



# Eleventh United Nations Congress on Crime Prevention and Criminal Justice

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## Opening of the Congress

### **Fifty years of United Nations congresses on crime prevention and criminal justice: past accomplishments and future prospects\*\***

#### **Report of the Secretary-General of the Congress**

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## **I. The past: half a century of work in the service of justice**

1. The efforts of the international community to lay down standards, norms and guidelines in criminal justice are not without precedent. Roman law was applied within an empire that covered most of Europe and parts of Africa and West Asia. Later, regulation of social conduct incorporated in Islamic law spread across three continents and still forms an important element of many countries' judicial systems.
2. One of the earliest forms of cooperation between sovereign States in law enforcement involved efforts to control piracy on the high seas, but those measures were often undercut in some countries by the practice of chartering freelance privateers to harass their rivals.
3. In the nineteenth century, as large-scale police forces, court systems and prisons began appearing in the major cities, studies on the causes of crime drew widespread attention to the field of criminology. A series of conferences in Europe, of which the most notable was the International Congress on the Prevention and Repression of Crime, held in London in 1872, brought together experts and professionals from various countries. Leading issues under consideration included the proper administration of prisons, possible alternatives to imprisonment, modes of rehabilitating convicts, treatment of juvenile offenders and extradition treaties.
4. At the close of the International Congress in London, the International Prison Commission was formed to collect penitentiary statistics, encourage penal reform and convene further international conferences. Later affiliated with the League of Nations, the Commission held three conferences in European capitals from 1925 to 1935. At the last of those conferences, the International Prison Commission was renamed the International Penal and Penitentiary Commission.
5. As the League of Nations foundered on the rocks of global conflict leading to the Second World War, so did the International Penal and Penitentiary Commission. At the end of the war, the United Nations was established with a mandate that included the treatment of offenders and the prevention of crime.
6. Following the dissolution of the International Penal and Penitentiary Commission, its functions and archives were incorporated in the operations of the new Organization. The General Assembly, in its resolution 415 (V) of 1 December 1950, approved a plan concerning the transfer of the functions of the Commission to the United Nations, including the convening of international congresses every five years.

### **A. 1955: the First Congress**

7. The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva from 22 August to 3 September 1955, was predominantly concerned with the treatment of juvenile delinquents and prisoners. The number of juvenile delinquents and prisoners had risen dramatically in post-war Europe. The First Congress considered the possibilities of "open" penal and correctional institutions, the selection and training of prison personnel and the proper use of prison labour. It was attended by 512 persons from 61 countries and

territories, observers and representatives from numerous intergovernmental and non-governmental organizations and 235 individual participants.

8. The First Congress approved a set of Standard Minimum Rules for the Treatment of Prisoners,<sup>1</sup> based on revisions by the International Penal and Penitentiary Commission of standards endorsed by the League of Nations. The Standard Minimum Rules were later approved by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957 and extended by the Council by its resolution 2076 (LXII) of 13 May 1977, becoming a prototype for international models, standards, norms and guidelines on the administration of criminal justice.

## **B. 1960: the Second Congress**

9. Crime resulting from social changes accompanying rapid economic development, including juvenile delinquency, was at the centre of attention of the Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in London from 8 to 19 August 1960. The range of issues discussed was broader than at the First Congress; the issues included: (a) special police services to prevent juvenile delinquency; (b) the impact of the mass media on juvenile deviancy; (c) the role of national planning in preventing crime; (d) questions of short-term imprisonment and prison labour; and (e) released prisoners' transition to community life.

## **C. 1965: the Third Congress**

10. Newly independent countries of the third world appeared for the first time in large numbers at the Third United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Stockholm from 9 to 18 August 1965. Representatives of 74 participating Governments and other participants, totalling over 1,000, focused their attention on: (a) technical assistance in the field of crime prevention and criminal justice; (b) criminological research for the prevention of crime and for vocational training; and (c) recommending the employment of United Nations regional advisers.

11. The Third Congress also developed policy on: (a) the relation between social change and criminality; (b) community action for preventing crime; (c) reduction of recidivism; (d) probation policies; and (e) special preventive and treatment measures for juveniles and young adults.

## **D. 1970: the Fourth Congress**

12. The Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Kyoto, Japan, from 17 to 26 August 1970, was the first of the congresses to be held outside Europe. "Crime and development" was the overall theme, and special emphasis was given to: (a) incorporation of prevention policies into development planning; (b) organization of research on social defence policies and community-based prevention; and (c) public participation in crime prevention.

13. The Fourth Congress also discussed nation-by-nation implementation of the Standard Minimum Rules for the Treatment of Prisoners. A survey of Member States found the Standard Minimum Rules had contributed to advancing basic human rights for millions of prisoners.

