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Meeting the Challenge of Crime in the Global Village:

AN ASSESSMENT OF THE ROLE AND FUTURE OF THE UNITED NATIONS COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE

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Helsinki 2012

This book is dedicated to those who have served and supported the United Nations and the Crime Commission in the belief that our future together lies in shared values that can only be reached through honest appraisal of the evidence, and through open and sincere dialogue that transcends our national, professional and individual prejudices, and forges consensus based on the common heritage we have as human beings, on the common world we share, and on the common responsibility we have to our children, their world and those who will share it with them.

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The Author is presently employed as Legal Counsel, Federal Justice Department of Canada, and was employed as a member of UNODC's Commission Secretariat and Legal Affairs Branch from 1999-2003. Views expressed herein are those of the author and are not the positions of the Government of Canada, the United Nations secretariat, or any department or agency of either of them, unless expressly so stated in the text.

This book was written over a period of several years based on my own experiences as a member of the Commission Secretariat, as a Canadian delegate to the Commission and as a lawyer and criminologist who has spent much of his professional life considering the nature of crime and our reactions and responses to crime as individuals, and as institutions, Member States and as a global community. It is also based on many discussions with colleagues, friends and fellow-travellers, and with the passage of time comes the understanding that we are a social species and that new ideas or perspectives seldom, if ever, spring entirely from one's own imagination. Over time and debate, many debts of gratitude collect. Whether they agree with my views or not, I am indebted to everyone who has cared enough and taken the time to share their ideas with me and to challenge my own. In this context, particular thanks are extended to my long-suffering spouse, Sabine Nölke, and to: Eduardo Vetere, Matti Joutsen, Lucie Angers, Slawomir Redo, Dimitri Vlassis, George Puthuppally, and Muki Daniel Jerneloev. I am also indebted to the many others who have served with me as national delegates and members of the Secretariat, and to a number of representatives of ICCLR, HEUNI and the other Programme Network Institutes.

I am also indebted to Prof. Roger Clark, whose 1994 book *The U.N. Crime Prevention and Criminal Justice Programme* represents the last (and possibly only) previous attempt to address this subject-matter. Reading his book resulted, as often as not, in the realization that I had been scaling intellectual mountains only to discover that the summits I sought had been visited by Roger almost two decades before, a rather peculiar blend of chagrin, *camaraderie* and vindication. I thank him for his assistance, and have included references back to his work where I thought them appropriate or useful for readers. Some of my thinking is derivative of or influenced by his, and in other cases I followed my own path to the summit. But lest there be any doubt, wherever two sets of footprints can be found, Roger trod the ground before I did.

ABSTRACT

This book examines recent developments in the evolution of crime at the domestic and transnational level, the pressures that these have exerted on domestic law and policy and national sovereignty, and the effectiveness of the United Nations Commission on Crime Prevention and Criminal Justice as a collective response to those pressures. At the time of writing (April - December of 2011) the Commission, which was established in 1992, is in its 20th year, and a re-assessment is in order. In order to evaluate the effectiveness of the Commission, it is necessary to first assess the various functions it performs, whether by design or not, and the value of these functions to the Member States individually and the international community as a whole. This is more complex than it may seem, because effectiveness is largely in the eye of the beholder and must inevitably be assessed as against the expectations of the many different constituencies it serves, which are defined not only by national or regional economic, political or other substantive interests but also in terms of the diplomatic, criminological, security, development and inter-governmental, governmental or non-governmental lenses through which various participants perceive the Commission and its work.

In this context, the book then considers developments of the past two decades and the perspectives of various constituencies on what has worked and what has not. It concludes that the benefits of the Commission and the work it mandates are, while often abstract, long-term and difficult to quantify, substantial when compared with the relatively small investment it demands from the Member States. At the 20th session, held in April 2011, the frustrations of many delegations appeared to crystallise in a new will to adopt procedural reforms, which bodes well for the future, but the Commission was also advised of major resource limits that will reduce the documentation by the Commission of its work, which bodes ill. These and other recent developments will be considered with a view to developing ideas and proposals for the future.

INTRODUCTION

Globalisation and the technological and other developments which support it have made possible enormous changes in social, economic and political activities at the local, national, regional and global levels. Some of these are beneficial and others are less so. One major adverse effect has been the globalisation of crime, which has become a major challenge to individual States at all stages of development and to the ability of the international community as a whole to develop and implement coordinated and coherent responses. The measures needed include legal measures such as criminal offences, criminal procedure laws and human rights protections, and non-legal measures such as crime-prevention and law enforcement and other training. The accelerating pace at which crime itself is evolving make the need for more-or-less constant capacity to monitor crime and update anti-crime measures a further challenge. Most of the direct anti-crime actions are taken at the national level, but the criminal activities themselves are increasingly transnational in nature. This has placed ever-greater emphasis on the need for coordinated international actions, to ensure that every State has more or less the same laws, and that effective international cooperation laws and practices are in place.

At all stages of the process, capacity is a further challenge. Within each State there are constant priority-setting and resource-allocation debates, as between crime-control and other policy areas, and between various crime issues. At the international level, even the most developed countries are challenged to keep pace with the evolution of crime, especially in technology-driven areas such as cybercrime. The problems are most acute in developing countries, where the lack of expertise and much greater competition for much scarcer economic resources make it much more difficult to identify and assess crime problems, develop responsive policies and laws, and implement and enforce whatever measures are developed.

As with many of the other adverse effects of globalisation, many of the problems generated by globalised crime and the challenges it presents are asymmetrical. Crime is generally a more serious problem in developing countries both in absolute and proportional terms, and globalisation has greatly reduced the insulation of each from the other. All else being equal, smaller and less-developed countries lack economies of scale and are less efficient, and such countries and their populations suffer greater harm from any given level of organised crime or corruption activities and the same is true for many specific forms of crime. Paradoxically, as countries increase in size and wealth, their abilities to develop and maintain rule of law and criminal justice capacities increase, but so does social cohesion and order, which reduces the demands placed on those same capacities.

Transnational or globalised crime exacerbates this problem because its size, presence and the magnitude of its effects are determined by global factors,

whereas both the proactive and reactive capacities of law enforcement and other criminal justice and rule of law elements tend to be determined and limited by domestic factors. Smaller and less-developed countries with limited expertise and human and financial resources for crime prevention and criminal justice can be seriously challenged and even overwhelmed by transnational organised criminal groups who can draw on greater expertise and more resources from without. The most obvious examples are drug-trafficking economies, but many of the same problems can be seen in other forms of transnational crime. Where narcotic drugs are produced and trafficked, different incentives and consequences tend to arise in producing, transit and destination or market countries, generating asymmetrical effects. This is not just because the drugs and their adverse social effects travel in one direction and the proceeds travel in the other, but also because the proceeds tend to flow from large, affluent States to smaller less-affluent ones. Absolute amounts or proceeds that are insignificant to the larger economies of the wealthy countries of North America and Europe from which they originate can completely corrupt and de-stabilise the smaller source and transit countries. This then creates domestic opportunities and incentives to grow or manufacture the drugs in places where prevention and criminal justice capacities are weak, the incentive and resources to keep them that way, or if this cannot be accomplished, to change the locations of production and trafficking routes in search of the lowest risk and the least resistance.

When transnational organized crime exploits the lack of capacity in developing countries as a point of origin or safe haven for its activities, the same factors that put it out of the reach of criminal justice there also place it beyond the reach of countries where victimisation and other harms occur and proceeds originate, creating new and stronger shared regional and global incentives to act in a coordinated and strategic manner to prevent and suppress it. In general, high rates of crime, corruption and some specific forms of crime are a major obstacle to social and economic development, whether efforts come from within a State or in the form of international assistance. The disproportionate effects of criminal expertise and proceeds drawn from large States or regional or global sources in less-developed States or regions causes instability to the point where the prevention and suppression of at least some forms of crime has now evolved from being dealt with as a social issue to being treated as a security issue. The globalisation of legitimate economic and commercial activities has created major commercial interests which can be threatened by crime, and when they are so threatened provide powerful incentives to prevent and suppress it as a prosperity issue. In the context of drug trafficking, the social consequences of trafficking in destination States also provide incentives for the destination countries to intervene in source and transit States by funding and building law enforcement and criminal justice capacity there. In reactive terms, when the countries which have the capacity to investigate and prosecute transnational crime do so, they often cannot obtain the investigative and judicial cooperation they need because other States lack the capacity to deliver it. Anti-crime processes that have traditionally been based on rule of law,

human rights and law enforcement paradigms at the domestic level now increasingly come into contact, and sometimes into conflict, with national security, diplomatic paradigms which have different processes perspectives and goals, and individual officials are often faced with scenarios and challenges outside of the scope of their training and experience.

While States and officials react to crime, crime itself is also reactive. Understanding the gaps in resources, expert capacity, political will and legal jurisdiction, the more sophisticated offenders and organised criminal groups have adjusted their own activities to reduce risks and take the best advantage of circumstances. Organised criminal groups and information technologies are particularly problematic in this regard because they provide an infrastructure where successful strategies for crime are enhanced and propagated, and unsuccessful ones are either discarded or modified until they become successful. Physical elements of criminal activities are conducted in places where law enforcement capacity is weak, and offences are committed across borders so that there are jurisdictional barriers between victims and prosecutors, evidence, and the offenders themselves. Trafficking routes and methods evolve constantly to avoid physical jurisdictions where enforcement is strongest and to elude sophisticated means of surveillance and detection. Cybercrime schemes and criminal communications are routed through States which are not able to intercept or trace them, and electronic evidence and proceeds of crime avoid detection, tracing and seizure through complex transfers, constant movement, and where possible, the use of "safe havens".

These fundamentals are often masked by the complexities of national or regional conflict, under-development, natural or humanitarian crises, and/or the ebb and flow of political and ideological debates, but they are relentless and consistent, and they have made the prevention and suppression of crime a global issue whether individual States, governments and officials like it or not. The end result is that, while many governments would often prefer to deal with crime as a more or less purely domestic matter, they are increasingly forced to deal with it at the bilateral, regional and global levels, with other States which may share few other interests than the general desire to control crime and with divergent views about what crime actually is.

That said, while the pressures to deal with crime as a global issue are substantial and constantly-increasing, the counter-pressures of sovereignty and political autonomy are by no means insignificant. The prevention, and especially the suppression of crime, is a jealously-guarded attribute of domestic national sovereignty, and is never far from the centre of partisan political discourse in any country where there is such discourse. In customary international law, the right to enforce laws and punish wrongdoing is based on the fundamental concept of territorial jurisdiction as an attribute of national sovereignty. As one text describes it:[1]

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[1] Shaw, 1997, pp. 458-59. Concerning the territorial basis for jurisdiction, exceptions to the principle and comity as they apply in the context of the criminal law, see: Aust, 2005, chapter

> That a country should be able to prosecute for offences committed upon its soil is a logical manifestation of a world order of independent States and is entirely reasonable since the authorities of a State are responsible for the conduct of law and the maintenance of good order within that State. It is also highly convenient since in practice the witnesses to the crime will be situated in the country and more often than not the offender will be there too.

