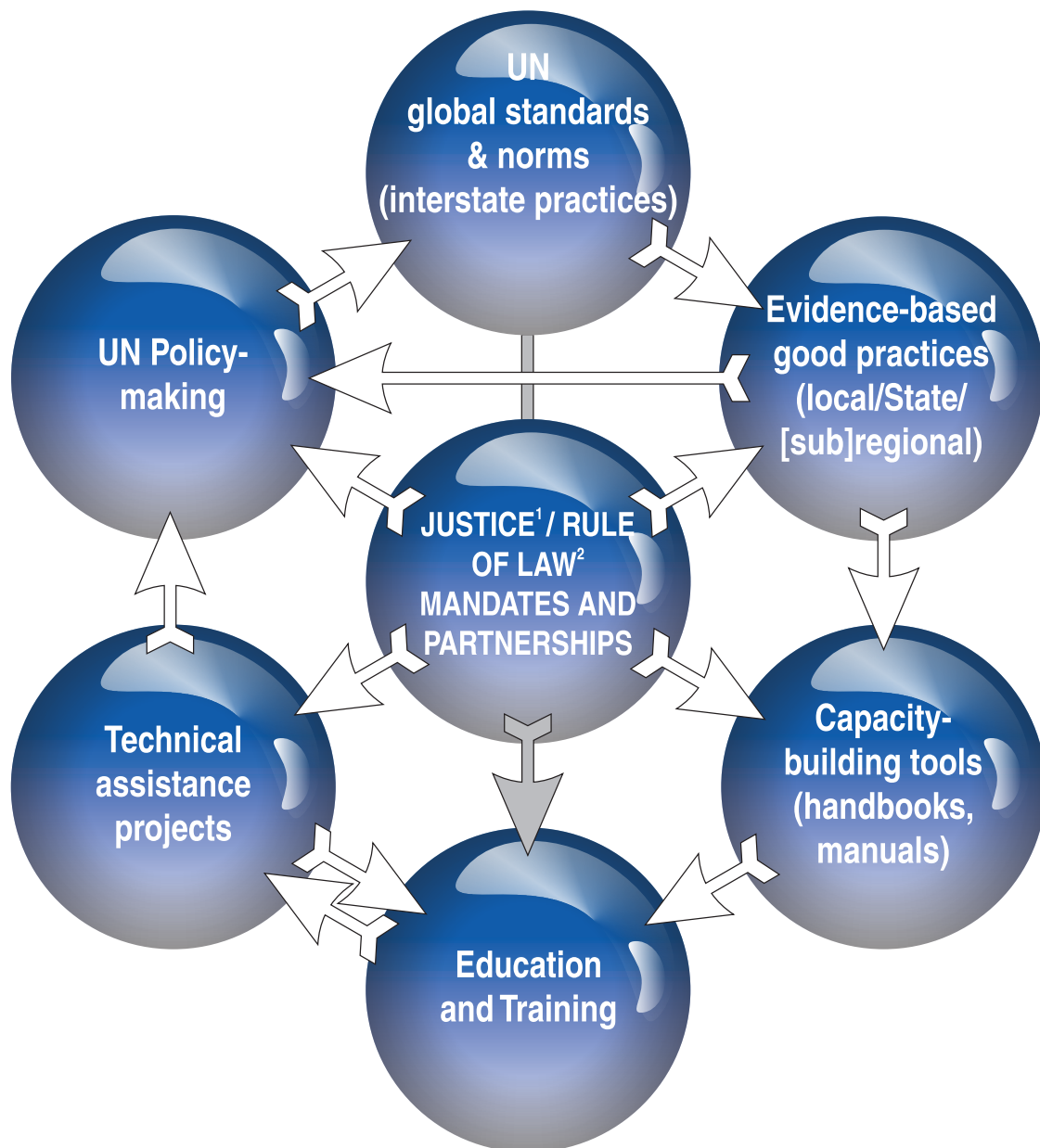


Figure 5. United Nations Criminal Justice Studies, training and mandates

NOTES.

1.- Justice is an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large. It is a concept rooted in all national cultures and traditions and, while its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanisms are equally relevant (S/2004/616, § 7).

2.- A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency (S/2004/616, § 4).

XIX Conclusion



Obvious as the following conclusion may sound, there are important differences and similarities between international academic and practical perspectives in responding to crime. United Nations criminological thought has a far greater outreach than academic criminology, since it has a greater transformative power than the latter has, and rests on partly different methodological principles, as noted in the introduction to this study. But there is also a common criminological thread in both pursuits. This is the need to counteract crime in the name of sustained development of a society and individual – so ably envisioned for the whole world by Gandhi.

United Nations and academic ideas, sometimes jointly, sometimes separately, should work towards this common goal. As to how and when it can be gradually achieved while the criminological horizon is always on the move, this study once more emphasizes its leading motto by Hugo. The time for their discussion and materialization comes when the situation is ripe, whereas new challenges are emerging ahead. And this is beautiful in this evolutionary mutually beneficial process and relationship!

XX Afterword



This monographic study of the UN crime programme is motivated by the experiences and vision of its author, from his own standpoint – that of a criminolo-

gist and an international civil servant. By and large, this book excludes the accounts relevant to the role of higher United Nations hierarchies, be it directors of the Social Division to which the crime programme chiefs reported, or even higher levels – those of the Assistant Secretary-Generals, the Under Secretary-Generals or the Secretary-Generals of the United Nations, who certainly contributed their own work to “Blue Criminology”. That may deserve a monograph or series of monographs.

This more modest present text has normative and analytical components in its “knowledge” part, and operational information in its “skills” part. Those parts are interwoven, in line with the study’s original intention of pursuing a path analysis of the development and implementation of certain criminological ideas. It is, then, a hybrid text that emerged under the strong influence of a chance to verify my academic knowledge in Central Asia. In the course of my UN service as a Senior Crime Prevention and Criminal Justice Expert there, I came across the ongoing process of creation of the Tajik Drug Control Agency (TDCA). Its functioning has incidentally been based on the academic principle of reflexive reformation, directed towards institutional rehabilitation of corrupted State organs involved in countering illicit drug trafficking and drug abuse. One of these corrupted organs was the State Drug Control Commission, the predecessor of the TDCA.⁴⁸⁹

At the moment of connecting this kind of theoretical knowledge with a practical TDCA example, I have started to understand this knowledge in a much more comprehensive and in-depth manner, much more than my academic and bureaucratic knowledge allowed me to do before that encounter. I have also started to understand that autonomous divisions in science, armchair divagations and recommendations, although they are good intellectual exercise and hence are needed individually, in their dogmatic excess they may make science a futile work. I have begun to understand “good” and “bad” science, “good” and “bad” bureaucracy with its frustrations, not really a result of the conflict between academic and practical priorities, but of the success (or the lack of success) in the practical application of academic science and life experience to responding to crime. Finally, I have started to understand that academic educa-

⁴⁸⁹ Redo 2004 & 2007. To recall, “*reflexive reformation*” (i.e., a reversal of Edwin Sutherland’s aetiological principle of differential association “*birds of a feather flock together*”, emphasizing that an offender can be rehabilitated if he/she is influenced by a formerly rehabilitated offender as a “*significant other*”) was developed by Donald Cressey, Sutherland’s student. Cressey formulated his principle after field visits to groups of *Anonymous Alcoholics* and drug abusers (*Synanon*). Both groups rehabilitate their members by involving in the process former addicts who are able to play the role of a “*significant other*”.

tion should not only be about “knowledge”, but also about “skills”, that is about how to manage it for a practical purpose through training. Accordingly, delivering a United Nations message across the world in which the power of the United Nations’ justice is also illusive, requires special interstate and intercultural efforts.

Regarding the interstate efforts, in 2010 they yielded three important outcomes. **First**, the United Nations General Assembly endorsed the *Salvador Declaration* of the Twelfth United Nations Congress in which it recognized “the centrality of crime prevention and the criminal justice system to the rule of law and that long-term sustainable economic and social development and the establishment of a functioning, efficient, effective and humane criminal justice system have a positive influence on each other”. **Second**, the Security Council included the consideration of the question of transnational organized crime among global peace and security threats. **Third**, the Review Conference of the Rome Statute, troubled by the impunity of perpetrators of the most serious crimes of international concern, but convinced that there can be no lasting peace without justice, recommended more complementarity between the ICC’s jurisdiction and national jurisdictions to prosecute those perpetrators, in accordance with internationally-recognized fair trial standards.⁴⁹⁰ In other words, the primary responsibility for prosecution and adjudication is at the country level, whether for crimes of international concern or ordinary crimes, because certain ordinary crimes, if committed in a systematic or widespread manner or on a mass scale, can amount to crimes of international concern. Impunity can be fought better if domestic criminal justice systems work better, according to the United Nations crime prevention and criminal justice standards and norms. Their promotion, implementation and studies on them are at the core of the United Nations’ work for peace and democracy in the world.

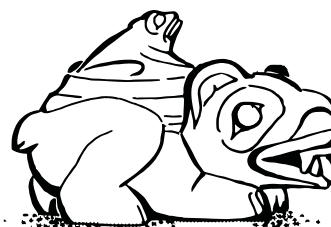
It would be yet another illusion to see the effects of that complementary work soon. This is a process and not an end in itself. But if Alexis de Tocqueville, on whose parochial view of prison reform this study commented in its preface, could now have looked “back to the future”, would he have been pleased to see the inherent connection between domestic cri-

iminal justice reform and democracy in the world, and the cumulative progress made by the United Nations? And how would he have reacted to Nelson Mandela’s dictum, “No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens but its lowest ones”?

Regarding the intercultural efforts, two *dicta* of other Nobel Prize winners (one from the East and one from the West) should be quoted here. As for the East, Alexander Solzhenitsyn said “When we do not punish or condemn the perpetrators of evil, it is not that we protect their trivial old age, but remove the foundations for justice for the succeeding generations”.

First, that part of the knowledge (how to progress in preventing the recurrences of this?) and commitment is in short supply. **Second**, it goes without saying that the political commitment of decision-makers without “skills” training in crime prevention, law enforcement and criminal justice personnel renders this objective difficult to achieve, because it is through their daily on-the-job performance that the United Nations standards and norms are (or not) applied in practice. **Third**, and as for the West, to make crime prevention and criminal justice successful, the skills should be effectively communicated, because, as George Bernard Shaw said, “The single biggest problem in communication is the illusion that it has taken place”.

I wrote that I had no illusion of seeing the effects of that United Nations rule-of-law work soon. But I would also like to emphasize at the end that the Organization which I served has, since its inception, taken its own place in the dialogue of civilizations. This monographic study, “*Blue Criminology: The Power of United Nations Ideas to Respond to Crime Globally*”, which hopefully contributes to this intercultural dialogue, was written to serve as another bridge across the divides.



⁴⁹⁰ Res. RC/Res.1 and res. RC/4, Kampala Declaration, § 5, 11 June 2010.

XXI Synopsis



Concluding this study, its goal in its last section is to focus on a non-discursive, fully descriptive summary of major criminological developments that contributed to the current legacy of the United Nations Crime Prevention and Criminal Justice Programme and its current outlook.

This will be done by capturing the essence of the preceding text (both its body and boxes), with a view to providing an action-oriented synthesis of the book.

PART I Against Fear and Want, for Sustainable Development

The United Nations crime prevention and criminal justice programme draws on crime and justice developments over more than two centuries. They started with the international penal reform work initiated by the classical criminal law school of Cesare Beccaria (1764) and the first comparative penitentiary recommendations of John Howard (1777). Its international institutional beginnings may be credited to the International Penitentiary Congress in Frankfurt am Main (1846), and to a subsequent series of twelve international penal and penitentiary congresses (London, 1872 – The Hague, 1950). Its programmatic beginnings have developed not only through the above accomplishments, but also through increasingly prominent social welfare policy in the era of industrialization and urbanization (modernization). Particularly in the second half of the nineteenth century, modernization has entered the European agenda and has spread across the world ever since. From that time on, the United Nations crime prevention and criminal justice mandate has inherited a programmatic and always dynamically adjusted focus of “social”, then “juvenile” and “criminal” justice, with a special reference to the position of children in the justice system, starting with the question of their solitary confinement and philanthropic concerns regarding their welfare.

After the Second World War, as the “succeeding generations” (or under any other similar notion), the lot of children and adults has been the centrepiece of international attention and action. In 1945, the United Nations, the largest ever peace-oriented inter-governmental organization, fearing the recurrences of the horrors of war that destroyed millions of lives and livelihoods and led to poverty of peoples and nations, started meeting its *Charter’s* objective of preventing those recurrences by promoting social and economic development (“sustainable development”) and human rights (1948-1987).