#### **E. 1975: the Fifth Congress**

14. “Crime prevention and control—the challenge of the last quarter of the century” was the theme of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva from 1 to 12 September 1975. Nearly 1,000 representatives of 101 countries and numerous organizations discussed, for the first time, the concept of crime as a business and looked into the changing forms and dimensions of national and transnational crime and violence, including the role of organized crime in seemingly legitimate businesses, criminality stemming from drug and alcohol abuse, and terrorism.

15. The Fifth Congress adopted recommendations on: the abuse of economic power; drug traffic; terrorism; theft and destruction of cultural property; interpersonal violence; and changing expectations of police performance.

16. On the recommendation of the Fifth Congress, the General Assembly, in its resolution 3452 (XXX) of 9 December 1975, adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In its resolution 39/46 of 10 December 1984, the Assembly, recalling its resolution 32/62 of 8 December 1977, in which it requested the Commission on Human Rights to draw up, in the light of the principles embodied in the Declaration, a draft convention against torture and other cruel, inhuman or degrading treatment or punishment, adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention, which entered into force on 26 June 1987, obliges States parties to make torture a crime, prosecute offences and punish those found guilty.

17. The Fifth Congress also laid the basis for the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in its resolution 34/169 of 17 December 1979.

#### **F. 1980: the Sixth Congress**

18. The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held in Caracas from 25 August to 5 September 1980. It was the first time that one of the congresses was held in a developing country. The Sixth Congress was presented with the first detailed United Nations survey of crime worldwide, based on information received from 65 Member States. The study revealed that the great majority of developed and developing countries were facing an escalation of violence and criminality, that crime was taking on new forms and dimensions and that traditional measures of crime prevention and control were not able to deal with the situation.

19. “Crime prevention and the quality of life” was the overall theme of the Sixth Congress. United Nations norms and guidelines were recognized as important tools for Governments to use in dealing effectively with crime while preserving human rights. Juvenile justice was placed in the context of ensuring social justice for all children, and crime was examined in relation to abuse of power.

20. The Caracas Declaration was adopted by the Sixth Congress and endorsed by the General Assembly in its resolution 35/171 of 15 December 1980. Thus, the Sixth Congress was the first to recognize that crime prevention programmes must be based on the social, cultural, political and economic circumstances of countries and form part of the developmental planning process. The Caracas Declaration contained recommendations for standard minimum rules for juvenile justice, public participation in crime prevention, improved statistics and eradication of extralegal executions.

## **G. 1985: the Seventh Congress**

21. The theme of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from 26 August to 6 September 1985, was “Crime prevention for freedom, justice, peace and development”. The Seventh Congress adopted the Milan Plan of Action,<sup>2</sup> which was subsequently approved by the General Assembly in its resolution 40/32 of 29 November 1985. The Milan Plan of Action outlined a worldwide programme for crime prevention and criminal justice, in key priority areas such as illicit drug trafficking, transnational organized crime and terrorism, stressing the need for action-oriented research and providing technical assistance to developing countries.

22. The Seventh Congress adopted or recommended for adoption by the General Assembly other instruments that set basic standards for criminal justice reform:

(a) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by the Assembly in its resolution 40/33 of 29 November 1985;

(b) The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the Assembly in its resolution 40/34 of 29 November 1985;

(c) The Basic Principles on the Independence of the Judiciary;<sup>3</sup>

(d) The Model Agreement on the Transfer of Foreign Prisoners<sup>4</sup> (the first model bilateral treaty) and recommendations on the treatment of foreign prisoners.<sup>5</sup>

## **H. 1990: the Eighth Congress**

23. The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held in Havana from 27 August to 7 September 1990. Over 1,400 participants from 127 countries discussed, inter alia: theft of archaeological treasures; the dumping of hazardous wastes in ocean waters; and the burgeoning international trade in illicit drugs and the lethal connection between drug abuse and AIDS, as well as the prevalence of both among prison populations.

24. The Eighth Congress disseminated information on: criminal justice computer networks; provisions for seizing the financial proceeds of organized crime and examining bank records; and the growing body of experience relating to the link between crime control and socio-economic development.

25. The Eighth Congress also reviewed: the development of community-based crime prevention; and non-custodial alternatives to prison.