States are gradually being pressed into compromises with respect to areas such as the extradition of offenders and legal instruments which oblige them to establish crimes and provide cooperation with one another, and within Europe developments have progressed to the adoption of a scheme for extraterritorial arrest warrants,[2] but these may still be executed or enforced only by the competent authorities of the State where the arrest takes place.[3] Europe has the advantage of relatively similar standards and the common basis of the European Convention on Human Rights. Elsewhere, countries can and do urge one another in the direction of common legislative and policy approaches, but are still very reluctant to enter into the development of legally binding or prescriptive standards, and any sort of extraterritorial enforcement, without the consent of the State where it takes place and appropriate judicial approvals, is still fiercely resisted.

From a legal perspective, a number of reasons have been advanced for this, many of them based on rule of law and human rights precepts. For example, the principle of legality (*nullum crimen sine lege*), the principle that ignorance of the law does not excuse (*ignorantia legis neminem excusat*) and key functions such as the role of judicial precedent (*stare decisis*) all become unstable if laws made in one jurisdiction are enforced in another and require that great care be taken in transferring legal measures from one place to another or formulating international legal instruments intended to be

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4; Brownlie, 5th ed., 1998, chapter XV.3.; Harris, 4th ed. 1991, chapter 6; and Shaw, 1997 at p. 458 et seq. See also: Council of Europe Extraterritorial Criminal Jurisdiction, 1990 (1992) 3 Crim. Law Forum 441-480; Gilbert, 1992, Lew, 1978, and Williams, 1965.

[2] Council of Europe Framework Decision 2002/589/JHA of 13 June 2002, amended by 2009/299/JHA of 26 February 2009.

[3] The arrest warrant replaces elements of the judicial process previously associated with extradition, but not powers of arrest, which remain with the State in which the arrest warrant is actually executed. Warrants are applied for and issued in the requesting State and then transmitted to the executing judicial authority in the State where the arrest is to be effected, whose authorities are then charged with the responsibility of making a final decision on the arrest, notifying the requesting authority, and assuming they approve the warrant, actually arresting the suspect, ensuring procedural rights are observed, and sending him or her to the requesting State. See: http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_ criminal_matters/l33167_en.htm

implemented in diverse legal systems.[4] In practical and diplomatic terms, extraterritorial enforcement without the consent of the host State is regarded as hostile and provocative, if not as an act of war, which has generally led domestic judicial and legislative bodies to take a conservative line and ensure that their barks do not extend far, if at all, beyond the range of their bites.

While large and powerful States have sometimes tended to stretch this conservative approach, for the most part the reluctance to accept foreign interference in what they regard as domestic criminal justice matters has led most States to a posture of reciprocal reluctance to impose their legal or criminal justice measures or principles on others. The need to avoid conflict over such issues has led to the principle of comity, in which each State respects the sovereignty and territorial jurisdiction of others, and to substantial pressures to negotiate acceptable principles for dealing with circumstances such as aviation, international waters, Antarctica and outer space, where no clear basis for territorial jurisdiction exists, and to develop appropriate legal, diplomatic and practical measures to ensure effective cooperation and the avoidance of conflict in places and circumstances where national legislative, adjudicative and enforcement jurisdictions overlap or interact. However, the fundamental legal framework for dealing with crime remains one in which the pressures of globalisation have led in the direction of coordinated international efforts acting through the agency – and under the constraints – of separate territorially-based national criminal law and justice systems, and not to any significant tendency to supersede or circumvent them by means of the direct application of international law or law enforcement measures. The expansion and codification of international crimes in the 1998 Rome Statute of the International Criminal Court represents a limited exception,[5] but even here the substantive scope is limited to the gravest of crimes, and the primary emphasis is on the use of domestic criminal justice and judicial institutions wherever possible and the international basis of the Rome Statute, the ICC and its prosecutorial functions only where national measures are not viable.

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[4] See Lew, 1978 and Williams, 1965. The discussion here is drawn from a paper produced by the author for the 2011 joint Annual Proceedings of the International Centre for Criminal Law Reform (ICCLR) and the International Society for the Reform of the Criminal Law (ISRCL). See Ram., C., "The Globalisation of crime as a jurisdictional challenge", ICCLR/ISRCL, Ottawa, 2011.

[5] *U.N. Treaty Series*, vol. 2187, p. 3, in force 1 July 2002, No. 38544, based on A/CONF.183/9 of 17 July 1998, as amended, Articles 13-19 and in particular Article 17, paragraph 1 (case inadmissible where domestic jurisdiction is viable unless the State with jurisdiction unwilling or unable to prosecute), official text available at: http://treaties.un.org/doc/source/RecentTexts/rome-en.htm. Referred to hereinafter as the "Rome Statute".

In terms of partisan political discourse,[6] the nature of crime, the fear of crime and popular and media fascination with crime make it a lucrative partisan political issue, but the effects are very different at the domestic and international levels. Within each State, voters are faced with arguments from the left that portray crime as a social problem best dealt with by prevention through social-welfare measures and which depict the right as being wasteful and overly-retributive. The right, for its part, plays to popular fears about crime and the popular belief that retributive measures will deter it, and tends to argue that the left is "soft on crime" and places the interests of offenders (who unlike other population groups can be safely demonised) ahead of those of victims or law-abiding citizens. Partisan advocates on both sides capitalise on "moral panics" whenever the fear of crime – which is usually greater than any actual risk of crime – peaks, and may themselves exaggerate the seriousness or risk of crime, effectively creating fears that would not otherwise exist.[7]

Popular input is a hallmark of law-making and public administration in democratic States, but the relationship between partisan politics and crime prevention and criminal justice is imperfect at best and often problematic, ranging from profound disagreements over the fundamental purpose and legitimacy of the criminal law and justice system as a means of social control, to disagreements about the balance between proactive and reactive policies and the details of specific policies and how they should be implemented. Many of the legal, social, and psychological relationships between crime and other aspects of society and among offenders, victims, the police and other key

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[6] References such as "partisan politics", "political oversight" and the nature of the Commission and other bodies and of some of the documents it produces as "political" bodies or texts are used in many places in the present article. For clarity, references to "partisan politics" as in this segment, are used to discuss the ideological and political dynamics – generally in right/left-wing terms – that ebb and flow in various Member States and that individually and collectively influence the Commission and other such bodies. Within the United Nations itself, references to "political" matters in terms of oversight and documents are generally used to distinguish between the internal management and governance of the organization itself under the authority of the Secretary General, and the "political" oversight and governance of the organization at the higher level by the Member States themselves. Thus, for example, a Bulletin of the Secretary General dealing with staffing policies is an internal governance text, whereas a resolution of the Commission, the ECOSOC, the General Assembly or the Security Council which allocates resources and directs the Secretariat to act on the decisions made is a product of the deliberations of a "political" body and is a "political" text. This is distinct from matters or texts referred to as "technical" in nature, which in the case of crime are generally based on substantive research and consideration of issues by legal, criminological or other substantive experts in processes which are not intergovernmental in nature and have some degree of independence from the Member States and their governmental or official interests or positions. Resolutions of the Commission, ECOSOC and General Assembly which make policy decisions are sometimes described as "legislative" texts, but the term has been avoided in the present article to avoid confusion with the international legal instruments on crime, corruption, terrorism and other subject matter and to legislative or law-making activities of the Member States themselves in response to crime problems.

[7] The term originates with criminologists Jock Young and Stan Cohen in the 1980s. See Cohen, 3rd. ed., 2002, and Cowell, Jones, and Young, J., 1981.

participants are counter-intuitive, which often confronts politicians with difficult choices between what the voters who elected them believe and want and what criminal justice experts tell them is actually occurring and will (or will not) be effective. Examples of this abound. Imprisonment is far less effective in deterring crime and far more costly than most voters believe, for example, and the incarceration rates of many democratic countries rise and fall like the tides as political government shifts back and forth between right and left. While social scientists sometimes become implicated in partisan debates, more commonly they find themselves somewhere in the middle, unpopular with both sides because social science evidence often tends to cast doubt (or worse) on the claims of both sides.[8]

National political influences on crime also operate at multiple levels in determining how crime is defined, characterized and how each State responds to it. Popular will and partisan pressures influence not only the making of laws establishing criminal offences and governing criminal procedures, but also the election or appointment of senior legislative, executive and even judicial officials and the setting of general priorities for crime prevention, law enforcement, the balance between custodial and non-custodial sentencing and diversionary or other programmes for juvenile offenders, and other such matters. Less evident is the fact that political influences also regulate the relative allocation of political and official attention and financial resources between domestic and international efforts, a fact which has had a major influence on the Crime Commission and its work. While dramatic events such as terrorist attacks occasionally make global action a domestic political priority, the general pattern for crime has been that politicians and voters focus almost exclusively on local and national crime problems and on types of crime – usually violent crime – that are less likely to be transnational in nature. The mass-media follow a similar pattern, partly responding to consumer demand, and partly because reporting local news is much faster, cheaper and less-demanding than international news. As discussed below, globalisation has had profound effects on crime, and State responses have begun to reflect this, but the general pattern remains that of national governments focusing most of their attention and crime prevention and criminal justice resources on solutions within their own borders, even in circumstances where the nature of the crime problem suggests that collective international responses would be preferable or

[8] The uncomfortable relationship between partisan politics and social science is a dominant and enduring theme of modern criminology and I will resist the temptation to revisit the issue in any detail here or to give any preference to the views of the left or right in the debate. The issue dealt with here is how the recurrence of these debates in many different Member States over time plays out in the multilateral environment of the United Nations. For those interested in a more detailed overview of the partisan issues and their relationship with political debates, the use of crime statistics, and social and media depictions and constructions of crime, reference may be had to *The Oxford Handbook of Criminology*, Oxford University Press, 4th ed., 2007, chapter 2 "The Social Construction of Crime and Crime Control". See also the discussion of critical theories of criminology in Taylor, Walton and Young, 1973, chapters 7-8.

even essential, or where purely domestic responses could be better informed by looking at what has been tried in other countries.