Eventually, since the beginning of 1990s, developing and developed member countries of the United Nations jointly arrived at a number of multilateral agreements paving the way for the operationalization of the common fight against security challenges, among which human and urban security, justice and security sector reform have been incorporated.

Against this background, academic research and United Nations criminal policy, which both have reacted to the basic ideas of the freedom from fear and want and to the idea of sustainable development, have either autonomously or jointly contributed their share to these three fundamental ideas.

PART II The United Nations Crime Prevention and Criminal Justice Mandate

Since 1946 onwards, the United Nations crime prevention and criminal justice mandate has incrementally built in its scope various technical facets of social and economic development. It began with the treatment of children/juveniles and adults, and already in 1955, through the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, it set the landmark Standard Minimum Rules for the Treatment of Prisoners (SMRs).

The twelve United Nations crime prevention and criminal justice congresses, held every five years since then (1955-2010), and the related actions by the increasingly substantively and institutionally expert (1950-1991) and then intergovernmental mechanism (the Commission on Crime Prevention and Criminal Justice) have produced for the Economic and Social Council, the General Assembly and the Security Council (organs of the United Nations) viable re-

commendations, respectively declared by them to be United Nations law on responding to crime.

Most prominent among United Nations instruments have been the aforementioned “soft law” SMRs, and the treaty law (the United Nations conventions against transnational organized crime (2000) and corruption (2003)). Between 1955 and 2010 the United Nations Crime Prevention and Criminal Justice Programme has adopted altogether about 60 soft law instruments, and the United Nations Office on Drugs and Crime (its constituent part), has been the custodian of those soft law and treaty law instruments, plus of three United Nations conventions against drugs and psychotropic substances (1961, 1972 and 1988), and 16 universal legal treaties against terrorism.

Today, the above constitutes the legislative essence of “*blue criminology*”. Over time it has undergone various stages of development, with a great measure of social defence components (1946-1990), currently replaced by other social welfare-orientated ideas and programmes aimed at continuing the objective of a humane and effective response to crime, drugs, terrorism and victimization.

The standard-setting continues, and involves legally and diplomatically negotiating skills assuring the progressive development of those standards and the rule-of-law United Nations content. The implementation of all the international legal instruments that have been enacted in the area of international criminal justice reform through field technical assistance, off- and on-line training has essentially become the reverse side of the same coin. Lessons learned in making those legal instruments work have increased the available pool of expertise, especially needed for further improving the success of various United Nations peace-keeping missions applying the United Nations rule-of-law principles in practice.

One can observe not only new forms of increasingly globalized crime, but also a gradual convergence of legal regimes for controlling it, and slower but evident cooperative and partner-based urban and other crime prevention. This has started against the larger picture of international criminal law reform that continues in the world since its scientific beginnings in the second half of the nineteenth century, and particularly has been dynamic and prolific after the *Cold War* period (1945-1989) when transitional justice work in post-conflict countries began.

While responding to crime, by pursuing the balance between *control* and *prevention*, international criminal justice reform now involves alternatives to imprisonment, restorative justice, and last and not least, victim assistance and compensation. They relate to old and new forms of crime, including transnational crime, with emerging cybercrime as one of the most sophisticated and challenging forms

The record of the United Nations in some of these fields is satisfactory, in some other fields less so. The international criminal justice reformers, among whom there have been United Nations senior and technical staff, have focused on assisting developing countries in modifying their legal and criminal justice system responses to such crime, in the context of evolving international criminal policy recommendations and ideological concepts of progress through various, sometimes incompatible, forms of modernization. With the declining (contrary to the original ideals expressed in the United Nations Charter) independence of the United Nations Secretariat as one of the main organs of the Organization, the staff of the UNODC and preceding administrative units have been subject to various ideological, political and criminal policy controversies, affecting the Organization’s integrity and performance.

In the first decade of the twenty-first century, extra-budgetarily funded technical assistance programmes and projects which have been a part of the United Nations programme since its early years, have become evidence-based capacity- and skills-training work in responding to crime, work that involves domestic ownership and political commitment with a view to sustainable change. The recent side-effect of the overwhelming reliance on extra-budgetary funding has involved changing the UN staff composition with a further erosion of the original concept of their integrity.

Supported by the advocacy work involving the promotion of the United Nations crime prevention and criminal justice standards and norms and good practices (published and shown worldwide), their domestic, regional and interregional application has been carried out by the UNODC, 17 Programme Network Institutes and numerous non-governmental organizations through evolving partnerships, in response to the changing demands: whether involving work in response to transnational organized crime and corruption, or national and local work in responding to urban and youth crime.

PART III Back to the Future

Notwithstanding the large-scale comparative legal and socio-economic approach to responding to crime, the UNODC applies also neurobiological and similar evidence-based findings relevant to individual risk and protective factors in youth violent crime and drug abuse. It draws on recent academic advances.

Whether micro- or macro-orientated, “*blue Criminology*” is basically focused on *peoples* (communities/individuals). For the implementation of the United Nations mandate it pursues a methodology that in part differs from that of academic criminology.

This book documents that the transformative power of the United Nations Crime Prevention and Criminal Justice Programme has been considerable, but in some fields has been more so than in others. It is driven, sometimes jointly, sometimes separately, by academic and intergovernmental ideas. It renders itself to an even more transformative, powerful and

focused action that may contribute to peace and security in the world. “United Nations Criminal Justice Studies”, the emerging discipline, has been singled out in the present monographic study as a potentially influential and practical instrument for getting the United Nations crime and justice message out to the world.

Figure 6 shows in the form of an ideograph the progressive development of international action in response to crime in the world, since its very start in 1764 (Cesare Beccaria) until 2010 – the year of the Twelfth United Nations Congress, of the Security Council meeting at which transnational organized crime was declared a threat to international peace and security, and of the adoption by the General Assembly of the *Standard Minimum Rules for Women Prisoners and Non-Custodial Measures for Women Offenders* (“*The Bangkok Rules*”). The ideograph shows the dates of important international conferences, and the major ideas that incrementally resulted in what is now United Nations criminal policy.

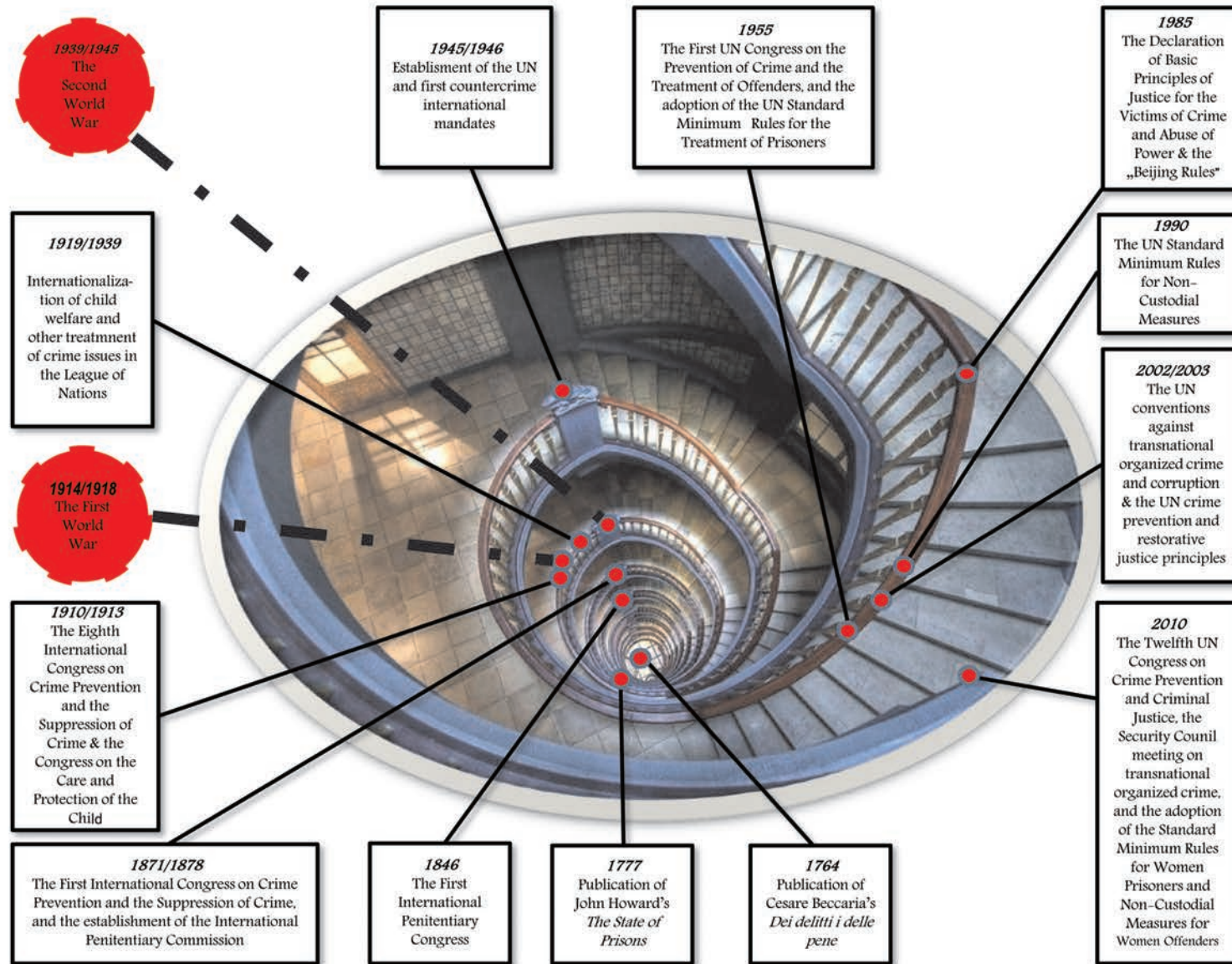


Figure 6. Progressive development of international action against crime in the world, 1764-2010

Annexes



I GLOSSARY

Access to justice is the capability of citizens to demand and obtain responses through formal or informal justice institutions, in compliance with rule of law principles and human rights standards and norms.

Adaptability of good practice refers here to the transfer of evidence-based drug abuse and violent (particularly urban) crime prevention programmes developed elsewhere for family skills training to a local community or culture other than the original from which they come. The adaptation process should be systematic and carefully planned in order to balance the needs of the community with the need to retain fidelity to the original programme that was evaluated as having been effective. It requires: (a) collection of information on appropriate evidence-based programmes to address the assessed needs of the target population; (b) creation of a cultural adaptation team to plan and oversee the implementation of the minimal adaptation process to ensure balance between the needs of the community and fidelity to the evidence-based programme; (c) professional translation of the training programme, the monitoring and evaluation instruments and the materials into the local language to ensure that key messages are not lost in the process; (d) measurement of the baseline by collecting baseline data on the targeted outcomes, other variables specified in the change model and those related to the population and context. The baseline data collection provides information about the target population and context before the intervention, so that it is possible to compare it to the situation after the intervention; (e) inclusion of a strong monitoring component, particularly crucial during the implementation of a freshly translated and minimally adapted evidence-based

programme developed elsewhere. Every effort should be made to utilize the monitoring instruments to the fullest in documenting attendance rates, obtaining feedback from participants, assessing fidelity to the original programme and documenting successes and barriers; (f) making a “continuous quality improvement cycle”, by a post-implementation assessment of the situation among the target population and the context should be conducted to provide the data for comparison with the data collected during the baseline. Enough data to assess the process and the impact of the adapted programme should be collected. It is crucial that this information be collated, analysed and, above all, fed back into the programme to further improve it.⁴⁹¹

Alternative development⁴⁹² is “A process to prevent and eliminate the illicit cultivation of plants containing narcotic drugs and psychotropic substances through specifically designed rural development measures in the context of sustained national economic growth and sustainable development efforts in countries taking action against drugs, recognizing the particular socio-cultural characteristics of the target communities and groups, within the framework of a comprehensive and permanent solution to the problem of illicit drugs”.

Budget of the United Nations. The regular budget of the UN is about \$2 billion per year. It pays for UN activities, staff and basic infrastructure but not peacekeeping operations, which have a separate budget. All States of the UN are obligated by the Charter - an international treaty - to pay a portion of the budget. Each State’s contribution is calculated on the basis of its share of the world economy.

⁴⁹¹ Adapted from UNODC 2009, ch. 4.

⁴⁹² *Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development*, UN GA Special Session (UNGASS) on the World Drug Problem, 1998.