26. The Eighth Congress adopted or recommended for adoption by the General Assembly more international instruments than all the preceding congresses combined, including:

(a) The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (Assembly resolution 45/110, annex);

(b) The Basic Principles for the Treatment of Prisoners (Assembly resolution 45/111, annex);

(c) The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (Assembly resolution 45/112, annex);

(d) The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Assembly resolution 45/113, annex);

(e) The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;<sup>6</sup>

(f) The Guidelines on the Role of Prosecutors;<sup>7</sup>

(g) The Basic Principles on the Role of Lawyers.<sup>8</sup>

27. In addition, the Eighth Congress adopted or recommended for adoption by the General Assembly five model treaties—draft bilateral agreements to guide Governments in their negotiations: the Model Treaty on Extradition (Assembly resolutions 45/116, annex, and 52/88, annex), the Model Treaty on Mutual Assistance in Criminal Matters (Assembly resolutions 45/117, annex, and 53/112, annex), the Model Treaty on the Transfer of Proceedings (Assembly resolution 45/118, annex), the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (Assembly resolution 45/119, annex) and the model treaty for the prevention of crimes infringing on the cultural heritage of peoples in the form of movable property.<sup>9</sup>

28. The Eighth Congress adopted a resolution on corruption in government,<sup>10</sup> which it recommended the development of what later became the International Code of Conduct for Public Officials, adopted by the General Assembly in its resolution 51/59 of 12 December 1996.

29. The Eighth Congress also adopted resolutions on organized crime,<sup>11</sup> on the prevention and control of organized crime<sup>12</sup> and on terrorist criminal activities.<sup>13</sup>

30. Further, the Eighth Congress adopted a resolution on computer-related crime,<sup>14</sup> in which it called upon Member States to consider a number of measures, including the improvement of computer security and prevention measures, taking into account the problems related to the protection of privacy, the respect for human rights and fundamental freedoms and regulatory mechanisms pertaining to computer usage.

31. Finally, the Eighth Congress led to the adoption by the General Assembly of resolution 45/108 of 14 December 1990, in which the Assembly decided to establish an intergovernmental working group to produce a report elaborating proposals for an effective crime prevention and criminal justice programme. The findings of the Intergovernmental Working Group on the Creation of an Effective International Crime and Justice Programme became the basis for convening the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme in Paris from 21 to 23 November 1991 (see A/46/703 and Corr.1), which, in turn, led to the adoption by the General Assembly of its resolution 46/152 of 18 December 1991. In that resolution, the Assembly requested the Economic and Social Council to dissolve the Committee on Crime Prevention and Control and to establish the commission on crime prevention and criminal justice as a new functional commission of the Economic and Social Council.

## **I. 1995: the Ninth Congress**

32. The Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held in Cairo from 29 April to 8 May 1995. The Ninth Congress further developed the United Nations portfolio of action for crime prevention and criminal justice. Heading the agenda were plans to combat transnational crime syndicates and economic crime through strengthened international cooperation and practical technical assistance for enhancing the rule of law, as well as measures against money-laundering.

33. Discussions at the Ninth Congress focused on exploring new concepts and concerns in the areas of: crimes against the environment; criminal justice and police systems; and strategies to be used against violent crime, urban crime, crime among young people and violence inflicted on women.

34. The consideration by the Ninth Congress of organized crime benefited from the achievements of two other meetings held in 1994: the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: a Global Approach, held in Courmayeur, Italy, from 18 to 20 June 1994 (E/CONF.88/7); and the World Ministerial Conference on Organized Transnational Crime, held in Naples, Italy, from 21 to 23 November 1994 (A/49/748).

35. The workshops held during the Ninth Congress were an integral part of its proceedings. National strategies to combat specific forms of crime were discussed, and recommendations were made to improve the international response to those forms of crime. The demonstration and research workshops had been initiated in order to facilitate more effective action in the prevention of crime and victimization, as well as criminal justice reform worldwide. They provided unique forums in which lessons learned and successful measures used to confront specific problems related to the substantive topics of the Ninth Congress could be discussed. Representatives of Governments, intergovernmental organizations, non-governmental organizations and scientific institutions attending the Ninth Congress were invited to participate in the workshops and to make presentations. For each workshop, a position paper was prepared to serve as background for discussion. Participants were invited to share their experiences and to present information on existing or envisaged research-oriented projects, programmes or other measures that

had been effective or innovative in relation to the specific goals and objectives of the workshops. Particular emphasis was given to those initiatives that had enhanced, or had the potential to enhance, bilateral and multilateral technical cooperation and transfer of knowledge or technology.

## **J. 2000: the Tenth Congress**

36. The Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held in Vienna from 10 to 17 April 2000. The theme of the Tenth Congress was “Crime and justice: meeting the challenges of the twenty-first century”. Hundreds of representatives of Governments, academia and non-governmental organizations attended the Tenth Congress.

37. The Tenth Congress discussed:

- (a) How to promote the rule of law and to strengthen the criminal justice system;
- (b) International cooperation in combating transnational organized crime: new challenges in the twenty-first century;
- (c) Effective crime prevention: keeping pace with the new developments;
- (d) Offenders and victims: accountability and fairness in the justice process.