Partisan debates over crime prevention and criminal justice have always been a significant factor at the international level, but here there are some important differences in effect. Within each State, the same issues tend to be raised repeatedly over time as the political pendulum swings from right to left and back. Generally one side is dominant and the criminal justice agenda is shaped accordingly at any given point in time, although the effects of this are often concealed by the fact that the effects of changes in social policies on crime are manifested over much longer time-lines than most political or electoral cycles and influenced and concealed by other factors. At the international level, however, there will usually be different States at different places in this process at any given time, and most sessions of the Commission therefore feature a mix of right and left ideological perspectives on the issues at hand and alliances between delegations that change from issue to issue and session to session. Member States whose governance and political systems do not shift over time may take strong ideological positions, but the effect of the ones which do shift is generally to reduce the influence of the more extreme positions and focus discussions on the political and criminological centre, where proposals may find consensus. As will be seen below, the tendency of criminologists and other social scientists to challenge partisan depictions of crime within each State is largely a thing of the past in the Crime Commission, if it ever existed. While the early history shows much greater engagement by independent crime experts – and no shortage of conflict as political and diplomatic views were challenged – the six decades since the U.N. itself was founded have seen a steady and relentless trend to dominance of the deliberations by governmental experts and diplomatic representatives.

The same political issues also tend to propagate from State to State. The globalisation of the mass-media and other information and communications has encouraged partisan politicians of the left and right to share experiences of successful and unsuccessful appeals to public opinion and support, and social scientists to exchange knowledge through professional, academic and governmental channels and publications. But politicians and criminologists only *react* to crime. Of greater significance in global crime patterns is the fact that the offenders themselves also share information and expertise across borders. The offenders have the initiative in forming transnational organizations, spreading criminal expertise and committing cross-border offences, and for this reason new criminal techniques propagate much more quickly than State responses to them. The fact that crime itself is able to evolve and propagate much more rapidly than in previous generations, in both geographic and substantive terms makes the combination of criminological and political discourse in the Commission even more important, both as a means of identifying new problems and trends and developing consensus on how to respond as quickly as possible. It is true that few who have participated in the work of the Commission over the years would regard it as a rapid-response mechanism in comparison with various sorts of direct action in specific cases.

But to the extent that international consensus is needed for many responses to crime, true consensus can be reached in the Commission more quickly than by any other means.

While the practice of consensus-building among like-minded and divergent States is as old as diplomacy itself, the non-random propagation of crime is new. It has significantly increased with recent globalisation developments, which support both the rapid transfer of knowledge and information (by politicians, law-makers, law enforcers and offenders alike), the rapid movement of people and goods, and the globalisation of the underlying economic and social environments in which most transnational crime occurs. This does not fundamentally alter the need for global consensus-building, but it is in the process of transforming the ways in which consensus is developed with respect to crime just as it is in other subject areas. Until the mid-twentieth century, States could afford to seek consensus on reactions to crime in time-honoured ways, and if none was to be had, to go their own ways. The advent and rapid evolution of problems such as trafficking in narcotic drugs, weapons and other illicit commodities (including human beings), transnational organised crime in general, terrorism, cybercrime and a range of new and traditional forms of economic and financial crime mean that international consensus-building is no longer a luxury, it has become a necessity.

This book will consider two essential propositions that arise from these facts. First, it will argue that both partisan political discourse and social science expertise are essential to the development of domestic crime prevention and criminal justice policies. Second, using the United Nations Commission on Crime Prevention and Criminal Justice (hereinafter referred to as the "Crime Commission"), it will argue that this is also true, *mutatis mutandis*, for the development and implementation of similar policies at the international level. Political discourse in domestic policy-development and law-making performs two critical functions. Within each State, elected legislatures serve as consultative bodies, broadly ensuring that issues are identified and that laws and policies developed are responsive to popular concerns, and they help to ensure that these responses are seen as legitimate, supporting the rule of law and popular compliance. Social science and other technical experts provide a balance to this, ensuring that factual evidence about the problems is available and accurate, providing long-term continuity of knowledge and expertise, and continually monitoring the effectiveness of past measures as a means of advising future ones.

Within the U.N. and other international bodies, the political will of the various Member States is primarily represented by their diplomats. Technical expertise is provided by a combination of experts provided by the Member States and by the Secretariat. Without substantive expertise in law, criminology, human rights and other key areas, international policy-making would lack long-term consistency. Consensus among States with diverging political views would be difficult to achieve, and policies which did find consensus would not be evidence-based or very likely to be effective against crime. Without a political

and diplomatic element, on the other hand, experts would have difficulty developing policies which were responsive to the actual needs of the Member States and which would not have the legitimacy and support needed for States to actually implement them. It will be argued that within the U.N. system as a whole, it is at the level of the Crime Commission that diplomatic and criminological elements are brought together and that reconciling these is both a major function of the Commission and a reason why neither diplomats nor criminologists recognize its true value.

The book will then consider the present functioning of the Crime Commission and suggest possible changes to address problems and enhance its effectiveness. In this context, the question of expectations is important. While it is here argued that there are important substantive parallels between the Commission and domestic policy and law-making organs, there are also fundamental differences in process, and the United Nations and its various constituent elements are commonly criticised by those who compare them to national government bodies or even private-sector entities. At the domestic level, decisions tend to be made on a majority-rule basis, both in elections and within legislative bodies once they are elected, and based on the rule of law and the pragmatic realities of law enforcement, these decisions are generally binding on everyone, whether they support a particular policy or the government which developed it, or not. At the international level, no practical means of enforcing the will of the majority, short of military force, exists. This means that the rule of law, to the extent that it exists at all, takes a very different form, and that decisions tend to be based on consensus among Member States, who must then also choose how best to ensure conformity at both the national and individual level with whatever has been agreed. This is nowhere more apparent than in the Crime Commission. Penal law and policy involve the harshest of consequences, which by their nature must be applied to individuals, and this has made criminal justice a jealously guarded matter of national sovereignty.

All of this makes the development and implementation of global policy and legal measures against crime a very difficult and time-consuming process when compared with its national counterparts, but it is argued that this is not the comparison that should be made in assessing the Crime Commission. Its primary function is not to make law, or even necessarily to make policy, although it has done both when the necessary consensus was present, and maintaining capacity to do so when needed is important. The primary function of the Commission is to serve as a forum in which Member States can share information about the evolution of crime, and what they are doing and what they believe should be done, to prevent and suppress it. It serves as a forum in which political and scientific input is reconciled, and one in which individual States with widely divergent realities in terms of governance, rule of law, social and economic development, and national and human security environments can articulate their views and needs and hear those of other States. It juxtaposes the perspectives of diplomats, who understand international differences and represent political interests but come and go with

the governments who appoint them, with the longer term substantive perspectives of criminologists and other experts, who provide evidence and continuity, and understand their own social environments, but who may not understand or appreciate the realities which exist in other States or the need to develop responses to crime which meet global needs as well as national ones.

The question of whether the Commission should also have a role in developing new policy is also discussed below. This is a question which has dogged the Commission, its predecessors, and many other functional bodies for as long the United Nations itself has existed. The Commission has considerable value even if it serves only as a "clearing house" for information, but I and many former colleagues who have been involved in the work over the years, believe that a policy-making function is necessary, and perhaps also inevitable. This is not to suggest that the primary source of policy and law-making should always be, first and foremost, each of the sovereign Member States, but to some degree global crime problems require global deliberations and global responses. Policies which are responsive to global issues and effective in responding to transnational and global crime problems require a new level of policy-making, but policy at the global level must be more than the sum of its parts in each State, and it is unlikely that the legal, criminological or other experts of even the most developed, sophisticated and best-resourced Member State could develop global policies that would be substantively viable, let alone politically acceptable, at the international level or within another State. The gradual but inexorable shift from independent experts to government experts on crime, and more recently in the direction of diplomatic representatives supports a vision of the Commission as a conduit or "clearing house" for information and bringing together the supply and demand for technical assistance, but it is not consistent with any sort of genuine policy-making function. The function of diplomatic experts in articulating the needs and concerns of their governments, and as a conduit for factual information is necessary for such policy-making, but it is not sufficient for it. The development of the sort of creative and innovative policy responses to crime at the global level that are becoming increasingly urgent can only come from dynamic and interactive substantive discussions among crime experts who can integrate the diverse political and substantive inputs with an objective and substantive understanding of the many aspects and varieties of crime itself. Paradoxically, this capacity has been steadily eroded during (and before) the first two decades of the Commission in the same period of time when the demand for global strategic responses to crime has steadily increased.

The United Nations is a vertical organization in which subject matter is first examined by substantive experts and then transmitted upward to the more political deliberations of bodies such as the ECOSOC and General Assembly. It will be argued below that in this context, the greater use of substantive experts on crime, including experts who are independent of the Member States, the allocation of the time and resources needed to support information gathering and substantive expert deliberations, and the development of innovative policy ideas which are more independent of the political views and

positions of the Member States, are also critical to the future success of the Commission and to the collective interests of the Member States. Once substantive policy ideas have been developed, it remains for the Member States, first collectively and then individually, to make political decisions about whether to implement them, and if so how. To be valid, however, it is argued that such a process must take the form of a dialogue between politics and criminology in which each speaks with an independent voice and in which political authorities consider crime as it actually is, based on the best possible factual evidence and scientific assessments. If the formulation of criminological policy is itself becomes politicised – as to some degree it has – then the dialogue becomes a sterile exercise of politics talking to itself in an atmosphere devoid of substance.[9] It is in the nature of political governments to be risk-averse, and they are understandably nervous in providing both autonomy and resources to international bodies which will, from time to time, produce policy proposals which are politically inconvenient, but in doing so, they run the risk of ignoring much greater risks, as recent experiences with global economic interdependence clearly illustrate. Crime is what it is, and effective measures to prevent and suppress it can only be developed by gathering accurate evidence and confronting the problems at a substantive level, and at the global level, the Commission is not just the most appropriate forum for this, it is the only available one.

As a person who has worked within the Commission Secretariat as a national delegate and as an expert on a number of subordinate bodies established by the Commission, I believe that, while there is clearly room for improvement, it has substantial value and plays an essential role in the global fight against crime. While international deliberations commonly take much longer than domestic ones, there are compelling reasons why this is, and should be so. In bringing together all of the U.N. Member States, the Commission also performs the function of reconciling divergent national policy and legal measures into a coherent amalgam that is viable for most or all States regardless of the nature of each State's legal system, and then supports a reverse process in which this amalgam can then be adapted and implemented in each individual States, focusing on those who lack the means to do this for themselves. In the case of new and emerging crime issues, it also assists many States in acquiring knowledge and expert advice on how to respond. This can take time, but it is essential that States representing different degrees of legal, social, political and economic development, all understand the nature and extent of a new global crime problem before any useful global consensus about what to do about it can emerge.

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[9] Lest this seem rather one-sided, it is equally unlikely that criminology talking to itself would produce viable global responses to crime. My argument is that each side needs the other. The differences are that dominance of the Commission by criminologists has never been a problem and seems unlikely to become one in the future, and that while politicians can and do make laws and implement social policies without regard to criminological expertise and evidence, criminologists cannot.