UN spending is determined through a rigorous process involving all Member States. The budget is initially proposed to the General Assembly by the Secretary-General, after careful scrutiny of requests from individual UN departments. It is then analyzed by the 16-member Advisory Committee on Administrative and Budgetary Questions and by the 34-member Committee for Programme and Coordination. The Committees' recommendations go to the General Assembly's Administrative and Budgetary Committee ("The Fifth Committee") made up of all Member States, which gives the budget further scrutiny. Finally, it is sent to the General Assembly for final review and approval. Since 1988, the budget has been approved by consensus - a practice that gives countries the leverage to restrain increases.⁴⁹³ Extra-budget resources come from voluntary contributions of Member States, other entities and individuals. In the UNODC case, those contributions that may carry donor conditionality, may be earmarked as general or special purpose funds. The former assist in the "executive direction and management, programme and programme support components of the biennial budget", the latter "mean earmarked voluntary contributions to the UNODC Funds that are provided to finance technical cooperation and other activities".⁴⁹⁴

Capacity-building. An outgrowth of the concept of technical assistance that gained currency during the late 1990s as a result of changing conceptions of the notion of development. Capacity building means not only the transfer and acquisition of know-how skills but also the sustainable creation, utilization and retention of the ability of individuals, organizations, and societies to perform functions and solve problems in order to reduce poverty, enhance self-reliance, improve people's lives, and transform society. The most innovative implications of capacity building are the emphases placed on the value of individual participation in the elaboration and implementation of projects and the sustainable development of social capital.⁴⁹⁵ Capacity-building is a tailored process that should successfully address the various levels of interest in participating in it, conditioned by the cultural, socio-economic, economic, political and religious factors.

Commission on Crime Prevention and Criminal Justice. A subsidiary body of the Economic and Social Council. It was preceded by a more technically fo-

cused Committee on Crime Prevention and Control, formed in 1971 to replace an earlier expert advisory committee and tackle a broadened scope of UN interest in criminal justice policy. The Economic and Social Council, on the recommendation of the General Assembly, established the Commission by its resolution 1992/1, entitled "Establishment of the Commission on Crime Prevention and Criminal Justice," and provided for the Commission's mandates and priorities in its resolution 1992/22, entitled "Implementation of General Assembly resolution 46/152 concerning operational activities and coordination in the field of crime prevention and criminal justice". This functional ECOSOC commission, composed of 40 Member States elected by the ECOSOC for a two-year term (and observer Member States), is mandated with: (a) international action to combat national and transnational crime, including organized crime, economic crime and money laundering; (b) promoting the role of criminal law in protecting the environment; (c) crime prevention in urban areas, including juvenile crime and violence; and (d) improving the efficiency and fairness of criminal justice administration systems. Aspects of these principal themes are selected for discussion at each annual session of the Vienna-based Commission. The Commission develops, monitors and reviews the implementation of the United Nations Crime Prevention and Criminal Justice Programme and facilitates the coordination of its activities. The Commission provides substantive and organizational direction for the quinquennial United Nations Congress on Crime Prevention and Criminal Justice. The United Nations Crime Prevention and Criminal Justice Programme Network supports the implementation of the United Nations Crime Prevention and Criminal Justice Programme and contributes to the work of the Commission. The Commission acts as the governing body of the United Nations Crime Prevention and Criminal Fund that provides resources for promoting technical assistance in the field of crime prevention and criminal justice. The Commission convenes: (a) intersessional meetings between its regular sessions to finalize the provisional agenda of the Commission, to address organizational and substantive matters, and to provide continuous and effective policy guidance to the Programme; (b) regular informal joint meetings of donor and recipient countries on the planning and formulation of the operational activities of the Programme, including projects; (c) open-ended groups to act on particular topics under

⁴⁹³ <http://www.un.org/geninfo/ir/index.asp?id=150>.

⁴⁹⁴ http://www.unodc.org/documents/commissions/WG-GOVandFIN/GP_and_PSC_definitions_14_May_2010.pdf.

⁴⁹⁵ Adapted from Fomerand 2007:38.

the guidance of the Extended Bureau (Chairperson, three Vice-Chairpersons, Rapporteur plus the chairs of the regional groups, the Presidency of the European Union, and the Chair of the Group of 77 and China).

Common language of justice. A metaphoric and pragmatic United Nations expression of the need to arrive at a better international understanding for a more effective operationalization of such key concepts as justice, the rule of law and transitional justice - essential to enhance human rights, protect persons from fear and want, address property disputes, encourage economic development, promote accountable governance and peacefully resolve conflict.⁴⁹⁶

Consensus building or collective problem solving is a decision-making process. Its participants can raise issues, seek to understand each other's views, and then cooperatively, often through compromise, develop an agreed-upon resolution. Consensus building involves a longer time-frame than most other forms of decision-making. Especially in the United Nations development and human rights context, which is the context of the right to self-determination, disarmament, peace and security, difficult decisions on significant issues require patience, time and participation. Therefore it may be necessary to break down big decisions into "mini-agreements" (for example on legal measures against terrorism) in order to help build group trust and lay the foundation for major decisions that can be supported and implemented. Most United Nations policy-decision making is aimed at achieving consensus. In case this is not possible, voting may take place, but is less common than adoption by consensus. Voting then is indicative of diversified positions of Member States vis-à-vis the United Nations legal instruments / obligations that may be contained in / formulated through its resolutions. In the United Nations Crime Prevention and Criminal Justice Programme, consensus building measures originally involved individual-expert committees (e.g., the Committee on Crime Prevention and Control and other less representative expert meetings), then a recurrent series of individual-expert and intergovernmental meetings, and now such meetings either mandated by the Commission on Crime Prevention and Criminal Justice or by the conferences of the State Parties to the UNTOC and UNCAC. Generally, consen-

sus building incrementally moves through a process of: (a) participant identification; (b) problem definition and analysis; (c) identification and evaluation of alternative solutions; (d) decision-making; (e) finalization and approval of the settlement; and (f) implementation. The eventual consensus is a decision that takes account of all the legitimate concerns raised.⁴⁹⁷ In the United Nations, the ECOSOC, GA and the Security Council (which go through the similar process) may be regarded as higher-level steps for reaching the eventual consensus insofar as they involve matters on which these bodies and its committees are seized, and for mandating its participants with the authority to act.

Crime prevention. Comprises strategies and measures that seek to reduce the risk of crimes occurring, and the potential harmful effects of crime on individuals and society, including fear of crime, by intervening to influence their multiple causes or risk factors. These causes and risk factors include global changes and trends which affect the social and economic conditions of regions and countries; factors affecting individual countries and local environments and communities; those relating to the family and close relationships; and those which affect individuals.⁴⁹⁸ In particular, **primary** prevention addresses individual and family level factors correlated with later criminal participation. Individual level factors such as attachment to school and involvement in pro-social activities decrease the probability of criminal involvement. Family level factors such as consistent parenting skills similarly reduce individual level risk. Risk factors are additive in nature. The greater the number of risk factors present, the greater the risk of criminal involvement. In addition there are initiatives which seek to alter rates of crime at the community or aggregate level. Policing hot spots, areas of known criminal activity, decreases the number of criminal events reported to the police in those areas. **Secondary** prevention uses techniques focusing on at-risk situations such as youth who are dropping out of school or getting involved in gangs. It targets social programs and law enforcement in neighbourhoods where crime rates are high. The use of secondary crime prevention in cities such as Birmingham and Bogotá has achieved large reductions in crime and violence. Programs that are focused on youth at risk have been shown to significantly re-

⁴⁹⁶ Adapted from S/2004/616, § 5.

⁴⁹⁷ Adapted from www.nps.gov/nero/rtcatoolbox/dec_consensus.htm; http://www.beyondintractability.org/essay/consensus_building/

⁴⁹⁸ Adapted from ECOSOC resolution 2002/13 (Annex) and the UNODC *Handbook on the United Nations Crime Prevention Guidelines: Making Them Work* (2010).

duce crime. Tertiary prevention is used after a crime has occurred in order to prevent successive incidents through the reintegration of offenders.⁴⁹⁹

Criminal justice. A constitutive part of a social system and declared by the United Nations to be a central part of sustainable social and economic development which, through its formal and informal law enforcement and adjudication process, aims at the control of crime and some forms of social deviance within the criminal justice purview, and deals with the humane and effective treatment of offenders and victims of crime and related social deviance.

Criminal policy. All activity on the part of organized society specifically directed at the prevention of crime and the humane and effective treatment of delinquents, offenders and victims, with a view to progressive development and application of non-custodial and restorative measures.⁵⁰⁰

Dependency theory. Emerged in the late 1950s, initially in economics and not in social science. Predicated on the notion that resources flow from a "periphery" of poor and underdeveloped states ("South") to a "core" of wealthy states ("North"), enriching the latter at the expense of the former. A central contention of dependency theory is that poor states are impoverished and rich ones enriched by the way poor states are integrated into the "world system". The theory was a counter-reaction to some earlier theories of development (especially the **modernization theory**). Dependency theorists argued that developing countries are not merely earlier versions of developed countries, but have unique features and structures of their own. Moreover, they are in the situation of being the weaker members in a world market economy, whereas the developed countries were never in an analogous position, because they have never existed in relation to a bloc of more powerful countries than themselves. Dependency theorists further argued that developing countries need to reduce their connectedness with the world market, so that they can pursue a path more in keeping with their own needs, less dictated by external pressures.⁵⁰¹ Dependency theory has various representatives among whom liberal reformists, Marxists and the world systems theorists are most frequently mentioned.

Developing countries.⁵⁰² Term used synonymously with others, such as *emerging nations*, *underdeveloped countries*, *less developed countries*, *Third World* and *Global South* to refer to non-Western countries of Asia, Africa, Latin America, and the Middle East sharing common characteristics in spite of cultural, political, and economic differences. Such characteristics include a wide incidence of poverty, high population growth rates, low levels of industrialization, widespread illiteracy and disease, as well as a general economic and technological dependence on the exports of primary products to the developed countries in return for finished products. Several of them gained their independence from colonial rule during the postwar era, and face problems in nation-building and state-building. With a few exceptions, individual developing countries tend to be minor players in international politics and, in order to increase their political leverage, are inclined to act collectively as a group through organizations such as the Nonaligned Movement (NAM) and the Group of Seventy-Seven (G77). As their number dramatically swelled in the United Nations, developing countries endeavoured throughout the 1960s and 1970s to reshape the political agenda of the organization, their major objective being to reduce their economic and political dependence on the industrial North. Since the General Assembly's adoption of its Declaration on the Establishment of a New International Economic Order, the influence of developing countries has waned considerably in the face of the resistance of developed countries and as a result of widening differences in their political, cultural, and economic development.

Development.⁵⁰³ The meaning of the concept of development has undergone profound changes since it entered into the lexicon of the United Nations during the late 1940s and the early 1950s. Originally, development was equated to *economic growth* as measured by increases in per capita income. The assumption was that free trade coupled with injections of private and public capital and technical assistance would create the conditions for an economic take-off in developing countries and that the benefits of the resulting growth would "trickle down" to the bulk of their population. Two decades later, in spite of impressive advances in many countries, particu-

⁴⁹⁹ Adapted from http://en.wikipedia.org/wiki/Crime_prevention

⁵⁰⁰ Adapted from IRCP 1952 No. 1:1.

⁵⁰¹ Adapted from: http://en.wikipedia.org/wiki/Dependency_theory

⁵⁰² Fomerand 2007:92-93.

⁵⁰³ Fomerand 2007:92.

larly in Asia and Latin America, the growing number of “absolute poor” led to a reassertion of the importance of *social progress* and a renewed emphasis on poverty eradication as a fundamental objective of development. The shift in development thinking was highlighted by the *Declaration on Social Progress* adopted by the General Assembly in 1966 and the increasing emphasis placed by donor countries on the satisfaction of basic needs and the improvement of living standards in their lending policies. During the 1980s, the prevailing concept of development was broadened by the recognition of the fundamental role of women as actors and beneficiaries in the economy and society. The mainstreaming of gender issues in development policies and the programs of aid agencies is now a well-recognized principle of national and international development strategies. United Nations—sponsored global conferences devoted to women have in no minor way contributed to this paradigmatic shift. During the mid-1980s and in the wake of the report of the World Commission on Environment and Development, environmental issues have also nudged their way into development thinking and led to concerns about the sustainability of the development process.

The return during the 1990s to a neo-liberal orthodoxy centred on the primacy of markets; the liberalization of trade, finance, and investment; together with the seemingly unstoppable process of globalization have triggered a new round of collective reflection on the understanding of development focused on the notion of human security advocated by the *Human Development Reports* of the United Nations Development Programme (UNDP).

For the purpose of statistical comparisons, *development* in the United Nations is, inter alia, measured by using GDP, GNP and/or Gini coefficient data. Countries are grouped as high, medium or low income countries.