38. In addition, workshops were held on the following subjects:

- (a) Combating corruption;
- (b) Crimes related to the computer network;
- (c) Community involvement in crime prevention;
- (d) Women in the criminal justice system.

39. At the Tenth Congress, representatives from 119 countries, including 76 ministers and other high-level officials, decided to take more effective concerted action to combat the world crime problem, in particular, the worst forms of transnational organized crime.

40. During the high-level segment of the Tenth Congress, the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (General Assembly resolution 55/59, annex) was adopted. In the Vienna Declaration, Member States set out an international agenda in crime prevention and criminal justice at the beginning of the new millennium. The Vienna Declaration captures the essence of the work carried out over many years and sets out specific key commitments that should reflect a vision for the future work of the United Nations Crime Prevention and Criminal Justice Programme and of Governments. More specifically, Member States pledged to take resolute and speedy measures to combat: terrorism; trafficking in human beings; illicit trade in firearms; smuggling of migrants; and money-laundering.

41. The Vienna Declaration stressed the need for an effective international legal instrument against corruption, independent of the United Nations Convention



against Transnational Organized Crime (General Assembly resolution 55/25, annex I).

## II. The impact

42. Article 55 of the Charter of the United Nations exhorts the United Nations to promote:

(a) Higher standards of living, full employment, and conditions of economic and social progress and development;

(b) Solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

(c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

43. In Article 56 of the Charter, the Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55. The drafters of the Charter contemplated not only the use of coercive power against breaches of the peace and acts of aggression. They also envisaged efforts to build a just world in which “We the peoples”, to which the preamble of the Charter refers, might strive for human security in all its dimensions.

44. One area in which Article 55 has been made operational is crime prevention and criminal justice. The nub of Article 55 lies in the phrases “social progress and development” and “human rights and fundamental freedoms for all”. Those are the basic concepts on which, for the most part, United Nations work in the area of criminal justice rests. Every aspect of Article 55 is reflected in some way in the instruments developed by the United Nations congresses on crime prevention and criminal justice over the past 50 years.

45. The congresses have managed to develop material that may be regarded as “legislative”, in the sense that it sets out normative standards applicable to all States. Most of the material is “soft law”, contained in resolutions of the relevant United Nations bodies. Increasingly, however, some of the material is being incorporated into treaty language or finding its way into the corpus of customary international law. Being the product of over a half a century of work, this material can hardly be described as a complete “code” of recommended practices. The instruments represent areas on which it was possible to gain a wide degree of consensus at a particular time. There are some overlaps, some redundancies and some obsolescence; however, their impact in the development of criminal justice, the strengthening of the notion of the rule of law and, more generally, a universal conscience of propriety, liberty and respect for common values is unquestionable.<sup>15</sup>

46. Some of the United Nations standards and norms have had a significant impact on the development of international principles, binding or non-binding, for action at the national and regional levels. The Standard Minimum Rules for the Treatment of Prisoners, for example, are substantially reflected in the Standard Guidelines for Corrections in Australia<sup>16</sup> and in an “illustrative draft of proposed guidelines for the treatment of prisoners within the Commonwealth”,<sup>17</sup> as well as on the European Prison Rules of the Council of Europe.<sup>18</sup> International standards on juvenile law and

on restorative justice have been at the heart of reviews of German law in those areas in recent years.<sup>19</sup> Non-governmental organizations regularly invoke relevant instruments in their work, for example in relation to prison conditions.<sup>20</sup> Amnesty International, for example, states that it uses the United Nations standards and norms in three ways. First, in its research, it evaluates reported actions of public officials against the rules and standards set out in the instruments, regarding them as yardsticks for official behaviour. Second, it repeatedly calls on Governments to implement the provisions, including by ensuring that they are reflected in domestic legislation and in training programmes for officials. Third, it appends the texts of relevant instruments to reports on violations of human rights in particular countries, thus disseminating the texts to officials and to the wider public.<sup>21</sup>

47. The crime prevention instruments have proved useful in feeding discussion about general standards developed in other parts of the United Nations system. A striking example of this is the way in which organs of the International Labour Organization have invoked the Standard Minimum Rules for the Treatment of Prisoners in the context of freedom of association for trade unions and the treatment of trade unionists.<sup>22</sup>

48. There is an increasing relationship between the standards and norms developed by the United Nations congresses on crime prevention and criminal justice and by the human rights treaty bodies. The Human Rights Committee issued general comment No. 21 (44), asserting what had already become the practice (HRI/GEN/1/Rev.3, para. 5):

“States parties are invited to indicate in their reports to what extent they are applying the relevant United Nations standards applicable to the treatment of prisoners: the Standard Minimum Rules for the Treatment of Prisoners (1957), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988),<sup>23</sup> the Code of Conduct for Law Enforcement Officials (1978) and the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners against torture and other cruel, inhuman or degrading treatment or punishment.”<sup>24</sup>