The Commission has also become an essential element of global anti-crime work precisely because of its global nature. While some exceptions remain, many forms of crime have now expanded to the point where only strategic responses which include global elements and take into consideration global causes and effects are viable. Specific elements of responses, especially the popular consensus and political will to enact criminal offences and other laws and the law enforcement will and capacity needed to make them work, remain national or local matters. But strategic global consideration is needed as the basis of a complete picture of the nature, extent and seriousness of the problem, to provide a global technical analysis of challenges and possible responses, and as a forum in which political consensus to act can emerge. Perhaps the best example of this is transnational organized crime, about which political consensus gradually emerged after a decade of technical study and deliberation, and in which the *Palermo Convention* focuses on establishing domestic offences and powers that are similar in all States Parties, and on providing an international framework to ensure that States Parties who need implementation assistance and international cooperation receive it from other States Parties in a position to provide it.

This and other emerging global crime problems have elicited a series of national and regional actions in accordance with needs and the political will to respond, but ultimately they will require global consensus and responses, and the Commission is the logical forum for the necessary deliberations.[10] With respect to crimes propagated by or committed using modern transportation and communications technologies, the interests and objectives of individual Member States have shifted from purely domestic responses to crime to ensuring that their own nationals and residents do not commit crimes against victims in other countries and pressuring and encouraging other countries to reciprocate. More generally, even when crime in one Member State may not explicitly engage the interests of other States, it is now recognised that in a global environment, almost any form of crime, and especially forms such as organized crime and corruption, affect such interests indirectly as matters of global or regional security, stability and prosperity. Purely domestic organised crime, corruption, economic frauds, trafficking in narcotic drugs, firearms and other weapons, and trafficking in persons have all been cited as factors in destabilising individual States and interfering with travel, trade and commerce and other global interests.

I also maintain that, as a standing body, the Commission and its Secretariat represent an important opportunity and excellent value in an era of scarce

[10] Pursuant to General Assembly Resolution 65/230 of 21 December 2010, an open ended intergovernmental expert group established to study the subject-matter of cybercrime commenced its work in January of 2011. I serve as the Rapporteur of that group, which reports to the Crime Commission. In this book, I take no position on any of the issues before the group. It is merely suggested here that the Crime Commission and subordinate bodies such as the open-ended intergovernmental expert group in this case are the logical *fora* in which to discuss the issue as a matter of evident global concern.

resources. While progress at the international level may be slower than at the national level, States at all levels of development and with most if not all approaches to law and governance share a fundamental interest in preventing and suppressing crime. This often makes consensus possible on crime issues that may not be possible in other areas. This not only makes the Crime Commission a useful forum in which to seek solutions to crime problems, it also provides a convenient forum from which the beginnings of consensus on broader issues such as good governance, the rule of law and human rights may sometimes emerge. The very breadth of the crime prevention and criminal justice policy agenda also ensures that there will always be areas in which work is needed and in which consensus is possible, and in areas where criminal law is used in furtherance of other policy objectives, limited consensus may be possible on criminalisation elements even if it is out of reach on broader strategies.

THE MEANINGS OF "CRIME", "TRANSNATIONAL CRIME" AND "INTERNATIONAL CRIME": USAGE IN THIS BOOK AND WHY IT MATTERS TO THE COMMISSION

Apart from "international crime", which has acquired a meaning in international law, these terms are largely political or criminological constructs and not juridical ones. As will be seen below, what constitutes "crime" is sometimes a legal concept within a State (e.g., where it is used to allocate legislative and executive powers within a federal constitutional structure), but the underlying concept is a chaotic debate between partisan politicians, criminologists and other players, and there is no consistency among the various States. There has, however, been much confusion, both in domestic governments and among Commission delegates over the years. Whether an issue is labelled as "crime" or not often depends more on the internal institutional dynamics of the U.N. and whether a State feels it has better prospects of achieving its goals in Vienna, New York, Geneva or elsewhere and whether labelling it as "crime" will make action more palatable for other delegations, or less so. "International crime" has been slow to evolve since the closing of the Nuremburg Tribunals of 1945-46 and 1946-49, but as it re-emerges as a viable concept in the wake of the atrocities of Yugoslavia, Sierra Leone and Rwanda and increasing pressure for supra-national accountability when domestic accountability fails, there has also been confusion with the more pragmatic – and less controversial – work of the Crime Commission.

(i) What is "crime"?

In any discussion of this nature, some clarity with respect to the terms "crime", "transnational crime" and "international crime" is needed. Even within States, there is often no consensus on these terms or the underlying concepts, which are fundamental to the mandates of the Commission, its *raisons d'être*, and the nature and scope of its work in general and as it unfolds from one session to the next.

Regarding "crime", most experts and Member States would agree on a functional definition or description based on the key factors that crime must be some form of conduct which can be defined by law and labelled as "crime" and which the State using the label chooses to deter and punish through the application of judicial penal sanctions. Beyond this, however, many of the abstract academic and philosophical debates about whether the purpose of criminal offences and criminal law should be based on religious, cultural or other constructions of morality; on more functional concepts such as the

causation of harm or preservation of social order; on political considerations; or on the protection or preservation of specific interests, [11] assume a very real and pragmatic significance in the multilateral Commission, because many of the assumptions that underlie these debates within a State or culture are by no means common to all of the participating delegations.

What may at first impression appear to be merely practical differences of approach to legislative drafting, law enforcement or criminal procedure are sometimes in reality manifestations of much more fundamental differences concerning what criminal law is and why it exists, and can be rooted in ancient, recent or ongoing historical developments of the State concerned. Elements of common law, civil law and Islamic law which first arose as long as 2,000 years ago remain influential, as do many of the religious, cultural and political developments that have taken place over centuries and decades, ranging from the English Magna Carta of 1215 and the gradual emergence of modern concepts of constitutionalism, the rule of law and human rights during the nineteenth and twentieth centuries to differences over nineteenth century colonialism and the rise and fall of German national socialism and the Soviet concept of "socialist legalism" in the twentieth century.[12]

Many examples of such differences and how they manifest themselves at the Commission have arisen over the past two decades.[13] Some of these are major, enduring issues, but many are not as readily apparent, and while delegates are aware of their superficial differences, the underlying gaps often escape notice. For example, the debate over whether terrorism should be included as a form of "crime" or not has arisen many times in the Commission, the negotiation of the Palermo Convention and in many other *fora* in which the subject-matter of terrorism itself has been discussed.[14] Some of the issues arise from the ongoing

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[11] Sources on the philosophical and other underpinnings of criminal law and punishment are legion and beyond the scope of this book. A useful summary may be found in Ashworth, 5th ed., 2006.

[12] Reviews of the twentieth century events and their effects on the rule of law and approaches to criminal law and procedure can be found in Tolley, 1994, chapter 4, and Müller, 1987, English translation (D.L. Schneider), 1991.

[13] For a description of early debates between WEOG and Eastern European States on the basis of crime and criminal justice and the implications on where it would be dealt with in the U.N. , if at all, see Prof. Clark's description of debates at the seventh (August 1949) ECOSOC session, Clarke, 1994, chapter 1 at pp. 10-15. Generally, Soviet States regarded crime as much more of a political matter, and aware of western dismissal of this idea, defended it as a purely domestic issue not appropriate for the U.N.

[14] Whether to include terrorism as a form of transnational crime in the Palermo Convention, and if not, how best to use the Convention against terrorism and how it fit within the context of other anti-terrorism initiatives was a major issue during the negotiation of the Convention. See Article 2, paragraph (a), which excludes groups not seeking any "financial or other material benefit" from the definition of "organised criminal group", the final report of the General Assembly Committee that produced the Convention, U.N. document A/55/383, at paragraph 89, and the agreed notes for the *Travaux Préparatoires*, A/55/383/Add.1, at paragraph 7 (scope of application of the Convention).

political debates and conflicts in the Middle East and other regions, but they also arise from different points of view regarding fundamental issues such as the equality of individuals and States before the law, whether sovereign States should be bound by their own laws, the extent to which the criminal law should be used to protect the State and its essential interests, the use of crime and crime-control or law enforcement measures for political ends, and the extent to which activities normally considered to be crimes can be justified by oppression, discrimination and other grievances.

Regarding crime in general, States which embody large religious or ethno-cultural majorities tend toward concepts of crime based on shared moral values, while States with more pluralistic and secular societies are more likely to follow social models which limit the scope of criminal law to offences and powers needed to prevent and punish specific harms. Formerly the preserve of politicians and academics at the national level and of diplomats at the international level, some of these debates have taken on a new life and vigour as the advent of the Internet and other communications media have enabled entire populations to engage in them, as the political transformations of 2011 in the Middle East illustrate.

Such political transformation is not a matter for the Commission, but the underlying philosophical differences and the dynamic effects of globalisation and technologies do have significant effects on views about the meaning and scope of "crime". Human rights and other fundamental values are often rooted in constitutional or fundamental laws, with criminal law coterminous, but also subordinate to them, in the sense that concepts of what can or should be criminalized ends where the protection of constitutional rights begins. The right to freedom of expression or speech illustrates this well, but a similar dynamic arises with respect to other rights and other crimes. Many countries which define themselves as "Islamic States" either by constitution or culture consider some forms of expression as criminal blasphemy, for example, whereas those with more diverse populations have found it necessary to allow for dialogue among religions and between religious and secular communities and have tended to curtail the scope of criminalization in favour of constitutional or other protections of free speech or expression.

Even in States where the dominance of free expression and discourse is clear, there are differences on the extent to which it can be curtailed and the justifications, if any for such curtailment. The views of the United States of America and its nationals and delegations on the scope of some forms of crime are established largely by that country's First Amendment protection of "free speech" and prohibition of "prior restraint", for example, whereas the views of nationals and delegates of most States from Western Europe, whose post-war constitutions contain more circumscribed concepts of "free expression" rights tend to have broader views of what is, or could be, within the scope of the criminal law. U.S. law allows for the criminalization of speech if and only if it specifically and directly advocates violence or constitutes clear incitement to commit other offences, going beyond indirect or abstract advocacy or offensive

opinion.[15] German constitutional and criminal law also protects free expression, but Germany can and does criminalise and prosecute what it considers to be abuses of fact, such as Holocaust-denial, and opinion which is less directly linked to violence, subversion. In the U.S., burning a cross on someone's lawn is not a crime, and neo-Nazi political extremists can march or demonstrate as they please,[16] while posting swastikas or other political and military symbols of the national socialist era in Germany is a crime, if the context links them to political expression. In some circumstances, the German offences extend to expression which originates outside of its territory but is directed to, received in or has effects in Germany.[17]

While most States which protect the freedoms of religion, association and expression as fundamental values would agree that blasphemy and religious defamation offences could not be used based on the justification of promoting or protecting one religion by the suppression of others, recent developments such as the global reactions to the public burning of a copy of the Qur'an in the United States and the publication of cartoon depictions of the Islamic Prophet in Denmark have given harm-based justifications new attention.[18] To use the

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[15] Brandenburg v. Ohio, 395 U.S. 444 (at 447), U.S. Supreme Court, 9 June, 1969.