Economic and Social Council. The UN organ responsible for the coordination of the economic, social and related work of the United Nations and the specialized agencies and institutions – known as the United Nations family of organizations. The Council has 54 Member States elected for three-year terms.⁵⁰⁴ In order to perform all of the functions within the

ECOSOC agenda, a number of commissions, sub-commissions and committees have been established. The so-called functional commissions, which are deliberative bodies whose role is to consider and make recommendations on issues in their areas of responsibility and expertise are: Statistical Commission, Commission on Population and Development, Commission for Social Development, Commission on the Status of Women, Commission on Narcotic Drugs, Commission on Crime Prevention and Criminal Justice, Commission on Science and Technology for Development Commission on Sustainable Development, and United Nations Forum on Forests.⁵⁰⁵

Evaluation. “An assessment, as systematic and impartial as possible, of an activity, project, programme, strategy, policy, topic, theme, sector, operational area, institutional performance, etc. It focuses on expected and achieved accomplishments, examining the results chain, processes, contextual factors and causality, in order to understand achievements or the lack thereof. It aims at determining the relevance, impact, effectiveness, efficiency and sustainability of the interventions and contributions of the organizations of the UN system. An evaluation should provide evidence-based information that is credible, reliable and useful, enabling the timely incorporation of findings, recommendations and lessons into the decision-making processes of the organizations of the UN system and its members.”⁵⁰⁶ The **relevance** of a project or programme is the extent to which its objectives are consistent with the beneficiaries’ requirements, country needs and priorities, relevant international standards, global priorities and the policies and objectives of partners and donors. **Efficiency** is a measure of how well inputs (funds, expertise, time, etc.) are converted into outputs. **Effectiveness** is the extent to which a project or programme attains its objectives and expected accomplishments and delivers the planned outcomes. **Impact** is a measure of all significant effects of the programme, positive or negative, expected or unforeseen, on its beneficiaries and other affected parties. **Sustainability** is the extent to which the benefits of the project or programme will last after its termination and the probability of continued long-term benefits.⁵⁰⁷

⁵⁰⁴ Adapted from the United Nations Today 2008:10.

⁵⁰⁵ <http://www.un.org/docs/ecosoc/subsidiary.html>

⁵⁰⁶ *Norms for Evaluation in the UN System* (2005). (United Nations Evaluation Group). <http://www.escwa.un.org/divisions/pptcd/upload/uneg.pdf>

⁵⁰⁷ United Nations Juvenile Justice Panel, Criteria for the Design and Evaluation of Juvenile Justice Reform Programmes, 2010.

Four Freedoms. The *Four Freedoms* were goals articulated by U.S. President Franklin D. Roosevelt on 6 January 1941. In an address known as the *Four Freedoms* speech (technically, the 1941 State of the Union address), he proposed four fundamental freedoms that people “everywhere in the world” ought to enjoy: Freedom of speech and expression; Freedom of religion; Freedom from want; and Freedom from fear. The concept of the *Four Freedoms* became part of the personal mission undertaken by First Lady Eleanor Roosevelt in inspiring the *United Nations Declaration of Human Rights*, General Assembly Resolution 217A (1948). Indeed, these *Four Freedoms* were explicitly incorporated into the preamble to the *Universal Declaration of Human Rights*, which reads in part, “Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed the highest aspiration of the common people ...”.⁵⁰⁸ The most elaborate reinterpretation of the *Four Freedoms* was given by Kofi Annan, the United Nations Secretary-General, in his report “In Larger Freedom” (A/59/205).

General Assembly. The main deliberative organ of the United Nations. It is composed of representatives of all Member States, each of which has one vote. Its main functions include: (a) to consider and make recommendations on the principles of cooperation in the maintenance of international peace and security, and (b) to initiate studies and make recommendations to promote international political cooperation, the development and codification of international law, the realization of human rights and fundamental freedoms for all, and international collaboration in the economic, social, cultural, educational and health fields.⁵⁰⁹ The General Assembly allocates its various agenda items to its six committees. “The Third Committee”, which is the Social, Humanitarian and Cultural Affairs Committee, deals with items relating to a range of social, humanitarian affairs and human rights issues that affect peoples all over the world. An important part of the Committee’s work focuses on the examination of human rights questions, including reports of the special procedures of

the newly established Human Rights Council. The Committee also discusses the advancement of women, the protection of children, indigenous issues, the treatment of refugees, the promotion of fundamental freedoms through the elimination of racism and racial discrimination, and the promotion of the right to self-determination. The Committee also addresses important social development questions such as issues related to youth, family, ageing, persons with disabilities, crime prevention, criminal justice, and drug control.⁵¹⁰

Good governance. The transparent and accountable management of human, natural, economic and financial resources for the process of equitable and sustainable development. This process entails clear decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of resources and capacity building for elaboration and implementing measures aiming in particular at preventing and combating corruption.⁵¹¹

Good practice. The accepted range of values as well as safe and reasonable practice that result in efficient and effective use of available resources in order to achieve quality outcomes for the beneficiary. Accepted good practice should also reflect standards for service delivery where these exist.⁵¹²

In cases of direct application of good practice at other than the original field-level location, the “necessary conditions” should be found or created in a different context for the same (or a similar) programme to produce similar results.⁵¹³ The practice is “good” when it is proven. “Evidence-based practice” is then created. Other practices may be “promising” but not yet proven. Because of the issue of adaptability (transferability) of good practice elsewhere, its examples rarely contribute to interstate practice in their original form and content, as also is the case with “best practice” examples that undergo the same verification and adaptation process. However, the absence of universally recognized criteria of one or the other, and the fact that both practice-adjectives are interchangeably used in the United Nations, conflates international custom-forming, otherwise regulated by the same-level interstate process. It is

⁵⁰⁸ <http://www.google.com/search?q=Four+Freedoms&rls=com.microsoft:en-gb:IE-SearchBox&ie=UTF-8&oe=UTF-8&sourceid=ie7&rlz=117GGLJ>

⁵⁰⁹ Adapted from the United Nations Today 2008:6-7.

⁵¹⁰ <http://www.un.org/ga/third/index.shtml>.

⁵¹¹ Adapted from art. 9 of the Cotonou Agreement (2000).

⁵¹² www.vn.government.bg/world/stranici/programi/novo/mladi/GLOSSARY.doc

⁵¹³ United Nations Juvenile Justice Panel, Criteria for the Design and Evaluation of Juvenile Justice Reform Programmes, 2010.

only then in the United Nations Crime Prevention and Criminal Justice Programme that this process leads to accepting such examples as a general interstate practice (hence as a standard or norm recognized by the ECOSOC/GA as either declaratory of the pre-existing custom or as custom-forming), when and if through the negotiations at the Commission on Crime Prevention and Criminal Justice that practice is adapted and eventually consented to by all attending States, whether or not they are members of the Commission.

Human security.⁵¹⁴ Broad concept related to the notion of human development that focuses on the need to create and sustain societies that enable individual human beings to realize their full potential. For that purpose, individuals should be protected against threats arising not only from conflicts and war but also from non-military threats such as poverty, environmental degradation, infectious diseases, illicit drug trafficking, other crime and victimization. The concept of human security remains controversial. Critics argue that it is tantamount to pouring old wine into new bottles and that it is too broad for concrete policy applications. Proponents, on the other hand, point to the rapid expansion of the range of security threats and find support in the United Nations report of the *High-Level Panel on Threats, Challenges, and Change* which identifies several clusters of threats, with economic and social threats: disease and hunger, poverty and unemployment, and terrorism and ethnic conflicts.

International criminal justice. Substantive and procedural international criminal law, and its enforcement mechanisms. Substantive international criminal law includes several categories of crimes represented by a number of international conventions. Procedural international criminal law represents international modalities of inter-State cooperation in criminal matters (i.e., extradition, mutual legal assistance, transfer of criminal proceedings, transfer of sentenced persons, recognition of foreign criminal judgements, law enforcement and intelligence cooperation, and more specialized cooperation in combating money-laundering). Enforcement mechanisms include international institutions for the investigation, prosecution and adjudication of certain international crimes, such as ad hoc institu-

tions established by the Security Council, the International Criminal Court and mixed-model tribunals established by the United Nations and certain Governments.⁵¹⁵

International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme (ISPAC). The General Assembly of the United Nations, in its resolution 45/107 *International co-operation for crime prevention and criminal justice in the context of development* of 14 December 1990, called for broader involvement of, and assistance by, non-government organizations in order to fully implement the mandates emerging from the Crime Prevention and Criminal Justice Programme and to provide additional technical and scientific expertise and resources for international cooperation in this field. The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1985) called for more intensive efforts to secure support and cooperation from scientific and professional organizations and institutions with an established reputation in the field, so as to make greater use of those resources at the subregional, regional, interregional and international levels, and proposed establishing an international council of scholarly, scientific, research and professional organizations and academic institutions to strengthen international cooperation in crime prevention and criminal justice by furthering the exchange of information and providing technical and scientific assistance to the United Nations and the world community which it serves. Accordingly, the constituent assembly of the International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme, attended by some seventy representatives of non-government organizations, academic institutions and associations was convened in Milan (Italy, 21-23 September 1991). Adolfo Beria di Argentine, Honorary Attorney-General, Supreme Court of Italy; Secretary-General, International Society of Social Defence and Centro Nazionale di Prevenzione e Difesa Sociale, Milan, Italy was the founder and first Chair of ISPAC.

Justice. For the United Nations, justice is an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the

⁵¹⁴ Fomerand 2007:159.

⁵¹⁵ A/CONF. 213/12, § 6.

rights of the accused, for the interests of victims and for the well-being of society at large. It is a concept rooted in all national cultures and traditions and, while its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanisms are equally relevant.⁵¹⁶

Juvenile justice. An integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.⁵¹⁷

Modernization.⁵¹⁸ The theory originally held that all societies progress through similar stages of development. Consequently, the task of helping developing countries in alleviating poverty implies accelerating their progress on a common path of development by various means such as investment, technology transfers, and closer integration into the world market. The theory was developed by the French sociologist Émile Durkheim. He studied how social order was to be maintained in a society and how primitive societies might make the transition to more economically advanced industrial societies. He suggested that in a capitalist society, with a complex division of labour, economic regulation would be needed in order to maintain order. He stressed that the major transition from a primitive social order to a more advanced industrial society could otherwise bring crisis and disorder. Durkheim furthermore developed the idea of social evolution, which indicates how societies and cultures progress over time - much like a living organism - essentially saying that social evolution is like biological evolution with reference to the development of its components. In much the same way as organisms, societies develop through several stages, generally starting at a simplistic level and then developing into a more complex level. Societies adapt to their surrounding environments, but they interact with other societies, which further contribute to their progress and development. This concept, which is most frequently pursued in the United Nations, is based on a theory that looks at the internal factors of a country while assuming that, with technical assistance, developing countries can be brought to development in the same manner as more developed countries have. Within the United

Nations framework, modernization theory in criminology was first advocated by William Clifford, Chief of the United Nations Social Defence Section. Modernization had been perceived as the flagship instrument of “Westernization” and/or of colonization. In the colonized countries (now developing countries), it has been countered by local political and intellectual elites which feared being overwhelmed by Western policies distorting the pre-colonial “tradition”. In the economic field, modernization theory has been countered by **dependency theory** (see above). In the legal field, through their own interpretations of “modernity”, those colonized countries sought first to reject the legal transplants, eventually adopting hybrid arrangements. In the post-colonial era, as, e.g., documented by the NIEO-related text of the *Caracas Declaration* of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the United Nations has still grappled with the aftermath of such a Western kind of modernization, slowly adapting to the demands of developing countries for more indigenous solutions to their own problems. However, irrespective of various relatively more recent conceptual underpinnings of modernization, its concept has always and everywhere included questions of industrialization and urbanization. The question of industrialization has dominated the United Nations agenda since 1945 as a part of post-Second World War reconstruction. At this formative phase, the General Assembly often discussed modernization, aware that internal situations in societies immediately affect its processes. A State in which favourites are rewarded and governmental corruption is prevalent causes the state to suffer in terms of modernization. This can repress the State’s economic development and productivity and lead money and resources to flow out to other countries with more favourable investment environments. Several General Assembly resolutions echoed those discussions that gradually led to the emergence of the right of developing States to “self-determination”, the NIEO referred to above, and sustainable socio-economic development. The question of urbanization strongly entered the United Nations agenda when the UN-Habitat was established (1978). Its aim is to improve living conditions and working for all, through the efficient, participatory and transparent management of human settlements within the overall objective of reducing poverty and social

⁵¹⁶ S/2004/616, § 7.

⁵¹⁷ *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (GA resolution 40/33 of 29 November 1985, § 1.1.4)

⁵¹⁸ Adapted from http://en.wikipedia.org/wiki/Modernization_theory.

exclusion. Social exclusion is also addressed through the UN-Habitat's Safer Cities Programme, established in 1996.