49. Representatives of States parties appearing before human rights treaty bodies are routinely questioned about the Standard Minimum Rules and other instruments as well. The Committee on the Rights of the Child has made use of standards and norms on juvenile justice in the course of interpreting relevant provisions of the Convention on the Rights of the Child (General Assembly resolution 44/25, annex).<sup>25</sup> The “theme mechanisms”, such as the Working Group on Enforced or Involuntary Disappearances and the various Special Rapporteurs such as those on the question of torture and on extrajudicial, summary or arbitrary executions, also make wide use of the criminal justice instruments. The Special Rapporteur on the independence of judges and lawyers has been created essentially to give effect to “Vienna” norms, the Basic Principles on the Independence of the Judiciary and the Basic Principles on the Role of Lawyers. The question of domestic violence, first placed firmly on the international agenda at the Seventh Congress, in 1985, has been given a great deal of attention not only in the human rights bodies but also by the Fourth World Conference on Women, held in Beijing from 4 to 15 September 1995, and the Commission on the Status of Women.

50. One feature of the development of normative standards in the field of human rights is the way in which material, originally approved in resolution form, is ultimately incorporated into binding legal obligations. Thus, most of the provisions of the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)) found their way into the International Covenant on Economic, Social and Cultural Rights (Assembly resolution 2200 A (XXI), annex) and the International Covenant on Civil and Political Rights (Assembly resolution 2200 A (XXI), annex). The Declaration on the Elimination of Discrimination against Women (Assembly resolution 2263 (XXII)) was succeeded by the Convention on the Elimination of All Forms of Discrimination against Women (Assembly resolution 34/180, annex). Until recently, this kind of progression had not occurred in respect of the criminal justice instruments with the exception that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was based substantially on the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was finalized at the Fifth Congress, in 1975.

51. This has changed dramatically in recent years. The Rome Statute of the International Criminal Court<sup>26</sup> contains significant provisions on the role of victims in the Court's processes that are consistent in spirit with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex), which had been finalized at the Seventh Congress, in 1985. Indeed, some of the exact language of the Rome Statute comes from that Declaration. Article 68, paragraph 3, of the Rome Statute, in particular, is taken almost verbatim from the Declaration. It provides that, where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined by the Court to be appropriate and in a manner which is not prejudicial to the rights of the accused and a fair and impartial trial. By the same token, article 25 of the United Nations Convention against Transnational Organized Crime, entitled "Assistance to and protection of victims", requires each State party to take appropriate measures within its means to provide assistance and protection to victims of offences covered by the Organized Crime Convention, in particular in cases of threat or retaliation or intimidation; moreover, each State party is required to establish appropriate procedures to provide access to compensation and restitution (terms derived from the Declaration) to victims of offences covered by the Organized Crime Convention; finally, each State party must, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence. Article 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex II) has even more detail on the treatment of victims, including material from the 1985 Declaration, as well as some new material. The United Nations Convention against Corruption (General Assembly resolution 58/4, annex) follows the trend of containing strong treaty provisions on victims (see article 32, entitled "Protection of witnesses, experts and victims").

52. The model treaties on cooperation in the criminal process (such as the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex) and the Model Treaty on the Transfer of Proceedings in

Criminal Matters (Assembly resolution 45/118, annex)) were considered also during the drafting of the Rome Statute. In the Rome Statute, the provisions of article 89 (“Surrender of persons to the Court”) and article 93 (“Other forms of cooperation”) represent substantial adaptations of those instruments appropriate to a context in which the object is cooperation between a State and an international organization rather than cooperation between two States. Treaties such as the United Nations Convention against Transnational Organized Crime (articles 13 and 16-18) and the United Nations Convention against Corruption (articles 44-46) have provisions on extradition, transfer of sentenced persons and mutual legal assistance that closely reflect many of the approaches of the model treaties.

53. Another example of a concept developed through the congresses finding its way into the treaty sphere appears in the title of the United Nations Convention against Transnational Organized Crime. In his famous Storrs Lecture delivered at Yale University in 1956, Philip Jessup proposed the term “transnational” “to include all law which regulates actions or events that transcend national frontiers”.<sup>27</sup> The Executive Secretary of the Fifth Congress used the term “transnational crime” to describe crime that crossed frontiers, using it as a “criminological rather than a juridical term”.<sup>28</sup> Now, with the coming into force of the Organized Crime Convention, “transnational organized crime” has become a juridical term of art.