[16] Brandenburg v. Ohio, previous note, and Collin. v. Smith, 578 F.2d 1197 (1978) (7th Circ.), certiorari (leave to appeal to the U.S. Supreme Court) denied, 439 U.S. 916 (1978). See also Tribe, L., Constitutional Choices Harvard U. Press, (1st ed., 1985), chapter 13, and Decroos, M.J.L., "Criminal Jurisdiction over Transnational Speech Offences: From Unilateralism to the Application of Foreign Public Law by National Courts", 13 European Journal of Crime, Criminal Law and Criminal Justice, (2005), pp. 365-400.

[17] See: Brugger, W. "The Treatment of Hate Speech in German Constitutional Law", (2002) 3 German Law Journal (online), available at http://www.germanlawjournal.com/index.php?pageID=11&artID=212 , staff article "Federal Court of Justice (BGH) Convicts Foreigner for Internet Posted Incitement to Racial Hatred", (2001) 2 German Law Journal (online), http://www.germanlawjournal.com/index.php?pageID=11&artID=67, Stegbauer, A., "The Ban on Right-Wing Extremist Symbols According to S.86a of the German Strafgesetzbuch (Criminal Code), 8 German Law Journal (online), pp. 173-84 available at: http://www.germanlawjournal.com/index.php?pageID=11&artID=797 , and Entscheidung "Auschwitzlüge", the Judgment in the "Auschwitz Lie" Case of 13 April 1994, Reports of the Federal Constitutional Court (Appeal Chamber) (Entscheidungen des Bundesverfassungsgerichts), BVerfGE, vol.90, pp. 241-255. Full German-language judgments of the BverfG prior to 1998 are not available on-line, but an English summary of the case can be found at: http://www.utexas.edu/law/academics/centers/transnational/work_new/german/case.php?id=621. See also, Finer, Bogdanor, and Rudden, 1995, chapter 2 at pp. 35-39.

[18] See: "Afghans avenge Florida Koran burning, killing 12", New York Times, 2 April, 2011, which reports on the killing of 12 persons, at least 7 of them U.N. workers (and none of them U.S. nationals), following the public burning of a copy of the Qur'an by a U.S. extremist and the broadcast of the event on-line. The article notes that: "... Unable to find Americans on whom to vent their anger, the mob turned instead on the next-best symbol of Western intrusion — the nearby United Nations headquarters. 'Some of our colleagues were just hunted down,' said a spokesman for the United Nations Assistance Mission in Afghanistan ...". A reprint appears on-line at: http://www.nytimes.com/2011/04/02/world/asia/02afghanistan.html?pagewanted=all. For a discussion of the subsequent U.S. debate of the boundary between free speech and actions which cause harm or put U.S. soldiers and others at risk, see also:

famous 1919 illustration of U.S. Supreme Court Justice Oliver Wendell Holmes that the First Amendment would not protect the (false) cry of "fire" in a crowded theatre, one wonders what the reaction would be (in the United States or elsewhere) to false disclosures or other conduct which was provocative and had little expressive value if it was intended to destabilise peacekeeping operations or provoke attacks on civilians.

The debate over hate-propaganda is probably the most prominent recent illustration of the effects of national history and culture on fundamental law and crime prevention and criminal justice, but it is an illustration of a much broader issue for the Commission and not an isolated example. The relationship between free expression and crime has arisen mostly in deliberations dealing with cybercrime and Internet issues which have thus far taken place outside of the Commission, but fundamental differences of philosophy, culture, governance influence deliberations on almost every issue. Different approaches to the rule of law may influence positions in the negotiation of responses to crime where some States envisage administrative actions while others look to legislation, for example, or to different positions on whether emerging crime problems such as cybercrime or identity crime require specific new offences or the enhanced application of pre-existing, more general offences. The positions of States with federal constitutional structures can also be influenced by the extent to which crime in general or a specific problem under discussion is a matter for the federal government or regional or local ones.

Beyond such profound issues lies a welter of specific differences that depend on how each State uses offences and punishments as instruments of social, economic or other policies, and whether it draws the line between criminal justice and other measures based on the nature of the underlying policy or on the nature of the laws used to accomplish it. A recurring illustration of this is the enforcement of copyright, patent and other intellectual property interests, which some States treat as "criminal law", some treat as regulatory or non-criminal schemes that may use, *inter alia*, offences and punishments, and others may regard as purely a civil matter between those owning the property interests and those who use them without authorization.

This range of underlying differences about the concept of "crime" and its nature and scope constantly influence the practical deliberations of the Commission in ways which are not always evident to the participants, but may nonetheless constitute one of its greatest values to the international community. In bringing to light such differences and helping to disseminate different concepts of crime, the Commission has served both as a forum for developing consensus on areas of crime where this is possible, for working out practical means of cooperation and coordination of laws and policies where goals may be shared even if underlying concepts or policies are not, and by making

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Catapano, P., "Freedom to Inflame", N.Y. Times online, 8 April 2011 at: http://opinionator.blogs.nytimes.com/2011/04/08/freedom-to-inflame/?ref=terryjonespastor .

unilateral or exceptional concepts of and approaches to crime clear to all. Speaking of the United Kingdom, Prof. Ashworth observes that:[19]

> ... The main determinants of criminalization continue to be political opportunism and power, both linked to the political culture of the country. The contours of the criminal law are not given but politically contingent. Seemingly objective criteria such as harm, wrongdoing and offence may tend to melt into political ideologies of the time ..."

To the extent that this is true, the Commission serves two purposes. It helps to inform each State about what the scope, extent and "determinants" of crime are in other States at any given time, and in so doing it becomes itself one of those "determinants" by exposing the political culture of each State to the culture – or at any rate their effects on crime prevention and criminal justice – of all of the others. By showing what is possible and effective it creates positive incentives and by showing what is ineffective or politically or morally repugnant to others it creates negative ones, but in either case the net effect is to gradually form a consensus platform for collective global actions and for coordinated domestic actions for the prevention and suppression of crime. In building consensus as to what should be seen as "crime" and what should not, it also provides a valuable service in helping to situate its own work within the context of other subject areas and more general global deliberations and strategies. Whether one considers terrorism as "crime" or not, for example, is ultimately less important than finding as much consensus as possible on what the problem actually is in factual terms, what should be done about it, and ensuring that whatever is done about it is done coherently with other adjacent policies in areas such as security, human rights, and crime in general.

(ii) Crime as a human rights, social, development and security issue

The right to make and enforce penal law has been regarded as matter for States from the time basic concepts of sovereignty and law itself first emerged. In the first decades of the twentieth century, some international focus arose out of humanitarian and human rights concerns with respect to the treatment of prisoners. As the U.N. was founded and began to evolve, however, broader concepts of human rights, including the rights of persons accused of crimes, and eventually the rights of victims and other participants in criminal justice proceedings, gradually emerged. From the early years of the U.N., there were also debates about whether crime problems should be left to the exclusive authority of the Member States or whether they fell within the competence of the General Assembly and its new subsidiary bodies as economic and social matters.

Most of the fundamental concepts on which the U.N. itself have evolved significantly since it was formed, and this process can be assessed subject-by-subject, but it can also be seen in terms of common underlying elements and

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[19] Ashworth, 2006, chapter 2 at pp. 2-3, citing also MacCormick, D.N., *Legal Right and Social Democracy*, Oxford U. Press, 1982 at p. 30.

dynamic forces which produced similar developments or a parallel evolution across all of the specific elements. As transportation and communication capacities have expanded, national activities have become increasingly interdependent, giving each individual State steadily increasing interests in what were previously purely-domestic social, political, economic and cultural matters in other States. This in turn transformed early models of development assistance based on ad-hoc efforts driven by general altruism and/or specific national interests, into broader and more strategic efforts based on much longer time-lines, coordination among different donors or providers, local ownership and participation, content based on assessed needs, and general principles such as sustainability. This evolution influenced thinking about crime in many of the same specific ways as it did human rights, good governance, commercial and economic development, and other areas, but it also did so through the realisation that many specific areas of development were interdependent, and that the rule of law and effective criminal justice systems were a precondition to development in other areas and therefore an essential and often early element in comprehensive and long-term development strategies.

Changing perceptions of crime were also influenced by the fact that the understanding of the nature of crime itself also evolved significantly in the decades prior to and after the founding of the United Nations. Starting in the late nineteenth century, various attempts to study the problem of crime scientifically in a number of States shifted perceptions away from early "classical" approaches which saw crime purely as an individual moral failure to be punished and deterred on an ad-hoc basis, to models based on anthropological, ecological, epidemiological, neurological, psychological, social, economic and ultimately political science principles, and to the birth and status of modern criminology as a social science. This study and debate continues, but at a fundamental level, it transformed the understanding of crime. By establishing the objective existence and importance of the effects of both internal biological and psychological factors and the social environments of offenders, it gave rise to principles which could – and as evidence accumulated, plainly did – apply in the same way in different States. As with other scientific disciplines, it also forged international relationships between academic experts, making the early U.N. Crime Congresses something closer to academic symposia than the intergovernmental meetings they have become. While local cultural, historical and other factors also had, and still have, to be taken into consideration, the appreciation that lessons learned in one country could be applied successfully in another made crime prevention and criminal justice a global issue for criminologists several decades before the more tangible effects of crime on accelerating globalisation forced reluctant politicians in many countries to the same conclusion.[20] As discussed below, this

[20] Among the more active States have been the academic communities in Italy, the United Kingdom, and the United States. Most modern criminology textbooks trace the evolution of the study of crime through this period, citing the transformation from individual and moral "classical" thinking to "positivist" approaches based on the scientific and fact-based study of offenders themselves, and then onto the more complex approaches based on the way

had both policy and institutional implications in determining whether the U.N. should deal with crime prevention and criminal justice matters at all, and if so, where.[21]

In the two decades since the Commission was established, Member States have begun to take crime much more seriously. Globalisation has increased the prevalence and variety of crime, and the interdependence of global social and economic systems has at the same time increased the seriousness of its effects and expanded the geographical and structural scope of those effects. The traditional view of crime as a social issue was based on implicit assumptions that it threatened people and not the State itself, and experiences of experts in States this was generally true and in which effective actions to prevent and suppress crime could be taken wholly or largely within the State's territorial jurisdiction. Globalisation radically changed this, by transforming the nature or dynamic of crime itself, the interests it threatened, and the nature and scope of the countermeasures needed to respond to it effectively. In truth, extensive corruption, organized crime and other such problems always could and sometimes did threaten and largely compromise the security of individual States, but international security interests were not sufficiently threatened by it.