New International Economic Order.⁵¹⁹ Adopted by the General Assembly at its sixth special session 1974 at the recommendation of developing countries (Southern countries), which sought far-reaching changes in the world economy, by pursuing self-reliant economic policies and indigenous solutions by developing countries. The demands contained in the NIEO stem from the growing concerns of developing countries that during the 1950s and the 1960s had, through the framework of the Nonaligned Movement (NAM) and the United Nations Conference on Trade and Development (UNCTAD), pursued structural changes in the world economy, fairer terms of trade, and greater flows of finance for development on more liberal terms. Resistance of developed countries (Northern countries), which insisted that any economic change should be discussed in the Bretton Woods institutions, and the success of the Organization of Petroleum Exporting Countries (OPEC) in increasing petroleum prices substantially in 1973 were the two catalysts that brought together and spurred the loose coalition of developing countries to press for adoption by the Assembly of the *Charter of Economic Rights and Duties of States and of a Declaration on the Establishment of a New International Economic Order*. The specific measures called for in the NIEO include the adoption of an integrated approach to the management and pricing of core products in order to reduce excessive price and supply fluctuations and commodity prices in real terms; the indexation of the prices of exports from developing country to the rising prices of manufactured exports from developed countries; the negotiated redeployment of industries of some countries to developing countries; the lowering of tariffs on the exports of manufactures from developing countries; the establishment of mechanisms for the transfer of technology countries; and reaching the target of 0.7 percent of the GNP of the developed countries in Official Development Assistance (ODA). The General Assembly devoted two other special sessions to the implementation of the NIEO in 1980 and 1990. But the South's lack of effective power in world politics, divergent interests among developing countries, the crushing debt burden that affected several Southern

countries during the 1980s, and the sheer costs involved in putting into effect the measures advocated in the NIEO simply led to its political demise.

Non-custodial measures. Any decision made by a competent authority to submit a person suspected of, accused of or sentenced for an offence to certain conditions and obligations that do not include imprisonment. Such decision can be made at any stage of the administration of criminal justice. The measures include alternatives to imprisonment for offenders which should enable the authorities to adjust penal sanctions to the needs of the individual offender in a manner proportionate to the offence committed.⁵²⁰

Nongovernmental organizations (NGOs). Special-purpose associations of individuals or groups created by means other than an agreement among States. It is estimated that the number of internationally active NGOs exceeds 35,000. NGOs fulfil a wide variety of functions ranging from advocacy, research, and information to the provision of humanitarian assistance.⁵²¹ The Vienna Alliance of NGOs on Crime Prevention and Criminal Justice was established during the early 1980s when the United Nations Crime Prevention and Criminal Justice Programme was transferred from New York to Vienna. Under the aegis of the alliance, around 30 NGOs (in consultative status with ECOSOC) provide input to the UN programme on matters of interest to the NGOs, such as criminal reform projects, promotion of human rights, use and application of UN standards and norms in crime prevention and criminal justice, gender issues, and matters related to social defence. In collaboration with the New York NGO Alliance and ISPAC, the Vienna Alliance has contributed regularly to the UN congresses on crime prevention and criminal justice by holding so-called "ancillary meetings" during which the work of the NGOs was presented, and professional expertise on criminal justice matters was provided. The Vienna and New York alliances have laid great emphasis on the elaboration and application of the United Nations crime prevention and criminal justice standards and norms. The alliances have been strongly involved in the elaboration of some of these standards. The worldwide network of NGOs has made a significant contribution towards monitoring the implementation of standards. The NGO community has also contributed

⁵¹⁹ Fomerand 2007:227-228.

⁵²⁰ *Commentary on the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)*, UN doc. ST/CSDHA/22, United Nations New York 1993:3.

⁵²¹ Fomerand 2007:231.

significantly to the formulation of the *United Nations Convention against Transnational Organized Crime* and its protocols, and the *United Nations Convention against Corruption*.

Organs of the United Nations. The *Charter* of the United Nations established the following six principal organs: Security Council, General Assembly, Economic and Social Council, Secretariat, International Court of Justice, and the Trusteeship Council (defunct since 1994).

Peacekeeping. United Nations operations deployed with the authorization of the Security Council and the consent of the host government and/or the main parties of the conflict. Peacekeeping has traditionally involved a primarily military model of observing ceasefires and the separation of forces after interstate wars. Today, it has evolved into a complex model of many elements – military, police and civilian – working together to help lay the foundations of a sustainable peace with transitional justice rule-of-law components.⁵²²

Peacemaking. The use of diplomatic means to persuade parties in conflict to cease hostilities, and to negotiate the peaceful settlement of a dispute. The United Nations provides various means through which conflicts may be prevented, contained and resolved, and their root causes addressed. The Security Council may recommend ways to resolve a dispute or request the Secretary-General's mediation. The Secretary-General may take diplomatic initiatives to encourage and maintain the momentum of negotiations.⁵²³

Poverty. The Charter of the United Nations originally enjoined the Organization to promote "higher standards of living, full employment, and conditions of economic and social progress". On that basis and with the mass entry to membership of developing countries during the 1960s, the United Nations vastly expanded the scope of its activities in development. Poverty eradication (or "*freedom from want*"), is now one of its overriding objectives. Poverty, first defined as "*denial of choices and opportunities for living a*

tolerable life" which includes adequate food, water, health care, and education,⁵²⁴ is widely and currently understood as the non-fulfilment of preferences and the non-satisfaction of basic needs. Inequality, deprivation, relative deprivation, social exclusion, powerlessness and vulnerability are dimensions of poverty measurable by social and economic indicators. Poverty may be defined in terms of individual consumption levels of less than US\$ 1 or 2 per day. Using this rather conservative indicator based on purchasing power parity techniques to facilitate comparisons across countries, we can see that over 1 billion of people, a quarter of the population of the developing world, now live below US\$ 1 per day. Although there is no simple or direct correlation between inequality and crime, especially violent crime, excessive economic and social inequality does appear to exacerbate the likelihood of violent crime and imprisonment, especially when it coincides with other factors. Originating from the study of the problem of poverty, relative deprivation theory suggests that inequality breeds social tension, since those who are less well-off feel dispossessed when comparing themselves with others. This theory is based on the assumption that individuals or groups are most likely to engage in violence if they perceive a gap between what they have and what they believe they deserve.⁵²⁵ Even more subtle interpretations of that theory claim that material and time deprivation condition each other. "[T]hose who are present-oriented are swept into the future that others have laid out for them"⁵²⁶ because children are unprepared by impoverished parents for the daily routines of mainstream culture ordaining their lives, hence reducing their interest in drugs and gang violence as idle time activities.⁵²⁷

Progressive development of international law. Broadly accepted as being an important task of States and the specific legislative process of the contemporary international community, as stipulated in the United Nations *Charter* (art. 13.1 (a)). It is a conscious effort towards the creation of new rules of international law, whether by means of the regulation of a new topic or by means of the comprehensive vision of existing rules.⁵²⁸ In the process of the elaboration of the United Nations crime prevention and crimi-

⁵²² Adapted from the *United Nations Today* 2008:77-78.

⁵²³ Adapted from the *United Nations Today* 2008:76-77.

⁵²⁴ *UNDP Human Development Report* 1997, New York 1997:3.

⁵²⁵ *State of the World's Cities* 2006/7:143-144.

⁵²⁶ Rifkin 1987:166.

⁵²⁷ Levine 1997:189.

⁵²⁸ <http://www.nationsencyclopedia.com/United-Nations/International-Law-INTERNATIONAL-LAW-COMMISSION.html>

nal justice standards and norms, including treaty law instruments, this development implies progressive humanistic treatment of offenders, victims of crime, juvenile delinquents and children in conflict with the law. It also includes enhancing the performance of the criminal justice system, the right to defence, the eventual abolition of death penalty, and respective improvements in responding to various forms of crime, whether traditional or modern.

Restorative justice. A way of responding to criminal behaviour by balancing the needs of the community, the victims and the offenders. An approach to problem solving involving the victim, the offender, their social networks, justice agencies and the community. Restorative justice programmes are based on the fundamental principle that criminal behaviour not only violates the law, but also injures victims and the community. Any efforts to address the consequences of criminal behaviour should, where possible, involve the offender as well as these injured parties, while also providing help and support that the victim and offender require. Restorative justice refers to a process for resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict. Participation of the parties is an essential part of the process that emphasizes relationship building, reconciliation and the development of agreements around a desired outcome between victims and offender. Restorative justice processes can be adapted to various cultural contexts and the needs of different communities. Through them, the victim, the offender and the community regain some control over the process. Furthermore, the process itself can often transform the relationships between the community and the justice system as a whole.⁵²⁹

Rule of law.⁵³⁰ For the United Nations, this refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the

principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

Secretariat. One of the principal organs of the United Nations which services its other organs and administers the programmes and policies laid down by them. At its head is the Secretary-General, who is appointed by the General Assembly on the recommendation of the Security Council for a five-year, renewable term. The duties carried out by the Secretariat are as varied as the problems dealt with by the United Nations. These range from administering peace-keeping operations to mediating international disputes, from surveying economic and social trends to preparing studies on human rights and sustainable development.⁵³¹ The Secretariat has some 40,000 staff members around the world. Staff members and the Secretary-General, as international civil servants, answer to the United Nations alone for their activities, and take an oath not to seek or receive instructions from any Government or outside authority. Under the *Charter*, each Member State undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and to refrain from seeking to influence them improperly in the discharge of their duties. The United Nations, while headquartered in New York, maintains a significant presence in Addis Ababa, Bangkok, Beirut, Geneva, Nairobi, Santiago and Vienna, and has offices all over the world.⁵³²

Security Council. The *Charter* of the United Nations – an international treaty – obligates Member States to settle their disputes by peaceful means, in such a manner that international peace and security and justice are not endangered. The Security Council is the United Nations organ with primary responsibility for maintaining peace and security. Under the *Charter*, Member States are obliged to accept and carry out the decisions of the Security Council. The Council has 15 members: five permanent – the People's Republic of China, France, the Russian Federation, the United Kingdom and the United States – and ten members elected by the General Assembly for two-year terms.⁵³³

⁵²⁹ *Handbook on Restorative Justice Programmes*, UNODC Vienna 2006: 6-7.

⁵³⁰ S/2004/616, § 4.

⁵³¹ Adapted from the United Nations Today 2008:13-14.

⁵³² <http://www.un.org/en/mainbodies/secretariat/>

⁵³³ Adapted from the United Nations Today 2008:8 & 73.

Security sector reform.⁵³⁴ A process of assessment, review and implementation as well as monitoring and evaluation led by national authorities that has as its goal the enhancement of effective and accountable security for the State and its peoples without discrimination and with full respect for human rights and the rule of law.

Social defence. The protection of society against crime through a systematically organized and coherent action by both the State and civil society. Since 1831 this term has been used in the criminological and penological literature. The methods of achieving the inherent objective of *social defence* have been shifting with the advancement in social sciences and behavioural disciplines, and so have been the countries in which that movement has shaped their criminal policy agenda. Between 1946 and 1973 the social defence movement nominally served in the United Nations Secretariat, to an increasing degree, to communicate its unit's/section's work programme in the area of the prevention of crime and the treatment of offenders. The term was eventually abandoned in 1989 with the change of the name of the United Nations Social Defence Research Institute (UNSDRI) to the United Nations Interregional Crime and Justice Research Institute (UNICRI).

Social exclusion. It involves a multidimensional process of progressive social rupture, detaching groups and individuals from social relations and institutions and preventing them from full participation in the normal, normatively prescribed activities of the society in which they live.⁵³⁵ The concept emerged in 1980s in the European Union in the course of defining the activities of the European Community Programme to Foster Economic and Social Integration of the Least Privileged Groups, followed in the early 1990s by the European Observatory on Policies to Combat Social Exclusion.⁵³⁶

Social inclusion. It refers to the extent to which individuals are incorporated within a wider moral and political community.⁵³⁷ It recognizes and values diversity, by increasing social equality and the participation of diverse and disadvantaged populations. Is-

suues of diversity and social inclusion have an impact on how programs and services are delivered to meet a wide range of client needs. As a result, the concepts of diversity and social inclusion have become critical to the evaluation of programs for governmental and community organizations.⁵³⁸

Soft law. Traditionally, the term is associated with international law, and often contrasted there with "treaty law". In the United Nations it refers to legal instruments which either may not have any external binding force at all (such as, e.g., "model laws") or whose binding force is somewhat "weaker" than the binding force of traditional "hard law", but in any case binding on the United Nations Secretariat (*pro foro interno*, e.g., budget). The content of such instruments, which are a type of substantive recommendations, and the way in which they were developed and adopted influences their legal value in Member States (*pro foro externo*). Soft law covers most resolutions and declarations of the Security Council (binding on Member States and the Secretariat), the General Assembly, the ECOSOC and its functional commissions (binding on the Secretariat). Otherwise these are not binding sources of law that may contribute to the development of international customary law beyond the United Nations. Depending on their status within that law, their custom-contents may be legally binding. Soft law includes statements, principles, codes of conduct, codes of practice etc., often found as part of framework treaties; action plans; other non-treaty obligations.⁵³⁹

Soft law has made a significant contribution to promoting more effective and fair criminal justice structures in three dimensions. First, it can be utilized at the national level by fostering in Member States in-depth assessments leading to the adoption of necessary criminal justice reforms, including improving their practices in line with internationally recommended standards. Second, it can help them to develop sub-regional and regional strategies and practices for countering crime together. Third, cross-regionally and globally, soft law may under certain conditions elevate "good practices" as declaratory of pre-existing custom or custom-formative (recommendatory).