### **III. The future**

54. In its resolution 46/152 of 18 December 1991, the General Assembly approved the statement of principles and programme of action of the United Nations crime prevention and criminal justice programme, annexed to that resolution, which had obtained the political imprimatur of the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme, held in Paris from 21 to 23 November 1991 (A/46/703 and Corr.1). The first of the principles set out in paragraph 1 of the annex to Assembly resolution 46/152 echoes Article 55 of the Charter of the United Nations and captures much of the flavour of the instrument as a whole:

“1. We recognize that the world is experiencing very important changes resulting in a political climate conducive to democracy, to international cooperation, to more widespread enjoyment of basic human rights and fundamental freedoms, and to the realization of the aspirations of all nations to economic development and social welfare. Notwithstanding these developments, the world today is still beset by violence and other forms of serious crime. These phenomena, wherever they occur, constitute a threat to the maintenance of the rule of law.”

55. In paragraph 7 of the statement of principles, it is also recognized that democracy and a better quality of life can flourish only in a context of peace and security for all. Crime poses a threat to stability and to a safe environment. Crime prevention and criminal justice, with due regard to the observance of human rights, is thus a direct contribution to the maintenance of peace and security.

56. These words are true today as much as they were almost 15 years ago. There is no doubt that much progress has been made. The scene has changed with the successful conclusion of the United Nations Convention against Transnational

Organized Crime and the Protocols thereto, and the United Nations Convention against Corruption. The rapid negotiation of those instruments and the level of their acceptance, as manifested by the number of States that have become parties to them, are certainly auspicious. The Organized Crime Convention and its Protocols represent an opportunity and a challenge. The opportunity lies in their high level of quality, the consensus they embody and the political commitment they manifest. Thus, they are the key components of a framework, which was lacking, and a yardstick, a benchmark that States can use to chart a course in the direction of addressing pressing needs in a coordinated and concerted manner. The challenge facing the international community is how to make sure that that political will remains strong and that efforts do not waver in pursuing the course of using those instruments, together with the existing body of standards and norms in crime prevention and criminal justice, as the essential building blocks of the rule of law.

57. It is now broadly accepted by the international community that promoting and guaranteeing the rule of law in a country dramatically promotes the development of the country as a whole. The most recent development policies and practices recognize the need for understanding the connections between the different aspects of development, in particular between legal and non-legal features of the process of development.<sup>29</sup>

58. The central role that the rule of law plays in development has been recognized and emphasized in the report of the Millennium Project entitled *Investing in Development: a Practical Plan to Achieve the Millennium Development Goals*:<sup>30</sup>

“The successful scale-up of investment strategies to achieve the Millennium Development Goals requires a commitment to good governance. This includes upholding the rule of law through administrative and civil services and through legal and judicial institutions. ... The rule of law, a prerequisite to sound governance, can affect the way policies are formulated and implemented.”

59. Reforming the rule of law and re-establishing criminal justice systems have become even more essential to post-conflict societies. Strengthening the rule of law in the wake of conflict is not only an investment for the recovery of the country but, by addressing the grave injustices of war and the root causes of conflict, can also help in preventing the hostilities from returning in the future.

60. As highlighted by some scholars in development thinking there has been a dramatic shift in the past few years, from a belief in the importance of projects and the delivery of services to a language of rights and governance,<sup>31</sup> implying an engagement in a broader process of change. In the new environment, policies take a central place whereas projects become only one element of a wider, integrated development agenda. The objective is to achieve an improved coherence of the international development agenda.

61. In recent years, the United Nations has been at the forefront in analysing new trends and developments in globalization. The Organization quickly recognized that, besides the traditional threats to international peace and security, new threats have emerged on a global scale, such as transnational organized crime, corruption and terrorism.

62. Member States are realizing that no State alone, no matter how powerful, can successfully fight the above-mentioned threats. Issues that were considered to be the exclusive domain of Governments are increasingly being addressed in multilateral settings where joint strategies and activities are agreed upon.

63. As indicated by the High-level Panel on Threats, Challenges and Change in its report entitled “A more secure world: our shared responsibility” (A/59/565 and Corr.1), an effective answer to these new threats requires a combination of different elements and actions such as: (a) better international regulatory frameworks; (b) an adequate compliance by the international community to such a framework; (c) improved cooperation among States; and (d) a strong coordination among international agencies. Extended efforts to assist countries, in particular those emerging from conflict and those with economies in transition, in building or rebuilding their capacity to respect the rule of law must also be part of a sustainable and effective strategy to tackle the new forms of threats to human security.

64. In this context, fostering respect for the rule of law becomes an investment not only in the development of countries, but also in peace and security for the international community as a whole.

65. Since its foundation, the United Nations has worked to promote and consolidate the rule of law, at the national and international levels. In the United Nations Millennium Declaration, adopted by the General Assembly in its resolution 55/2 of 8 September 2000, reflecting the signatory countries’ commitment to achieving the Millennium Development Goals, Member States expressed their resolve to strengthen respect for the rule of law in international affairs as in national affairs (para. 9) and declared that they would spare no efforts to promote democracy and strengthen the rule of law (para. 24).