This began to change more quickly in the mid-1980s as consensus built towards what would eventually become the Palermo Convention, based on the assessment that transnational organized crime was "... a threat to the internal security and stability of sovereign States..." with "... effects on national economies, the global financial system, and the rule of law and fundamental social values."[22] By the end of the 1990's the perception of transnational organized crime had changed to the point where it could be said that:[23]

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individuals interact with their social environments and so-called "radical" or "critical" approaches that looked as much at what – and who - societies and governments chose to criminalise as the acts of offenders themselves. Significantly, the evolution of criminology beyond positivism and its acceptance as a social science by academics (if not always by politicians) gained substantial momentum about two decades before the U.N. was founded and was a significant factor in the early consideration of crime in the U.N., and at the early Crime Congresses. See generally, Rock, P. (ed.) 1988, and Garland, D., "Of Crimes and Criminals: The Development of Criminology in Britain", *Oxford Handbook of Criminology*, 1st ed., 1994, Part I, pp. 17-68. Concerning the role of academic criminologists in early U.N. processes, see Hall-Williams, 1961 and Lòpez-Rey, 1978.

[21] For more detailed review of the evolution of concepts of crime in the U.N., see the segment discussing the establishment, history and nature of the Crime Commission, below, and sources there cited, including Clark, 1994, chapt.1-3 at pp. 19-23; Clifford, 1978; and Lòpez-Rey, 1978.

[22] *Naples Political Declaration and Global Action Plan Against Organized Transnational Crime* A/49/748, Annex, one of the primary precursor documents of the subsequent Convention negotiations. See also A/RES/51/60 of 12 December 1996.

[23] Godson, R., and Williams, P., "Strengthening cooperation against transnational crime: a new security imperative" in Williams, and Vlassis, 2001, pp. 321-355 at p. 327.

> The emergence of these [organized criminal] groups and their increasing capabilities in a world of states is a broad and direct challenge to governability, national sovereignty, and international security. The threat, however, lacks the highly visible state-centric profile of a conventional military threat. This does not mean that organized crime is a marginal phenomenon. Like insurrectionists, members of transnational criminal organizations are largely indistinguishable from civilian populations. Their activities undermine the fibres of society, its economic and financial structure, its polity and its physical security, but do so in ways that only become apparent when the process is well advanced and therefore more difficult to counter.

The new threats posed by transnational crime in general, and specific forms of transnational organized crime began to effect regional and global security interests at about the same time as the end of the Cold War and other globalisation related developments triggered an expansion of security concepts into what have been described as "non-traditional" security areas such as food production, environmental issues, individual or "human security", and the domestic and international effects of crime.[24] Added to this was the impetus generated by the Member States to use criminal law and justice policies and programmes to address specific aspects of policy areas such as terrorism, which had clear regional and global security aspects, and other policy areas, such as the protection of the environment or the incorporation of anti-corruption and rule of law elements into development assistance projects, which were among the emerging "non-traditional" security issues and which attracted the interest and engagement of political interests and substance experts from outside of the traditional scope of Commission delegations.

The effect is that crime it is now seen in a much broader and more contextual perspective. The decision to establish the Commission was an important recognition that crime was an expert discipline in its own right, but at the same time, connections between the work on crime and development, human rights, protection of the environment, traditional and other non-traditional security interests is stronger than ever before. Effective criminal justice systems are now regarded as an essential element of good governance, and as a key element in establishing and protecting the rule of law, human rights and human security and as a platform for protecting development and other processes and for implementing a wide range of other policy goals. Anti-corruption efforts have linked crime prevention and criminal justice work to broader development assistance agendas, and anti-terrorism work has established similar links to national, regional and international security agendas.

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[24] See: Spector, B., and Wolf, A., "Negotiating Security: New Goals, Changed Process", *International Negotiation*, Vol.5, pp. 411-25 (2000) and Mathews, J.T., "Redefining Security" (1989) *Foreign Affairs* Vol. 68(2), pp. 162-177 (environmental issues). See also Clark, 1994, chapter 2 at pp. 31-32, describing discussions of many of the same non-traditional security issues in the 1991 process leading to the establishment of the Commission itself.

As with any subject matter in the U.N., the shifting conceptualisation of crime has institutional implications, although these have changed as the U.N. itself has matured. The post-war concepts of "international" peace and security on which the U.N. was originally founded have become considerably more nuanced in an era of globalization, interdependence and non-State and asymmetrical conflict and security scenarios, and as above, the meaning and scope of "security" itself has changed significantly. The United Nations Charter itself speaks only of "international peace and security", from which it distinguishes other matters of humanitarian, social, economic affairs and human rights, and envisages an organization which would address primarily issues relating to security and other concerns between and among the Member States while avoiding matters "essentially within the domestic jurisdiction" of the States themselves.[25] The creation of a "Security Council" was intended to address matters of peace and security at the international level, and while specific powers are conferred on the Council, it is clear that these do not derogate from or extinguish the plenary substantive authorities of the General Assembly, with the exception of a specific "dispute or situation" while it is actually before the Council. The General Assembly, and within their mandates, its subsidiary bodies, may deal with all matters within the scope of the *Charter*, including peace and security matters not specifically before the Council.[26]

Whether one regards the new security aspects of crime as an expansion of work on "social" or "human rights" matters or as an expansion of the concept of "security" based on the erosion of the demarcation between problems with an international aspect and problems which are purely domestic concerns, the basic mandate of the Assembly and the Commission to deal with them is not affected. While the early concepts of "crime" led to questions about where the Crime Commission and its predecessors should fit within the U.N. organizational chart, the recognition that crime prevention and criminal justice is itself a distinct discipline has shifted the challenge from one of institutional organization to one more concerned with the coordination of thematic and substantive expertise. It has become clear that crime is not merely a human rights or social issue, but an element of virtually every aspect of international discourse and the work of the U.N. itself, and that it cannot and should not be isolated from essential work on fundamental matters such as good governance, rule of law and human rights. The idea that crime and responses to crime raised primarily domestic issues and was exclusively within the jurisdiction of individual States, while still intact, has been steadily eroded both directly by the globalisation of crime itself and indirectly by the emergence of social and economic interdependence and the consequent focus on matters such as development assistance and post-conflict and other reconstruction. Even to the

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[25] Charter of the United Nations (deposited in the archives of the Government of the United States of America). San Francisco, 26 June 1945, Article 1 and Article 2, paragraph 7 (hereinafter "U.N. Charter").

[26] U.N. Charter, Chapter IV, Articles 10-15 (General Assembly) and Chapters IX and X (Economic and Social Cooperation and ECOSOC).

extent that some crime remains largely a problem within a particular Member State, the Commission and Secretariat are mandated to provide assistance when it is requested, and economic, humanitarian, regional stability and security interests frequently motivate other Member States to support and provide resources for the necessary work.

Thus, while U.N. insiders and Member States may not always appreciate the change, the questions to be addressed are no longer matters of institutional jurisdiction and the allocation of mandates and resources. They are the much more fundamental questions of how to develop and maintain solid fundamental rule of law, human rights and criminal justice governance structures, and how to ensure that sound and proven crime prevention and criminal justice principles are integrated into the wide range of other policy areas of which they have become an element.

(iii) "International crime"

References to "International crime" in this text refer to crimes which are established by international law, are subject to universal or other international principles with respect to jurisdiction, and are generally subject to prosecution by either *ad hoc* international tribunals, such as those established by the Security Council to deal with crimes relating to the situations of Yugoslavia, Sierra Leone and Rwanda, or more recently, by the International Criminal Court under the Rome Statute.[27] These seldom come before the Crime Commission or the U.N. Office on Drugs and Crime, although some of the U.N. Programme Network Institutes have dealt with them,[28] but they nevertheless have an influence on what the Commission does and may be called upon to do in the future. While the fundamental differences may arise from the fact that conduct criminalised by the international community reflects the higher degree of denunciation warranted by war crimes and crimes against humanity, the actual conduct involved is often also addressed by conventional concepts of crime and by domestic criminal offences which may be coterminous or included within international crimes.

Apart from questions of demarcation between murder, mass-murder and genocide, there are also questions of procedural and institutional overlap. As noted above, practical considerations and the Rome Statute both favour the use

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[27] On this subject, see Cassese, A., "The Rationale for International Criminal Justice", and Bassiouni, M.C., "International Criminal Justice in Historical Perspective: The Tension Between States' Interests and the Pursuit of International Criminal Justice", both in Cassese, A., *The Oxford Companion to International Criminal Justice*, Oxford University Press, 2009, at pp. 123-1340 and 131-142, respectively.

[28] The Canadian Government has supported joint work by the Vancouver-based International Centre for Criminal Law Reform and Criminal Justice Policy and the Montreal-based International Centre for Human Rights and Democratic Development in support of the International Criminal Court, and ICCLR has engaged in projects in the same area. See: ICCLR-ICHRDD, International Criminal Court: Manual for the Ratification and Implementation of the Rome Statute 3rd ed., 2008): http://www.icclr.law.ubc.ca/Site%20Map/Programs/ICC.htm.

of domestic criminal offences and criminal justice proceedings over international proceedings where possible. The Statute establishes criminal offences itself and does not expressly require States Parties to adopt parallel offences or incorporate the international ones into domestic law, but creates procedural and jurisdictional incentives to do so. Older international legal instruments, such as the Convention against Torture,[29] operate by requiring the States Parties to adopt the requisite offences in domestic criminal law and apply appropriate degrees of extraterritorial or universal jurisdiction in their domestic tribunals. Institutionally, most of these instruments have been developed in bodies or processes established outside of the Commission on the basis that they enforce human rights standards (freedom from torture), International Humanitarian Law (Rome Statute) international peace and security requirements (most of the terrorism instruments) or consist of criminal law elements of other policy areas such as aviation offences or piracy and other maritime offences. Decisions about where such subject matter should be dealt with often come down to historical factors, tactical or "forum-shopping" decisions among the Member States, or competition within elements of the U.N. Secretariat.