⁵³⁴ A/62/659-S/2008/39, § 17.

⁵³⁵ http://en.wikipedia.org/wiki/Social_exclusion.

⁵³⁶ Martin O'Brien and Majid Yar, *Criminology. The Key Concepts*, Routledge. Taylor & Francis Group, London - New York 2008:153.

⁵³⁷ *Ibid.*:153.

⁵³⁸ Adapted from York Institute of Health Research, http://yihr.abel.yorku.ca/peu/?page_id=51.

⁵³⁹ Adapted from http://en.wikipedia.org/wiki/Soft_law

Sustainable development.⁵⁴⁰ The development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It involves the right to fulfil the aspirations of the present generation without limiting the developmental rights of future generations. Sustainable development in its original sense, as used by the World Commission on Environment and Development (1987), chaired by Gro Harlem Brundtland, at the time Norway's Prime Minister, communicates that in the interest of the right to development of future generations, the development of economy and civilization should not be pursued at the cost of exhausting the non-renewable natural resources and the destruction of environment. Historically, the origins of the UN crime program mandate may be traced back to the antecedents of that welfare concept, expressed in the *Atlantic Charter* (1941) and the UN Charter ("to save succeeding generations from the scourge of war"), since the program started with the prevention of juvenile delinquency. Currently, this concept extends to a self-generating, creative, albeit also conflicting, mechanism for renewing socio-economic and other resources. It is geared toward their multiplication and, generally, the broadening of human intergenerational capital in any creative areas of mankind, including science and education - the necessary doorway to a change in mindset and behaviour. A change in behaviour by everyone (citizens, companies, local and regional authorities, governments and international institutions) to counter the threats looming over our planet (climate change, loss of biodiversity; industrial, health and security risks; excessive but preventable economic and social inequality, likewise crime and victimization levels, and so on).

Sustainable livelihood.⁵⁴¹ A part of the above concept of sustainable development. It was advanced at the UN Conference on Environment and Development (1992) as a broad goal for poverty eradication. It comprises the capabilities, assets (stores, resources, claims and access) and activities required for a means of living which can cope with and recover from stress and shocks, maintain or enhance its capabilities and assets, and provide opportunities for the next generation; and which contributes net benefits to other livelihoods at the local and global levels and in the short and long term.

Technical assistance.⁵⁴² A broad range of activities to enhance the human and institutional capabilities of developing countries and foster their economic and social development through the transfer, adaptation, and utilization of ideas, knowledge, practices, skills, and technology. It originally started with the "Expanded Programme of Technical Assistance", initiated in 1949 in the United Nations by the United States, by providing expert advice, training, and fellowships through projects designed to improve health and educational facilities, land culture methods, communication and transportation facilities of developing countries, and their financial and administrative procedures. Soon technical assistance expanded further to crime prevention and criminal justice services. Such activities now include the financing of experts, consultants and trainees, feasibility studies, engineering and construction services for capital projects, institution-building efforts, research related to development, and the like. Technical assistance, including its major component of "capacity building", involves annual expenditures exceeding US\$ 7 billion in over 150 Member States. Separately, there have been efforts to expand technical assistance among developing countries themselves, known as "South-South cooperation".

Transitional justice. Comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.⁵⁴³

United Nations Convention against Corruption (UNCAC) is the first legally binding global anti-corruption instrument. It was opened for signature and ratification by Member States in Merida (Mexico, 9-11 December 2003). It entered into force on 14 December 2005. A Conference of the States Parties has been established to review implementation and facilitate activities required by the Convention. In its eight chapters and 71 articles, the UNCAC obliges its States Parties to implement a wide and detailed range of anti-corruption measures affecting their

⁵⁴⁰ Adapted from <http://www.veolia.com/en/glossary/s.aspx>.

⁵⁴¹ Chambers & Conway 1992.

⁵⁴² Fomerand 2007:120 & 308.

⁵⁴³ S/2004/616, § 8.

laws, institutions and practices. These measures aim to promote the prevention, criminalization and law enforcement, international cooperation, asset recovery, technical assistance and information exchange, and mechanisms for implementation. In the absence of an agreed definition of corruption, UNCAC provides the definitions of its elements that may constitute it through a list of defined mandatory offences (bribery of public officials, active bribery of foreign public officials, embezzlement, money laundering, obstruction of justice), and a list of other non-mandatory offences (passive bribery of foreign public officials, trading in influence, abuse of function, illicit enrichment, bribery in the private sector, and embezzlement in the private sector). The Convention is the first-ever global legal treaty delineating the parameters of asset recovery.

United Nations Convention against Transnational Organized Crime (UNTOC). The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, is the main international instrument in the fight against transnational organized crime. It was opened for signature and ratification by Member States in Palermo, Italy, on 12-15 December 2000. It entered into force on 29 September 2003. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime: the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*; the *Protocol against the Smuggling of Migrants by Land, Sea and Air*; and the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition*. States must become parties to the Convention itself before they can become parties to any of the Protocols. The Convention defines what is a transnational organized crime group, the trafficking in persons, the smuggling of migrants, and the illicit manufacturing and trafficking in firearms and ammunition. The Convention is the first-ever global legal treaty delineating the parameters of its own implementation, including technical assistance measures, through the Conference of State Parties.

United Nations congresses on crime prevention and criminal justice. The United Nations congresses on crime prevention and criminal justice, held every five years since 1955, are the major

global forum for exchanging information and experiences, comparing criminal justice practices, finding viable solutions to crime and stimulating international action. The congresses bring together representatives of the world's national Governments, specialists in crime prevention and criminal justice, scholars of international repute and members of intergovernmental and non-governmental organizations. Their recommendations, channelled through the Commission on Crime Prevention and Criminal Justice, impact on the legislative bodies of the United Nations - the General Assembly and the Economic and Social Council - and on the criminal justice policies and practices of national and local governments. The quinquennial Crime Congresses continue a tradition established by the former International Penal and Penitentiary Commission (IPPC). Comprising experts and professionals from mostly European countries, the IPPC held congresses every five years from 1885 to 1910 and from 1925 to 1935, and during the latter period was affiliated with the League of Nations. Its last congress was held in 1950. The IPPC was dissolved by General Assembly resolution 415 (V) of 1 December 1950, and its function and archives were transferred to the UN in 1951. From an early focus on penology and treatment of delinquents and offenders, the scope of the UN crime prevention and criminal justice congresses has broadened to include issues such as the relation between crime control and social and economic development and international responses to transnational crime, organized crime and cybercrime.

United Nations Crime Prevention and Criminal Justice Programme. Nominally established by General Assembly resolution 46/152 (Annex) of 18 December 1991, it has been developed since 1946 by the resolutions of various United Nations policy-making bodies, starting with those of the Temporary Social Commission. Currently, it comprises Member States (acting individually or through the Commission on Crime Prevention and Criminal Justice), the United Nations Secretariat, including the UNODC, Programme Network institutes and non-governmental organizations. The goal of the Programme is to assist the international community in meeting its pressing needs in the field of crime prevention and criminal justice and to provide countries with timely and practical assistance in dealing with problems of both national and transnational crime.

United Nations Crime Prevention and Criminal Justice Programme Network. Its establishment commenced with the United Nations Asia and Far East Institute on the Prevention of Crime and the Treatment of Offenders (1962), and continued with other institutes, including the United Nations Social Defence Research Institute (1968). It now consists of the UNODC and 17 interregional and regional institutes around the world, as well as specialized centres. This open-ended network has been developed to assist the international community in strengthening co-operation in crime prevention and criminal justice. Its components provide a variety of services, including exchange of information, research, training and public education.

United Nations crime prevention and criminal justice standards and norms. These are global soft law provisions in crime prevention and criminal justice developed by Member States and non-State actors (non-governmental organizations and individual experts) since the adoption of the Universal Declaration of Human Rights (1948). In this participatory process, over those years a considerable body of United Nations standards and norms related to crime prevention and criminal justice has

emerged, covering a wide variety of issues such as juvenile justice, the treatment of adult offenders, international cooperation, good governance, victim protection, and violence against women. These universal standards and norms have provided a collective vision of how the criminal justice system should be structured and have helped to significantly promote more effective and fair criminal justice structures in three dimensions. First, they can be utilized at the national level by fostering in-depth assessments leading to the adoption of necessary criminal justice reforms. Second, they can help Member States to develop sub-regional and regional strategies and practices. Third, cross-regionally and globally, they may under certain conditions elevate "good practices" as declaratory of pre-existing custom or custom-formative (recommendatory).

Urban security. Includes strategic and managerial governmental capacity to counter, in a sustainable manner, insecurity, crime, violence and other disorder in cities. The term includes facilitating work to reduce disorder, excessive socio-economic inequality, social exclusion and land tenure problems, where these are significant factors.

II BIOGRAPHIES

Alper, S. Benedict (1906-1994). The first Chief of the United Nations Social Defence Section (1946-1947). Criminology graduate of the Harvard University (1927). Taught criminology at Boston College (MASS, USA), School of Law, the Rutgers University (Newark, N.J., USA) and the New School for Social Research (New York City); probation officer in the Boston Juvenile Court; correctional officer in the Massachusetts State Prison; worked for the US Bureau of Prisons; Research Associate to the Center of Studies in Criminal Justice, Law School, University of Chicago; a research director of a New York Legislative Committee, Field Secretary of the American Parole Association; chief statistician and special assistant to the Director, Federal Bureau of Prisons. During the Second World War served in the US Army and was assigned to the military police in Northern Africa and Italy, as a part of the Allied Military Government of Occupied Territories. Managed prisons during and after the Second World War in Italy (Naples, Rome, Trieste) for civilian criminals and Nazi collaborators. Founding member and President of the UN Staff Association. Consultant to the United Nations Consultative Group on Crime (1968) and to the Fourth Congress (1970). Attended the Eighth Congress (1990). "He was gifted with native intelligence, an unusual sensitivity to people, managerial expertise, and a flair for writing".⁵⁴⁴

Amor, Paul. (1901-1984). The third Chief of the United Nations Social Defence Section (1950-1952). Criminal lawyer involved in juvenile justice matters; prosecutor and magistrate. Member of the French resistance movement in the Second World War; imprisoned by Germans. First post-Second World War Director of the French Prison Administration (1944-1947). Introduced in France a multi-disciplinary approach to the rehabilitation of prisoners. General Attorney at the *Cour de Cassation* (1952), the highest court in the French judiciary. First Editor of the *International Review of Criminal Policy*, published in 1952 by the United Nations. UN Regional Representative for Social Defence in Europe and the Middle East (1953); Executive Secretary of the First United Nations Congress on the Prevention of Crime

and the Treatment of Offenders (1955); member of the French Commission on Legislative Penal and Penitentiary Matters (1959-1963). Knight of the Legion of Honour, granted the *la Croix de Guerre*, the Prison Medal and Education Medal. His efforts in promoting the social defence movement placed France in the vanguard in the field of penology.⁵⁴⁵ "Real high-ranking European senior official, which is rare and difficult because it involves, besides the qualities of an organized and precise "civil servant", the culture, the experience and the qualities of a gentleman of such a scale and grandeur that he can really raise the function up to the higher international level its implies, thanks to his influence and authority".⁵⁴⁶

Clifford, William (1918-1986). The seventh Chief of the United Nations Social Defence Section (1968-1971) / Crime Prevention and Criminal Justice Section (1971-1974). Lawyer and economist; worked on crime and social development issues in Northern Rhodesia (now Zambia) as Director of Social Welfare and Probation Services (1958-1960) and Principal of the Oppenheimer College of Social Services (1960-1964); Vice-President of the Australian Academy of Forensic Sciences (1977); Founding Director of the Australian Institute of Criminology (1975-1983); author of "*Introduction to African Criminology*" (1974) and many criminological articles; United Nations Senior Consultant in the Democratic Republic of Congo (1964-1966). "He had wide experience and a gift for establishing good relationships and useful contacts".⁵⁴⁷

Galway, Edward (1918-1996). The fifth Chief of the United Nations Social Defence Section (1962-1966). Criminologist; Doctorate in Social Administration; Masters in Educational Psychology. For 25 years employed by the United Nations Secretariat (DESA). Extensive travel in India, providing training to the Indian prison system (1952-53). Regional Advisor, based in Bangkok (1956-58). Interregional Advisor (1970-74). Wrote numerous analytical and policy documents, and organized many regional and international meetings. Long-term focus included the questions of juvenile delinquency; prostitution

⁵⁴⁴ Swain 1993: 744

⁵⁴⁵ Ancel 1966: 115.