66. The achievement of the Millennium Development Goals may be held back by a conceptual approach that needs to be reviewed as a matter of urgency. While there has been considerable evolution in the concept of the rule of law in recent years and substantial debate about the importance of the rule of law on development, there has been little progress in understanding the key role that the criminal justice system has in establishing, maintaining and strengthening the rule of law. There must be recognition of the fact that the criminal justice system is the soft underbelly of the rule of law. While the concept of the rule of law is undeniably broader, unless the central role of the criminal justice system is recognized and approached as a main pillar of the entire edifice, there is great risk that the measures proposed and attempted will not produce the desired results. The time has come to move away from misconceptions and, in some cases, apprehensions regarding adverse effects of programmes to strengthen law enforcement and the criminal justice system as a whole. If such apprehensions were ever justified, they have certainly ceased to have any basis in the current political environment. The time has also come to invest in building and strengthening institutions of the criminal justice system and to do so in an integrated, coordinated and sustainable manner as part and parcel of both the development and security agendas of the international community.

67. A new global language is being used in the international development discourse; the words often used are partnership, empowerment, ownership, participation, accountability and transparency and, even more often, good governance, rule of law and human rights. However, even if the language and ideas

of the new agenda have been introduced, the corresponding changes will be slow in materializing. As recognized by Robert Chambers and Jethro Petit:<sup>32</sup> “These fine ideals stand in contrast to a development landscape littered by failure, corruption, secrecy, greed and contradictory motives. The language of this new consensus does, however, invite the hope of a more just and inclusive path towards human development and well-being.”

68. The United Nations has a central role to play in fulfilling that goal, by helping the international community to narrow the existing gaps between words and practice and recognizing that words themselves can be used to induce raised awareness and action.

69. Building or strengthening the criminal justice system is a prerequisite to effective international cooperation. The United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption constitute the framework for such cooperation in some of the most important areas where collective action is necessary. Significantly, their drafters decided that those conventions would be too important to be left without implementation mechanisms. For the first time in instruments of international criminal law, those conventions foresee their own implementation mechanisms, with a mandate carefully crafted to ensure their effectiveness while safeguarding principles such as respect for sovereignty that the international community still considers sacrosanct. That equilibrium lies at the heart of the potential of those mechanisms. With one of those mechanisms now in operation and the other presumably to be activated in no more than a year's time, it is imperative to ensure that that potential is fully realized. For this to be done, the spirit of the two conventions must be kept alive. Both conventions were negotiated on a common principle. Fighting organized crime and corruption is a shared goal, a common objective of all countries of the world. In order to achieve that objective, all countries should make every possible effort and invest in implementing the provisions of those instruments. At the same time, it was recognized that for many developing countries there would be gaps left, even after they had done their best, because of limited resources, lack of capacity and competing priorities. The international community as a whole would rally to fill those gaps, on the premise that there can be no weak links in the chain of action against organized crime and terrorism.

70. The first steps towards implementation of the United Nations Convention against Transnational Organized Crime have now been taken. They are steps in the right direction but they also appear tentative. The near doubling of the number of parties to that Convention since the first session of the Conference of the Parties may make it possible for bolder steps to be taken. It is important that there be such bolder steps; those steps should also be accelerated. In the case of the United Nations Convention against Corruption, the present lack of balance in the group of parties is unfortunate, while still understandable. The strength of both of those conventions lies in their ability to acquire quickly the broadest possible participation. Their effectiveness is directly linked to the collective strong will of States to support their implementation, both politically and financially. Hesitance or lack of active support may quickly become a major issue of credibility, risking a regression in international cooperation that would be truly detrimental.

71. Consolidation and reliance on the successes achieved in the last 50 years since the congresses began are prudent and necessary. However, such a course of action must not stand in the way of developing and pursuing a common vision for the future. The international community cannot afford to rest on its laurels. Much work remains to be done and more challenges are emerging daily. In a world where everything has become faster, reaction is less an option than ever before. Policy development in new areas that demand attention, such as new forms of economic crime or cybercrime, or conceptual development and implementation of new approaches to deal with emerging threats and their interrelationships are pressing needs.

72. If the international community shies away from properly taking up this challenge, it will be doing so at its peril. The Eleventh Congress offers a unique opportunity for all of these issues to be discussed and appropriate advice to emerge for the Commission on Crime Prevention and Criminal Justice to exercise its mandated role. The legacy of the previous congresses must be a source of inspiration and the tradition must be honoured in Bangkok.

### Notes

<sup>1</sup> *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A.

<sup>2</sup> *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

<sup>3</sup> *Ibid.*, chap. I, sect. D.2, annex.