Some of the same political pressures apply to international crimes as to domestic ones, however, and this has direct and potential effects on the work of the Commission. To the extent that the basis for international crime is seen as a greater degree of denunciation, there will always be pressures to enhance the denunciation of a problem by escalating it from the domestic to the international levels. To the extent that international criminal law may be imposed upon or applied to acts within a jurisdiction which does not consent, there may also be pressures to expand international criminal law into areas where the less-draconian means of dealing with transnational crime have not proven sufficient or productive. Such arguments are occasionally made, and are thus far not very influential because of the much greater counter-pressures of national sovereignty, but this may change over time if the balance shifts. The international community generally (albeit in some cases still grudgingly) accepts the idea that a person who has committed genocide or serious war crimes should face prosecution and punishment in the Hague, but is far from accepting the idea that those who commit more conventional offences such as economic frauds or cybercrime offences should be dealt with this way, even if they may be unlikely to face justice in the places from which they commit crimes. Between this lies a grey area occupied by conduct such as torture, terrorism and elements of corruption or organized crime that threaten State integrity or security. In more immediate terms, some subject matter, such as terrorism, has been raised in the Commission in an attempt to either re-define or re-frame the issue, or in the hope that labelling it as "crime" might permit progress in Vienna that has not been possible elsewhere.

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[29] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNTS No.24841, Vol.1465, p. 85, adopted by the General Assembly as A/RES/39/46, 10 December 1984 (in force 26 June 1987).

(iv) "Transnational crime"

The term "transnational crime", as has been noted, is not a juridical one,[30] but a practical label used to designate crimes which either occur in more than one State, or which have significant elements, such as offenders, victims, evidence, or effects, in more than one State, such that they give rise to incentives to respond on the part of more than one State and hence, at the international level. At a political level, the major reason for not constructing a legal definition has been the breadth of the phenomenon the term describes, particularly in the era of globalization, in which telecommunications media can be used to commit the same crime, in whole or part, in many different places at once. The concept also has sovereignty and jurisdictional implications, in the sense that a domestic law criminalising some form of transnational conduct would generally be seen has having some degree of extraterritorial effect. Negotiators and drafters have tended to focus definitions of crime and of specific offences on conduct and circumstances, and leave questions of transnationality to jurisdictional provisions. Clearly this has not precluded the development of offences and of jurisdictional principles allowing States to adjudicate crimes which have effects in their territories or which are committed there in some part – many such offences and jurisdictional principles were established during the twentieth century – but it has made many States very reluctant to deal with transnational crime at a general level.

A range of specific approaches has been taken. The Conventions of 1961, 1971 and 1988 dealing with narcotic drugs and psychotropic substances clearly envisage "trafficking" and "the traffic in" proscribed drugs and substances as being transnational in nature, but they address it by requiring the States Parties to criminalize a specific series of activities of which some, such as "cultivation" are inherently domestic, some, such as "distribution, sale, delivery or ... transport" might occur within or between States, and only two, "importation and exportation" are inherently transnational in nature.[31] The 2000 Palermo Convention defines "transnational in nature", but does so for the purpose of limiting the scope of application to the sort of offences for which its international cooperation provisions would actually be required. The Convention also provides that, in adopting the domestic offences needed to implement its criminalisation requirements, States should ensure that these not

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[30] Mueller, G.O.W. "Transnational Crime: Definitions and Concepts", in Williams, P., and Vlassis, D. (eds.) *Combating Transnational Crime*, U.N. International Scientific and Professional Advisory Council (ISPAC), 2001, pp. 13-21. For a more detailed list, see also Williams, P. "Organizing Transnational Crime: Networks, Markets and Hierarchies", in the same volume, pp. 57-87 at 60-65.

[31] See, e.g., *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, UNDCP, 1988, E/CN.7/590, U.N. Sales No. E.98.XI.5, pp. 48-61, paras.3.1-3.40 (offences) and pp. 100- 116, paras. 4.1-4.40 (jurisdiction), and the Convention itself, E/CONF.82/15, and E/CONF.82/15/Corr.1 and Corr.2, *UNTS*, Vol. 1582, p. 95, No. 27627 (11 November 1990), Articles 3 and 4.

require any element of transnationality unless the contrary is required.[32] The intention is that these requirements be attached to applying the Convention between States and not become added requirements which would narrow the scope and effectiveness of the offences of the offences and complicate prosecutions in individual States Parties. Thus, for example, money laundering offences can be prosecuted regardless of who commits them or what State(s) might be involved, but would have to demonstrate to another State Party the added elements if requesting its cooperation under the Convention.

The four offences established by the parent Palermo Convention all operate in this manner, but two of the offences established by the Protocols do incorporate specific transnationality requirements. The primary offence of the smuggling of migrants is inherently transnational based on an underlying transnational concept of "migrant" and migration, and thus requires the procurement of the illegal entry of the migrant into a State Party, leaving questions of internal migration to each State Party. The primary offence of illicit trafficking in firearms covers a wider range of activities, including importing and exporting, but also such acts as delivery, transfer and movement, but then limits these to forms of movement through or from the territory of one State Party to that of another State Party. This resulted, in part, from the range of positions taken by delegations on domestic gun control policies and related offences. While there was consensus that offences such as money-laundering and trafficking in persons should be equally culpable and subject to adjudication whether committed inside a State or from one State to another, there was no similar consensus with respect to criminalizing domestic firearms trafficking activities, apart from specific provisions against illicit manufacturing and the alteration or removal of serial numbers.

Clearly, it is "transnational crime" that has proven most problematic in the context of globalisation and has dominated discussions at the Crime Commission since its inception in 1992, although the mandates also extend to purely domestic crime "within" a Member State. Transnationality is not usually an element of an offence or legal definition as much as it is a description of the way a specific offence is committed or of a trend or pattern in offending. Fraud, for example, is often committed transnationally because it can be committed using communications media, but there is nothing inherently "transnational" in a crime based on the dishonest deprivation of victims and enrichment of offenders. Elements of transnationality may not become apparent, if ever, until after an offence has been fully investigated, and crimes that are purely domestic in their definition and in their commission can still raise international concerns. High crime rates or spectacular incidents can threaten transnational tourism revenues, for example, and social or economic instabilities resulting from domestic corruption or other crime problems can

[32] Palermo Convention, A/RES/55/25, Annex I, *UNTS* #39574, vol.2225 p.209, at Article 3, paragraph 2, defining "transnational in nature and Article 34, paragraph 2, requiring that offences be established in domestic law independently of transnationality or the involvement of an organized criminal group.

weaken the ability of a State and its government to negotiate or represent its interests effectively in international *fora*. Major crime problems such as drug trafficking and corruption may take on new criminological dimensions arising from their scope, magnitude and the difficulty of suppressing them at the domestic level as a result of transnationality, but ultimately the effects of corruption on sustainable development are the same whether it originates at home or abroad, and the same can be said of its effects on members of the population.

The fact that the concept of transnationality is more criminological than juridical has important implications in the context of Commission proceedings, but it is not an obstacle. Member States approach the Secretariat or raise crime problems in the Commission for different reasons depending on transnationality. States usually raise purely domestic crime, often with some reluctance, to ascertain whether other States have encountered the same problems and developed solutions, and most commonly, to seek technical assistance in the form of expertise, resources or both. Transnational crime, on the other hand, is usually raised because the States which have problems with it have concluded that the problems cannot be fully addressed at the domestic level and require some form of coordinated international response, both in terms of sharing information, raising awareness and building consensus, and through political resolutions or "hard-law" or "soft-law" instruments setting out the action to be taken and requiring or urging Member States to take it.

ESTABLISHMENT, HISTORY AND NATURE OF THE U.N. CRIME COMMISSION

In the area of crime prevention and criminal justice, developments since the establishment of the United Nations in 1946 have been largely driven by the same two countervailing pressures. While the Member States have continued to defend sovereignty and the autonomy of their political, legislative and criminal justice systems on the one hand, they have been driven on the other hand in the direction of ever more extensive cooperation and the sorts of coordinated laws and procedures needed to support it by the constant expansion and proliferation of transnational crime and the need to protect the beneficial aspects of globalization from both transnational and domestic crime.

As a general rule, anti-crime measures have tended to commence with specific issues in areas where the seriousness of a specific problem has overcome the more general sovereignty concerns and political counter-pressures, and then tended to condense as Member States begin to transfer lessons learned in one area to others and to link projects or processes where possible to avoid unnecessary inconsistencies and duplication of effort. The more specific and narrowly-focused an issue is, the more likely it is that consensus will form to take some sort of action, and that the action will be more forceful, up to the point of binding international legal instruments. Thus can be seen in the history of transnational organized crime and trafficking in narcotic drugs, where both the formation of political bodies and the development of legal instruments starts first with the specific and then proceeds to the more general.

Organized crime has always had transnational aspects. It propagated with the population migrations of the late nineteenth and early twentieth centuries, but was regarded as a largely domestic criminal justice issue in the States where it occurred and most of its illicit activities took place at the domestic level. The transnational nature of the illicit global trade in narcotic drugs could not be ignored, however, and the first of the two U.N. standing anti-crime bodies, the Commission on Narcotic Drugs (CND), was created in 1946[33] by the Economic and Social Council, only one month after the U.N. and the ECOSOC were themselves established and less than a year after the Charter of the United Nations came into force. Treaty-making activities started long before the birth of the U.N. itself: a total of ten instruments incorporating six pre-U.N. treaties dating back as far as January of 1912 were adopted by the General Assembly at its first Session in 1946, and nine more instruments have been adopted since then, including the Conventions of 1961, 1971 and 1988, which expanded the scope of the subject matter by including non-drug psychotropics and gave the Commission functions which included reviewing the implementation and functioning of the instruments themselves.

[33] E/RES/1946/9, adopted on 15 February 1946.

The specific nature of the problems posed by the trade in narcotic drugs supported consensus on the existence of the Commission, the elaboration and implementation of the various treaties and the commitment of substantial resources in this area decades before the formation of the Crime Commission, which deals with crime in general. At the time the Commission was formed there was discussion of some sort of general U.N. crime convention that would either consolidate all of the existing legal and normative standards or serve as a more general framework for international cooperation, and the same issue was raised on several occasions in the various Crime Congresses,[34] but the breadth of such a project made it unsustainable. Apart from the sheer size and scope of such an instrument and the negotiations needed to produce it, it would have been impeded by the debate over whether to include many specific types of crime to which one Member State or another objected, the fact that it would have had to have been open-ended to include new forms of crime, and by fundamental disagreements over the basic nature and purpose of criminal law and criminal justice measures. The more an instrument contains, the less likely it is to find consensus, and this did not emerge in respect of crime until the development of the Palermo Convention in the late 1990s. Even that does not address crime in general, but only crime which is "transnational in nature" and involves an "organized criminal group", and whether it should apply to all such crime or only to a list of specific crimes was a major issue in the negotiations. CND, of course, also addresses a subject area in which criminal offences and criminal justice measures are used to deal with what is to a large degree also a public health issue, which is one major reason why Member States have resisted proposals to merge the two bodies over the years, but common subject-matter, such as money-laundering, has gradually shifted from the specific to the general as consensus permits.[35]

In keeping with its more general scope, the Commission on Crime Prevention and Criminal Justice, which covers a much wider and more open-ended range of subject-matter, evolved much more gradually in the form of a series of political resolutions as opposed to binding international legal instruments.[36] While the challenge of trafficking in narcotic drugs represented a fairly clear problem and priority, the prevention and control of crime posed more of a challenge for the nascent U.N., not the least of which was the meaning of "crime" itself and the extent to which crime in general and specific forms of

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[34] See: Clark, 1994, chapter 2, pp. 48-53.