⁵⁴⁶ Graven 1985: 232-233.

⁵⁴⁷ Radzinowicz 1999: 407.

and trafficking in women and children. Later, added a special focus on corruption, and on the theft of cultural property. In the course of his career his advisory assignments numbered over 50 countries, in every region of the world. Founding Director of UNDSRI (1967-1970), inaugurated by the UN Secretary General, U Thant. "His criminological competence, reinforced by the field expertise, showed that through their joint combination, the recommendations on the new perspectives in international cooperation on crime prevention and criminal justice in developing world have been practical and viable".⁵⁴⁸

Kahale, Georges (1923-2006). The sixth Chief of the United Nations Social Defence Section (1962-1964). Doctor of Law, Doctor of Psychology (University of Paris, Sorbonne); Criminologist; Legal Adviser (1948) and Alternate Delegate (1949) of Syria at the United Nations General Assembly; member of the task force involved in the preparations for the First and Second United Nations Congresses on the Prevention of Crime and the Treatment of Offenders (1955/1960); Editor of the *International Review of Criminal Policy* (1958); in charge of the United Nations work programme related to the implementation of the 1949 Convention on the Suppression of the Traffic in Persons and the Exploitation of Prostitution of Others (1955-1959); Chief of the United Nations Mission in the Republic of Congo / "Congo-Léopoldville" (1961-1963); Secretary of the United Nations Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders (1958); Secretary of the Commission for Social Development (1966-1972); Executive Secretary of the Third United Nations Congress (1965); Executive Secretary of the International Women's Year (1974-1976); Special (1973-1974/1976-1979) and Senior (1980-1983) Technical Adviser on Social Development.

López-Rey de Arroyo, Manuel (1902-1992). The fourth Chief of the United Nations Social Defence Section (1952-1961). Studied law, social science and criminology. In 1936, at the start of the civil war in Spain, he left his native country and emigrated to Latin America. He was the author of the Bolivian draft Penal Code, the Procedural Penal Code and the Code of Minors. After the Second World War, he had continued studies of penal systems in more than 60 countries and had been involved in penitentiary reform in a number of them. In 1960 he established the

basis for the organization of the UNAFEI (Japan). Published 12 books and more than 150 articles in French, English and Spanish in various areas of penology, penal law and criminology. Organized conferences and gave courses in more than 50 countries. Executive Secretary of the First (1955) and Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1960). "Freedom, Justice, Peace and Development are the main issues orienting Professor López-Rey's creative works and also his existential vocation characterized by passionate concern to defend man's dignity under every type of socio-political or cultural system".⁵⁴⁹

Mueller, Gerhard, O.W (1926-2006). The eighth Chief of the United Nations Crime Prevention and Criminal Justice Branch (1974-1981). Professor of Law, School of Criminal Justice, Rutgers, The State University of New Jersey; Core Faculty Member and Program Director, National Judicial College, University of Nevada at Reno, (1970-74/1982-1985); British Military Government, Water Police (1945-1947); New York University School of Law: Associate Professor of Law (1958-1960); Professor of Law, Director, Comparative Criminal Law Project and Criminal Law Education and Research Center, 1960-1977 (on leave 1974-1977). President, American Society of Criminology (1967-1968), Permanent Representative to the United Nations of the International Association of Penal Law, and Istituto Superiore Internazionale di Scienze Criminali, Siracusa, Italy (1967-1974, 1982-2005). International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme (ISPAC), Milan, Italy: Member of Executive Board and Chair, Functional Committee (1991), Standing Rapporteur (1992), Chairman of the Board (1996-2000); Executive Secretary of the Fifth (1975) and Sixth United Nations Congress on the Prevention of and the Treatment of Offenders (1980). Received the Beccaria Medal (1979), and the Order of Commander of the Lion of Finland for his efforts in the establishment of HEUNI. Author or co-author of over 25 monographs, 30 other books, 40 book reviews and about 300 articles on international criminal law, comparative criminal law, criminology, criminal science and victimology. His concern for the role and efforts of the United Nations crime prevention and criminal justice can be seen reflected in articles such as those on the internationalization of criminal justice, the

⁵⁴⁸ David 1985:27.

⁵⁴⁹ David 1985:13.

work of the United Nations on crime prevention and control, standards, norms and guidelines for crime control and criminal justice worldwide, world-crime surveys, and other topics. His publications appeared in Arabic, English, Italian, Japanese, French, German, Polish, Portuguese, Russian and Spanish. In his words, "A blind criminal justice, a deaf forensic psychiatry, and a dumb sociological criminology stand a good chance not only of survival - if they stand together - but also of bettering humanity's plight".⁵⁵⁰ "He always represented criminology as an interdisciplinary effort ... [He] has been very influential in international criminology, and he has carried abroad the need for scientific criminology, including the need for crime prevention and new crime control measures ...".⁵⁵¹

Radzinowicz, Leon (1903-2000). The second Chief of the United Nations Social Defence Section (1948-1949). Polish-born British criminologist and educator. In 1924 studied at the University of Paris (Sorbonne); M.A., University of Geneva (1926); Graduated with another law degree from the University of Rome (1927) where he studied under the controversial criminologist Enrico Ferri. Returned to Poland (1932) to teach the positivist criminology that Ferri favoured; Professor at the Free University of Warsaw (*Wolna Wszechnica Polska*). His positivist views made him unpopular. Before the outbreak of the Second World War he settled in Cambridge (1938). During the Second World War he established the Department of Criminal Science in the Faculty of Law at the University of Cambridge. Fellow of Trinity College (1948). Played an active and distinguished part in the shaping of criminal policy in England from 1950 to 1972. First Wolfson Professor of Criminology (1959) and the founding director of the Institute of Criminology (1959-1972), which played a significant role in the development of the discipline and lent the subject a new legitimacy. He contributed to the scholarship of the field through numerous lectures and a number of books, most notably in his fifty-two-volume series *English Studies in Criminal Science* (later retitled *Cambridge Studies in Criminology*), 1948-1986. In 1991 he published *The Roots of the International Association of Criminal Law*, and in 1999 *Adventures in Criminology* (his memoirs). Recognized as a leading authority on penal affairs; university lecturer at several institutions in the

United States; consultant to the Home Office of the United Kingdom; took a leading part in the debates on capital punishment and the treatment of dangerous prisoners; member of the Royal Commissions on Capital Punishment (1949-1953) and the Penal System (1964-1966). Consultant to the U.S. Justice Department's Kerner Commission on Violence. Knighted in 1970. In 1992 awarded a testimonial by United Nations Secretary-General Boutros Boutros Ghali in grateful recognition of dedicated service in support of the United Nations Crime Prevention and Criminal Justice Programme. "He was a highly published scholar and solely contributed to the international perspective of crime and public policy. In some ways, he was ahead of his time in his view of political and governmental aspects that create criminal policy".⁵⁵²

Shikita, Minoru (1932 ~). The ninth Chief of the United Nations Crime Prevention and Criminal Justice Branch (1982-1986). Public prosecutor (1956), Harvard University Law School studies (1957); Director of the General Affairs Division, the Criminal Affairs Bureau of the Ministry of Justice (1978); Director of UNAFEI (1980-82); Executive Secretary of the Seventh United Nations Congress (1985); Director-General of the Correction Bureau, Ministry of Justice (1986); Chief Prosecutor of the Kyoto District Public Prosecutors' Office (1987); Chairman of the United Nations Committee on Crime Prevention and Control (1988); Superintending Prosecutor, Hiroshima High Public Prosecutors' Office (1991); Superintending Prosecutor, Nagoya High Public Prosecutors' Office (1993); Vice-President, IPPF (1990-98). Chairman of Board of Directors, Asian Crime Prevention Foundation (ACPF) (1995-2009); Special ACPF Adviser (2010). Elected as Vice-President of the International Association of Prosecutors (IAP) (1996). Honorary IAP Vice President for life; Honorary Emeritus Professor of Law of the East China University for Politics and Law (1999, Shanghai, the People's Republic of China); awarded the Order of the Rising Sun (2002), Gold and Silver Star from the Emperor of Japan; Honorary Doctorate of Law Degree by the Dhurakijpundit University (2002, Thailand, Bangkok). His prosecutorial career and his drive to internationalize Asian crime prevention perspectives were a landmark in bridging both with other regions of the world. "Well-known to all the staff ... and a first rate criminal justice specialist".⁵⁵³

⁵⁵⁰ Anttila 1994:337-338.

⁵⁵¹ *Ibid.*:332.

⁵⁵² Howell 2005: 1380.

⁵⁵³ Mueller & Adler 1995: 11-12.

Vetere, Eduardo (1945-). The tenth Chief of the United Nations Crime Prevention and Criminal Justice Branch (1987-1996), later Director of the Division (1996), and then Director of the Centre for International Crime Prevention (Vienna, 1997- 2003) and Deputy Executive Director of the ODCCP. Director of the Division for Treaty Affairs of the reconstituted United Nations Office on Drugs and Crime (UNODC, 2003-2005). Doctor of Law/Jurisprudence, Rome University “La Sapienza” (1967). Specialization in criminal law and criminology (Universities of Cambridge and Rome, where he studied with Prof. L. Radzinowicz and Prof. F. Ferracuti). Associate Professor of Criminology (Rome University, 1969-1975). Italian Bar examination (1970). Research Officer at UNICRI (1969-1975); Social Affairs Officer, Crime Prevention and Criminal Justice Branch (CSDHA/DIESA, New York and Vienna, 1976-1984). Senior Programme Officer with the United Nations Fund for Drug Abuse Control (UNFDAC, Vienna, 1984-1987). Executive Secretary of the Eighth (1990), Ninth (1995) and Eleventh United Nations Congresses on Crime Prevention and Criminal Justice (2005); in charge of the organization and servicing of the Ministerial Meeting on the Strengthening of the United Nations Crime Prevention and Criminal Justice Programme (1991) and of the United Nations World Ministerial Conference on Organized Transnational Crime (1994). Contributed to the establishment of the Ad Hoc Committee for the negotiation of the UN Convention against Transnational Organized Crime (1998), servicing the First Session of the Conference of Parties (2004) and the Ad Hoc Committee which negotiated the United Nations Convention against Corruption (2002-2003). Overall responsibility for preparing the documentation, organizing and servicing of the biennial sessions of the Committee on Crime

Prevention and Control (1988-1990), and the annual sessions of the Commission on Crime Prevention and Criminal Justice (1992-2005) and the Commission on Narcotic Drugs (2003-2005), as well as the ECOSOC and the GA on all matters related to drug control and crime prevention. Contributed to the establishment of ISPAC, chairing several meetings of its annual Conferences. Was also involved in a number of peace-keeping missions as UNTAC Provincial Director of Phnom Penh, serving also as Officer-in-Charge for Public Security, overseeing the re-establishment of Cambodia’s criminal justice infrastructure and the drafting of a new provisional criminal code (Cambodia, 1992-1993); as Director of the Office of the Special Envoy of the Secretary-General in Iraq and his Deputy (Baghdad, 1998-1999); and as Chairman of the Identification Commission of the United Nations Mission for the Referendum on Western Sahara and Deputy Special Representative of the Secretary-General (Layoun, 1999-2001). Editor and co-editor of several books and author of many publications in the fields of transnational organized crime, penology, victimology, comparative criminal justice, human rights in the administration of justice, crime trends and criminal justice statistics, development assistance and international cooperation in criminal matters. Honorary Member of the International Association of Penal Law and the International Penal and Penitentiary Foundation (2005). Highest honorary award by the Italian President of the Republic (*Ufficiale di Gran Croce*). Cofounder of the International Association of Anti-corruption Authorities (IAACA), Member of its Executive Committee and Vice-President (2006). Member of the Advisory Board of HEUNI (2007). “It was a good appointment ... He skilfully established his authority and provided effective leadership”.⁵⁵⁴

⁵⁵⁴ Mueller & Adler 1995: 12.