<sup>4</sup> *Ibid.*, chap. I, sect. D.1, annex I.

<sup>5</sup> *Ibid.*, annex II.

<sup>6</sup> *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.2, annex.

<sup>7</sup> *Ibid.*, sect. C.26, annex.

<sup>8</sup> *Ibid.*, sect. B.3, annex.

<sup>9</sup> *Ibid.*, sect. B.1, annex.

<sup>10</sup> *Ibid.*, sect. C.7.

<sup>11</sup> *Ibid.*, sect. C.15.

<sup>12</sup> *Ibid.*, sect. C.24.

<sup>13</sup> *Ibid.*, sect. C.25.

<sup>14</sup> *Ibid.*, sect. C.9.

<sup>15</sup> See, in this connection, the reports of the Secretary-General submitted to the General Assembly on the implementation of the conclusions or recommendations of the Fifth Congress (A/35/289), the Sixth Congress (A/40/482 and Corr.1 and 2) and the Seventh Congress (A/45/324), the note by the Secretary-General on the results of the "Review of the functioning and programme of work of the United Nations in crime prevention and criminal justice", submitted to the Committee on Crime Prevention and Control at its eleventh session (E/AC.57/1990/6) and the



report of the Office of Internal Oversight Services on the in-depth evaluation of the United Nations Crime Prevention and Criminal Justice Programme (E/AC.51/1998/3); see also General Assembly resolutions 3021 (XXVII) of 18 December 1972, 32/59 of 8 December 1977, 35/171 of 15 December 1980, 40/32 of 29 November 1985, 45/108 of 14 December 1990, 46/152 of 18 December 1991, 50/145 of 21 December 1995 and 55/59 of 4 December 2000.

- <sup>16</sup> Conference of Correctional Administrators, *Standard Guidelines for Corrections in Australia* (1989).
- <sup>17</sup> Communiqué dated 19 November 1993, presented to the Meeting of Commonwealth Law Ministers, Grand Baie, Mauritius, 15-19 November 1993, paras. 49-50.
- <sup>18</sup> Recommendation No. R (87) 3, adopted by the Committee of Ministers of the Council of Europe on 12 February 1987.
- <sup>19</sup> Otto Bönke, "Criminal policy in the process of reform: review of juvenile and restorative justice as examples of the application of United Nations and European standards and norms in Germany", *Expert Group Meeting: the Application of the United Nations Standards and Norms in Crime Prevention and Criminal Justice*, Stadtschlaining, Austria, 10-12 February 2003 (United Nations Office on Drugs and Crime, 2003), pp. 49-58.
- <sup>20</sup> *Making Standards Work: an International Handbook on Good Prison Practice*, 2nd. ed. (Penal Reform International, 2001).
- <sup>21</sup> Amnesty International, "The role of United Nations standards and norms in the fight for human rights", *Expert Group Meeting ...*, pp. 231-232.
- <sup>22</sup> See, for example, the report of the Commission instituted under article 26 of the Constitution of the International Labour Organization to examine the complaint on the observance by Poland of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (*Official Bulletin*, Special Supplement, Series B, vol. LXVII, 1984, para. 479).
- <sup>23</sup> General Assembly resolution 43/173, annex.
- <sup>24</sup> General Assembly resolution 37/194, annex.
- <sup>25</sup> See G. Van Bueren, *The International Law on the Rights of the Child* (Dordrecht, Kluwer Law International, 1998).
- <sup>26</sup> United Nations, *Treaty Series*, vol. 2187, No. 38544.
- <sup>27</sup> Philip C. Jessup, *Transnational Law No. 2*, 1956.
- <sup>28</sup> See M. Cherif Bassiouni and Eduardo Vetere, eds., *Organized Crime: a Compilation of U.N. Documents, 1975-1998* (Ardsley, New York, Transnational Publishers, 1998).
- <sup>29</sup> Amartya Sen, "What is the role of legal and judicial reform in the development process?", statement made at the World Bank Legal Conference entitled "Role of Legal and Judicial Reform in Development", Washington, D.C., 5 June 2000.
- <sup>30</sup> *Investing in Development: a Practical Plan to Achieve the Millennium Development Goals* (United Nations publication, Sales No. 05.III.B.4), pp. 110 and 115.
- <sup>31</sup> Leslie Groves and Rachel Hinton, "The complexity of inclusive aid", *Inclusive Aid: Changing Power and Relationships in International Development*, Leslie Groves and Rachel Hinton, eds. (London, Earthscan, 2004).
- <sup>32</sup> Robert Chambers and Jethro Petit, "Shifting power to make a difference", *Inclusive Aid: Changing Power and Relationships in International Development*, Leslie Groves and Rachel Hinton, eds. (London, Earthscan, 2004).