

Thirteenth United Nations Congress on Crime Prevention and Criminal Justice
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High Level Special Event on Rule of Law, Human Rights and the Post 2015 Development Agenda

*Statement
of
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1. In its early days, in 1948, the United Nations incorporated the work of the League of Nations in the penal and penitentiary field.¹ As stated in a report of the Secretary-General of the Eleventh United Nations Congress on Crime and Punishment, *Fifty years of United Nations congresses on crime and prevention and criminal justice: past accomplishments and future prospects*:

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.

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 non-governmental organizations and 235 individual participants.

The First Congress approved a set of Standard Minimum Rules for the Treatment of Prisoners,¹ 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.²

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¹ See *Fifty years of the United Nations congresses on crime prevention and criminal justice: past accomplishments and future prospects*, 11th United Nations Congress on Crime Prevention and Criminal Justice, Bangkok 18-25 April 2005, A/CONF.203/15, 24 March 2005.

² *Id.* at 2–3.

2. Within the Secretariat, what started as a section, namely the Section on Crime Prevention and Criminal Justice, became a Branch, then a Division, and then a Center. The latter corresponded with the establishment of a new United Nations headquarters in Vienna whose only reason, at the time, was political.³ And so Vienna in 1977 became the location for disparate UN programs, such as: the International Atomic Energy Agency, the treaty-bodies on Narcotic Drugs, and the Secretariat offices serving them, as well as the divisions on Women and Social Development. Even so, the new building was still one-third empty and in 1980 the Crime Prevention and Criminal Justice Division was transferred to Vienna and combined with the drugs.⁴ Thus, leading to the incongruous naming of UNODC as the United Nations Office of Drugs and Crime which suggests a priority of drugs over other crimes instead of considering drugs as another crime. The reason at the time was that drugs were the primary concern of certain states, as is now the case with terrorism. The latter also explains why counter-terrorism has been given to a separate bureaucratic entity within the Secretariat, which is intended to coordinate the many treaty entities that deal with the question of terrorism.

3. Notwithstanding, the substantial contributions and outcomes of the quinquennial congresses, which have addressed a multiplicity of crime prevention and criminal justice issues, and which have had a significant impact on international and national policy, UNODC has become limited in regards to its scope and programmatic activities. The protection of human rights, the strengthening of the rule of law, and the administration of criminal justice have continued to evolve separately in another arena of the United Nations, namely the Office of the High Commission for Human Rights (OHCHR). The laudable work of the OHCHR remains however for all practical purposes quite distinct and separate from UNODC, terrorism, and the rule of law – notwithstanding the obvious need for effective programmatic cooperation.

³ To paraphrase what was stated by then Secretary General Kurt Waldheim in response to the United Nations headquarters location in Vienna: a United Nations headquarters in Vienna is worth ten divisions to protect Austria's security.

⁴ THE CONTRIBUTIONS OF SPECIALIZED INSTITUTES AND NON-GOVERNMENTAL ORGANIZATIONS TO THE UNITED NATIONS CRIMINAL JUSTICE PROGRAM (M. Cherif Bassiouni ed., Martinus Nijhoff Publishers 1995). *See id.* Freda Adler and G.O.W. Mueller, *A Personal History of the United Nations Crimes Prevention and Criminal Justice* 3; Eduardo Vetere, *The Work of the United Nations in Crime Prevention and Criminal Justice* 15; Herman Woltring, *The Evolution of United Nations Policy Approaches to Crime Prevention and Criminal Justice* 65.

4. As certain states no longer wished to fund expensive peacekeeping operations, DPKO has received a mandate for rule of law. This has been enhanced by linking the DPKO's new rule of law leadership mandate to UNDP, leaving UNODC and OHCHR as secondary bodies, despite OHCHR, UNODC, and OLA having been given the lead on rule of law at the international level, in Secretary-General Policy Committee decision 2012/2 par. 8. While DPKO and UNDP's work is most laudable, it is quite different from the experience of the UNODC and OHCHR in addressing the complexities of the rule of law's application to conflict and post-conflict justice situations,⁵ and particularly in the challenging arena of failed and failing states. While it is understandable that the transformation of the DPKO from its original mandate to a deliverer of rule of law services occurred for political and bureaucratic reasons, it nonetheless defies sound policy judgment on the merits, particularly, when both DPKO and UNDP are placed in the senior leadership position. The UN Rule of Law Coordination and Resource Group (ROLCRG) should reconsider this structural relationship.
5. The parceling out of different crimes and different activities related to crime prevention and criminal justice to different agencies including separate administration of programs such as those involving drugs, terrorism, organized crime and corruption, (while excluding such crimes as genocide, war crimes, and crimes against humanity, from the Secretariat's work) does not reflect sound legal policy. Legal history demonstrates that criminal justice is the foundation of rule of law no matter how the latter is defined. There is no model in history in which the effectiveness of a criminal justice system has been achieved by breaking up its components and also by breaking it up by subject matter.