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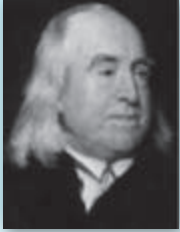

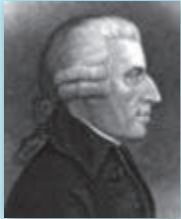
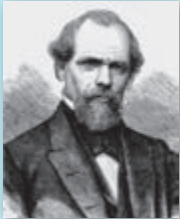










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Figure 7.

CRIMINOLOGISTS, CRIMINAL JUSTICE THINKERS AND REFORMERS (1764-2010): INTERNATIONAL AND UNITED NATIONS PERSPECTIVES

 <p>Cesare BECCARIA</p>	 <p>Jeremy BENTHAM</p>		
 <p>John HOWARD</p>	 <p>John AUGUSTUS</p>		
 <p>Alexander MACONOCHIE</p>	 <p>Elizabeth FRY</p>		
 <p>Robert PEEL</p>	 <p>Adolphe QUÉTELET</p>		
 <p>Karl Joseph Anton von MITTERMAIER</p>	 <p>Édouard DUCPÉTIAUX</p>		
 <p>Benedict S. ALPER, 1946-1947</p> <p>Founding member and President of the UN Staff Association. Consultant to the United Nations Consultative Group on Crime (1968) and to the Fourth Congress (1970); attended the Eighth Congress (1990). "He was gifted with native intelligence, an unusual sensitivity to people, managerial expertise, and a flair for writing".</p> <p style="text-align: right;">Swain 1993:744</p>			 <p>Leon RADZINOWICZ, 1947-1949</p> <p>In 1992 awarded by the United Nations Secretary-General Boutros Boutros Ghali with the testimonial in grateful recognition of dedicated service in support of the United Nations Programme on Crime and Justice. "He was a highly published scholar and solely contributed to the international perspective of crime and public policy. In some ways, he was ahead of his time in his view of political and governmental aspects that create criminal policy".</p> <p style="text-align: right;">Howell 2005:1380</p>
 <p>Paul AMOR, 1950-1952</p> <p>First Editor of the <i>International Review of Criminal Policy</i>, published in 1952 by the United Nations. UN Regional Representative for Social Defense in Europe and the Middle East (1953); Executive Secretary of the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1955); member of the French Commission on Legislative Penal and Penitentiary Matters (1959-1963). "Real high-ranking European senior official, which is rare and difficult because it involves, besides the qualities of a organized and precise "civil servant", the culture, the experience and the qualities of a gentleman of such a scale and grandeur that he can really raise the function up to the higher international level its implies, thanks to his influence and authority".</p> <p style="text-align: right;">Graven 1955:232-233</p>			 <p>Manuel LÓPEZ-REY DE ARROJO, 1952-1961</p> <p>Executive Secretary of the First (1955) and Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1960). "Freedom, Justice, Peace and Development are main issues orienting Professor López-Rey's creative works and also his existential vocation characterized by passionate concern to defend man's dignity under every type of socio-political or cultural system".</p> <p style="text-align: right;">David 1985:12</p>

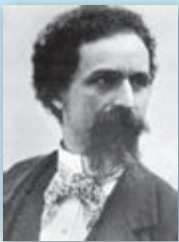
CRIMINOLOGISTS, CRIMINAL JUSTICE THINKERS AND REFORMERS (1764-2010): INTERNATIONAL AND UNITED NATIONS PERSPECTIVES



Enoch Cobb WINES



Cesare LOMBROSO



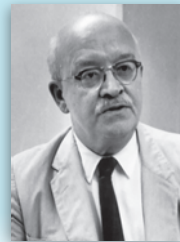
Enrico FERRI



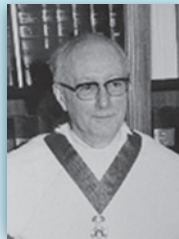
Janusz KORCZAK



Vespasien V. PELLA



Thorsten SELLIN



Marc ANCEL



Robert MERTON



Ahmed OTHMANI



George SOROS



Edward GALWAY, 1962-1966

Founding Director of the United Nations Social Defense Research Institute (UNSDRI, later UNICRI) inaugurated by the UN Secretary General, U'Thant, Interregional Adviser (1970-74). Founding Director of UNICRI (1967-1970). "His criminological competence, reinforced by the field expertise, showed that through their joint combination, the recommendations on the new perspectives in international cooperation on crime prevention and criminal justice in developing world have been practical and viable" (David in this book).



Georges KAHALE, 1966-1968

Member of the task force involved in the preparations for the First and Second United Nations Congresses on the Prevention of Crime and the Treatment of Offenders (1955/1960); Editor of the *International Review of Criminal Policy* (1958); In charge of the United Nations work programme related to the implementation of the 1949 Convention on the Suppression of the Traffic in Persons and the Exploitation of Prostitution of Others (1955-1959); Chief of the United Nations Mission in the Republic of Congo/"Congo-Léopoldville" (1961-1963); Secretary of the United Nations Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders (1958); Secretary of the Commission for Social Development (1966-1972); Executive Secretary of the Third United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1965).



William CLIFFORD

Founding Director of the Australian Institute of Criminology (1975-1983); Author of "Introduction to African Criminology" (1974) and many criminological articles; United Nations Senior Consultant in the Democratic Republic of Congo (1964-1966). "He had wide experience and a gift for establishing good relationships and useful contacts".

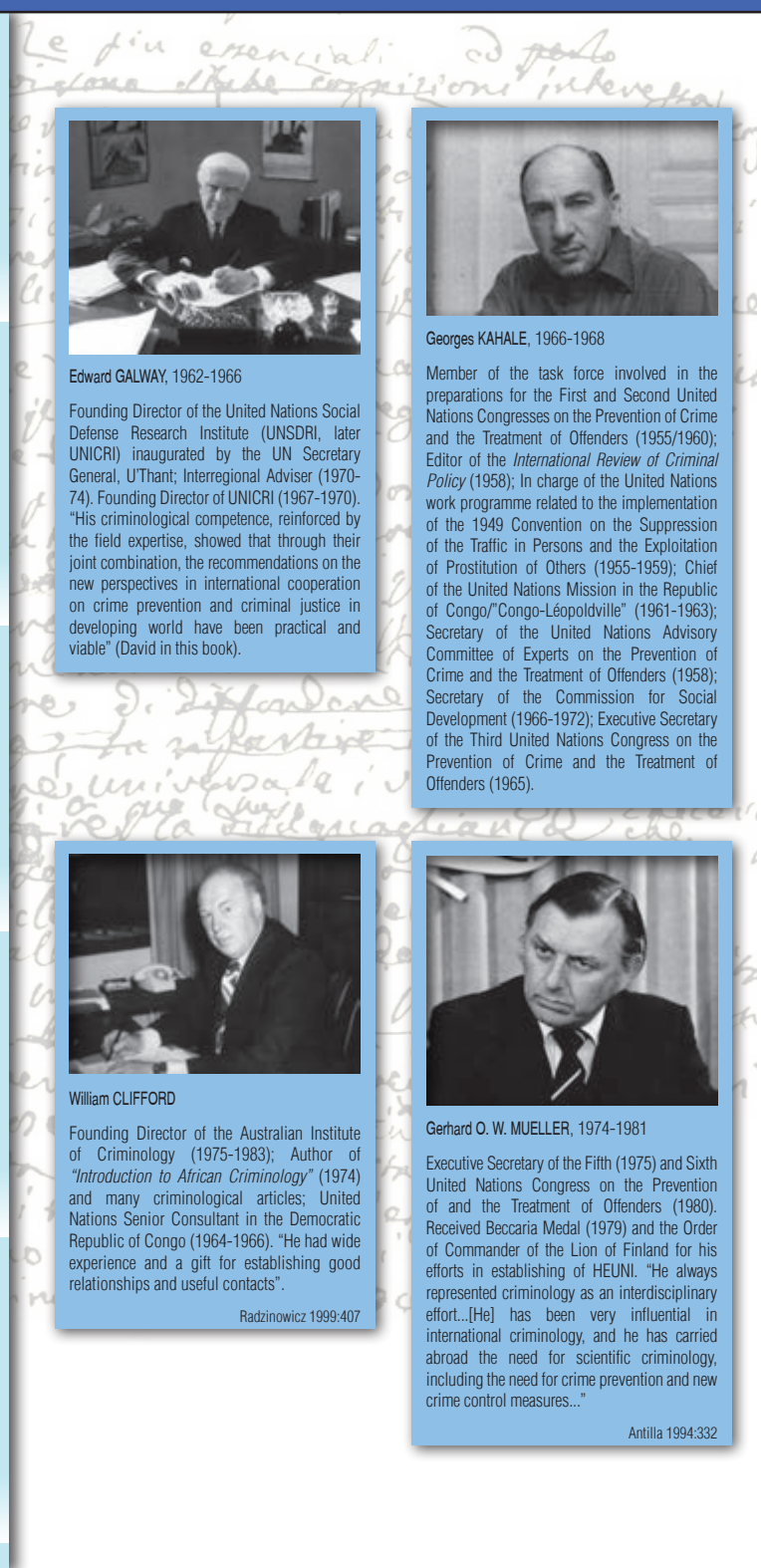
Radzinowicz 1999:407



Gerhard O. W. MUELLER, 1974-1981

Executive Secretary of the Fifth (1975) and Sixth United Nations Congress on the Prevention of and the Treatment of Offenders (1980). Received Beccaria Medal (1979) and the Order of Commander of the Lion of Finland for his efforts in establishing of HEUNI. "He always represented criminology as an interdisciplinary effort...[He] has been very influential in international criminology, and he has carried abroad the need for scientific criminology, including the need for crime prevention and new crime control measures..."

Antilla 1994:332



CRIMINOLOGISTS, CRIMINAL JUSTICE THINKERS AND REFORMERS (1764-2010): INTERNATIONAL AND UNITED NATIONS PERSPECTIVES



M. Cherif BASSIOUNI



Inkeri ANTTILA



Minoru SHIKITA, 1982-1986

Chairman of Board of Directors, ACPF (1995-2009); Special ACPF Adviser (2010). Elected as Vice-President of IAP (1996). Honorary IAP V-President for life.; Honorary Emeritus Professor of Law of the East China University for Politics and Law (1999, Shanghai, China); Awarded the Order of the Rising Sun (2002), Gold and Silver Star from the Emperor of Japan; the Honorary Doctorate of Law Degree by the Dhurakijpundit University (2002, Thailand, Bangkok). "[W]ell-known to all the staff... and a first rate criminal justice specialist".

Mueller & Adler 1995:11-12



Eduardo VETERE, 1987-2005

Appointed as Chief of the Crime Prevention and Criminal Justice Branch (1987), later Director of the Division (1996), and then Director of the International Crime Prevention Centre (ICPC, Vienna, 1997- 2003) and Deputy Executive Director of the ODCCP. Director of the Division for Treaty Affairs of the reconstituted United Nations Office on Drugs and Crime (UNODC, 2003-2005). "It was a good appointment... He skillfully established his authority and provided effective leadership".

Mueller & Adler 1995:12

UNITED NATIONS INTERREGIONAL TECHNICAL ADVISERS



Thorsten ERIKSSON



Edward GALWAY



Pedro DAVID



Matti JOUTSEN



Vincent DEL BUONO



Jean Paul LABORDE



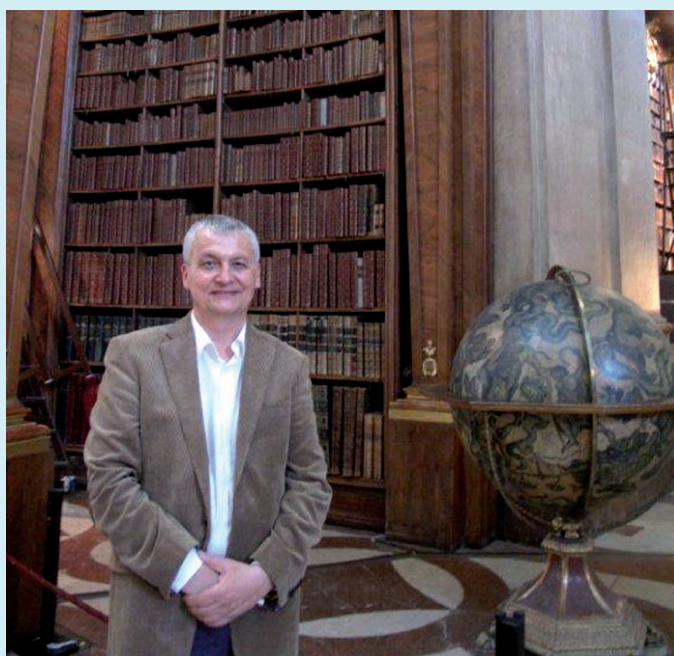
Fausto ZUCARELLI



Mark SHAW



Sandra VALLE



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