⁵ NEIL KRITZ, *PROGRESS AND HUMILITY: THE ONGOING SEARCH FOR POST-CONFLICT JUSTICE* (M. Cherif Bassiouni ed., Transnational Publishers 2002); *TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES, VOLUME I GENERAL CONSIDERATIONS* (Neil J. Kritz ed., 1995). *TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES, VOLUME II COUNTRY STUDIES* (Neil J. Kritz ed., 1995). *TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES, VOLUME III LAW, RULINGS, AND REPORTS* (Neil J. Kritz ed., 1995); *THE CONTRIBUTIONS OF SPECIALIZED INSTITUTES AND NON-GOVERNMENTAL ORGANIZATIONS TO THE UNITED NATIONS CRIMINAL JUSTICE PROGRAM* (M. Cherif Bassiouni ed., Martinus Nijhoff Publishers 1995); Jane E. Stromseth, *Peacebuilding and Transitional Justice: The Road Ahead, in MANAGING CONFLICT IN A WORLD ADRIFT* 571-591 (Chester A. Crocker, Fen Osler Hampson & Pamela Aall eds., United States Institute of Peace Press 2015).

6. The administration of criminal justice is the foundation of the rule of law, because that is how individual and collective human rights are achieved, while at the same time it is how social policy for the overall protection of society is also achieved. As history has demonstrated, without the existence of due process of law and fairness in the administration of criminal justice, tyrants and abusive regimes have pursued their human harms and carried out their abuses of power, all with substantial impunity. It is therefore sound policy to avoid separating the rule of law from the administration of justice in general, and the administration of criminal justice in particular.
7. The work of the United Nations, as a multifaceted organization, is necessarily divided in accordance with its own bureaucratic structures and the mandates of its Bodies and Agencies. Thus, by its very nature, it requires a constant reassessment of the overlaps and gaps between the mandates of these Bodies and Agencies and their programmatic activities. The difficulty of establishing an overall policy coordinating mechanism at the Secretary-General level is obvious, as are the challenges that such an undertaking faces. This is particularly evident in relation to the institutional and programmatic separation between human rights and crime prevention. While both are two sides of the same coin, they operate separately. Another separate compartment is that of International Criminal Justice which was purposefully eliminated from the United Nations scope of work on crime prevention and criminal justice, as well as human rights, and rule of law. The political reasons for that exclusion are self-evident but it does not correspond to a sound policy of comprehensiveness. This is also evident in connection with the normative sources of applicable law such as International Human Rights Law, Humanitarian Law, and International Criminal Law.

As recommended by this speaker in his statement for the *High-Level General Assembly Thematic Debate on “Integrating crime Prevention and Criminal Justice in the Post-2015 Development Agenda,”* UNGA in New York on February 25, 2015:⁶

⁶ G.A. High-Level General Assembly Thematic Debate on “Integrating Crime Prevention and Criminal Justice in the Post-2015 Development Agenda,” (Feb. 25, 2015), http://www.un.org/pga/240215_hl-debate-integrating-crime-prevention-and-criminal-justice-in-post-2015-development-agenda.

In conclusion it is recommended that the Secretary-General convenes a High-Level Meeting of Experts both from within and outside the United Nation system, to examine the situation mentioned above and to make recommendations for a comprehensive strategy to address all forms of criminality, irrespective of their normative legal sources, and to examine the overlaps and gaps that exists within the United Nations system in connection with a comprehensive response to criminological phenomena. Which, unlike the United Nations bureaucratic system, do not draw artificial legal distinctions between international, transnational and national criminality. In addition, it is necessary to establish under the lead of UNODC permanent coordinating bodies between UNODC, OHCHR, UNHCR, Counter-Terrorism and UNDP (for funding and economic and social development). It is also recommended that the General Assembly consider calling a Special Session to address on an overall comprehensive and integrated policy basis the new realities arising out of international, transnational and national criminality in the context of contemporary globalized society.

The Open Working Group's deliberations and the Secretary General's Synthesis Report have reaffirmed the importance of promoting the rule of law, justice and security, both as critical enablers of development and as development ends in themselves. The recent GA thematic debates held by President Kutesa as well as the theme of this excellently prepared Congress have provided excellent inputs for member states' consideration of the way forward on the post 2015 development agenda, in advance of the September 2015 Summit thereon. What we can take away from all of this is that there is no doubt, that in our global society everything is related: environment, economic development, social development, human development and crime, irrespective of its sources and manifestations. These globalized factors, whether they deal with migration, failed and failing states, multinational corporations – which have become beyond the reach of the law – the role of specialized IGOs and NGOs, and the ability of national systems to deliver justice as part of its social contract are all interrelated. Artificial and bureaucratic divisions, as well as normative separation by categories, whose enforcement relies on unrelated institutions and mechanisms, weaken the overall effectiveness not only of the reduction of crime and the achievement of justice, but also impact sustainable development which in turn impacts in direct and indirect ways on peace and security at the international levels and on peace and stability at the national levels.