[35] This sort of dual aspect is a major challenge for criminal justice policy at both the domestic and international level and is discussed in more detail below.

[36] For a more detailed review of work on crime prior to the establishment of the U.N., the evolution of the Committee on Crime Prevention and Control from 1950-1991, and the 1986-91 process that led to the establishment of the Commission on Crime Prevention and Criminal Justice in 1992, see Clark, 1994, chapters 1-3, and in particular chapter 1 at pp. 19-23. See also: *Crime Prevention and Criminal Justice Newsletter*, issues 20-21, V.93-86653, available on-line (2011) at: http://www.uncjin.org/Documents/Newsletter/newsletter.html; Clifford, 1978; Cooper, 1973; Lòpez-Rey, M., 1978; and Lòpez-Rey, M., 1985.

crime were appropriate for attention at the international level and not just purely domestic matters, and these issues still remain.

There were also early questions of whether it should be dealt with as a social issue, a human rights issue and on a scientific/criminological or a legal basis, and later, during the 1970s and 1980s, the extent to which it should be treated as sustainable development or regional and global security issue. Attempts made to exclude work on crime under Article 2, paragraph 7 of the U.N. Charter as being "essentially within the jurisdiction" of the individual Member States were rejected in the 1940s in favour of dealing with it under the Social Committee, an early subsidiary body of the ECOSOC, as relating to the promotion of conditions for economic and social development and the resolution of economic and social problems within Article 55 of the Charter.[37] Human rights advocates have argued that crime was a human rights issue based on several links between human rights and criminal justice. This originated with pre-U.N. concerns about rights relating to prisoners and prison standards, then with the rights of those accused and charged with offences as they were set out in the post-war human rights instruments, and the collective rights of societies to be, to the extent possible, free of crime. [38] More recently, the range of issues has expanded to include the rights of victims, and the aspect of collective rights has included aspects of individual or human security.

Within the U.N., these positions had institutional implications and triggered debates about whether the work should be done in Vienna, Geneva or New York, and through which channels the Committee on Crime Prevention and Control should report to the General Assembly. More fundamentally, as above, they also raised the question of whether crime prevention and criminal justice matters in general had sufficient scientific or practical elements of a universal, international or transnational nature to warrant dealing with them in any U.N. body at all. There were also debates in and around the Committee about the extent to which it should be composed of scientific experts independent of the Member States, or of experts appointed by and accountable to the States themselves. Throughout the institutional evolution from 1950-1991, the reality of crime itself and the challenge it posed remained constant in its nature and evolution, and these questions remained open. As will be seen, many of them remain among the more fundamental challenges that continue to face the Commission after its first two decades.

As noted above, the general pattern is one in which the appreciation of crime as a social science matter made it a global issue for academic experts some decades before the practical effects of crime on established international subject-matter such as governance, development, human rights, rule of law, and commerce brought national governments and politicians, somewhat

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[37] Lòpez-Rey, 1978 at p. 3. See also Clark, 1994, chapter 1 at p. 15.

[38] Clark, 1994, chapter 1 at pp. 4-6, and Clark, R.S. "Human Rights and the U.N. Committee on Crime Prevention and Control", *Annals of the American Academy of Political and Social Science*, Vol. 506, pp. 68-84.

reluctantly, to the same conclusion. Looking back at the early Crime Congresses and first two decades of work on crime in the U.N., Manuel Lopez-Rey, the first Chief of the Secretariat unit responsible for the subject cited the broader contextual understandings of crime based on scientific study and the growing appreciation of crime as what he describes as a "world-wide socio-political problem" as the basis of the U.N.'s engagement:[39]

> Perhaps the time has arrived for an evaluation of United Nations activities in the prevention of crime and the treatment of offenders. After more than three decades of international action a trajectory has become evident, especially during the last two [*Kyoto, 1970 and Geneva, 1975*] congresses. There is an obvious contradiction between the pragmatic approach to the problems of crime and the assessment of crime as a world-wide socio-political problem, in which general needs and aims, power, human rights and the right to self-determination of peoples are fundamental. By stressing this contradiction the Fourth and Fifth Congresses each made a very important contribution. The necessary emphasis on a global approach will not preclude the selection of which problems of crime are to be treated as part of an international plan of action. Such an approach is in full accordance with the purposes and principles of the United Nations Charter and more particularly with the spirit and letter of its Article 55**,** as interpreted at the present juncture.

The problem of crime had been a global concern even before the U.N. itself was established, and work of an older body, the International Penal and Penitentiary Commission, was taken up by the U.N. in 1950 and allocated to a new advisory committee of experts, the Advisory Committee of Experts on the Prevention of Crime and Treatment of Offenders.[40] The same resolution also called for the convening of quinquennial Crime Congresses, and the first such Congress was held from 22 August to 3 September, 1955, in Geneva.[41] The committee was gradually expanded, and in 1971 was made an ECOSOC subsidiary and designated the Committee on Crime Prevention and Control. Further expansions and other changes followed in 1979, and in 1983, when it was directed to report directly to the ECOSOC (and not *via* the Commission on Social Development). Continuing dissatisfaction with the profile of anti-crime work eventually led to processes in 1987-89 which reviewed the entire Crime Programme and led ultimately to the dissolution of the Committee, still a body

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[39] Lòpez-Rey, 1978, at p.10, bracketed text added by the author.

[40] A/RES/415 (V) of 1 December 1950, Annex, calling for, *inter alia*, the nomination of consultative experts, from whose number would be chosen "... a small international Ad Hoc Advisory Committee of Experts ..." to advise on devising and formulating on study programmes and "... policies for international action in the field of the prevention of crime and the treatment of offenders ...".

[41] A/CONF/6/1, January 1, 1956.

of individual experts, at least in theory, and its replacement with the Commission, an intergovernmental body, in 1992.[42]

The Crime Commission was established to address concerns that the pre-existing Committee on Crime Prevention and Control 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.[43] The documentary record leading up to the establishment of the Commission and of its first two sessions suggests a general intention to mainstream work on crime prevention and criminal justice issues within the work of the U.N. in general. In addition to references to specific crime problems and possible State responses, there are many references to the need to see crime-control as a foreign aid and development issue, and to its connection with good governance elements such as human rights and the rule of law, and to the need for anti-crime measures as a regional security issue. Following several years of discussions, the General Assembly called upon the ECOSOC to establish the new Commission in December of 1991 and it was formally established by the Council at its 1992

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[42] The major resolutions of the ECOSOC and/or General Assembly include: E/RES/1086 B, of 30 July 1965 (increasing the size of the Advisory Committee); E/RES/731 (F) (XXVIII) of 30 July 1959; E/RES/830 (A) (XXXII) of 3 August 1961; E/RES/1086 (B) (XXXIX) of 30 July 1965; E/RES/1584 (L), of 21 May 1971 (further expanding the Committee, providing for appointment of experts by the ECOSOC, and calling for work on a list of priorities set out by the Fourth Congress (Kyoto, 1970)); A/RES/32/60 of 8 December 1977 (Committee members to be nominated by Member States and elected by ECOSOC on the basis of equitable geographical distribution); E/RES/1979/19 and E/RES/1979/30 of 9 May 1979; E/RES/1983/25 of 26 May 1983 (reporting of Committee directly to ECOSOC); and the sequence of ECOSOC and General Assembly Resolutions from 1986-1990 that led to the establishment of the Commission by ECOSOC following A/RES/46/152 of 18 December 1991. These were: E/RES/1986/11 (21 May 1986); E/RES/1987/53 (28 May 1987); E/RES/1988/44 (27 May 1988); E/RES/1989/69 (24 May 1989); E/RES/1990/27 (24 May 1990); A/RES/43/99 (8 December 1988); A/RES/44/72 (8 December 1989); and A/RES/45/108 (14 December 1990). The last of these convened the intergovernmental working group whose recommendation, after review by a Ministerial meeting, formed the basis of the Annex to A/RES/46/152. That resolution called upon the ECOSOC to establish the new Commission with mandates based on the Annex, and this was done by E/RES/1992/1 (6 February 1992) and E/RES/1992/22 (30 July 1992).

[43] See Note of the Secretary General transmitting the Report of the Ministerial Meeting on the Creation of an Effective Crime Prevention and Criminal Justice Programme (Paris, 21-23 November 1991), A/46/703, at paragraph 57, and Report of the Committee on Crime Prevention and Control, 1990, "The Need for the Creation of an Effective International Crime and Justice Programme", E/1990/31/Add.1. Other more specific concerns raised in the 1991 Report included the growing seriousness and globalisation/internationalisation of crime (paragraphs 43-45), the need to increase resources and ensure that crime matters were considered as a foreign aid issue by States (paragraphs 40-41 and 52-53, see also A/CONF/156/3); the need to expand and multilateralise technical assistance and cooperation (paragraph 48) and establish the new Commission as a "clearing house" for technical assistance and criminal justice information (paragraph 52, see also E/RES/1992/22, Part I, subparagraph 3(e)); and the need to expand the capacity of the Secretariat to support the new Commission and its work in these areas (paragraph 58).

organisational session on 6 February 1992.[44] Its first session, held from 21-30 April 1992, produced a draft resolution containing the comprehensive mandates of the Commission, its Secretariat and to a more limited extent, the other elements of the U.N. Crime Programme, which was adopted by the ECOSOC on July 30, 1992.[45] In the convening documents, the Commission is treated as one element of the Crime Programme, which also includes the permanent Secretariat,[46] the Crime Prevention and Criminal Justice Programme Network Institutes (PNI),[47] and the quinquennial Crime Congresses.

As above, one intended function of the Commission was the mobilization of resources from donor States for use in various crime prevention and criminal justice capacities based both on the perceived needs of the time and the substantial gap between resources used for the activities of the CND and those allocated to crime matters, and one action taken by the General Assembly in the convening Resolution was the establishment of a new Crime Prevention and Criminal Justice Fund, intended to provide a receptacle for contributed

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[44] See A/RES/45/108 of 14 December 1990 (establishment of working group), A/CONF.156/2 (report of working group), A/RES/46/152 and Annex (calling on ECOSOC to establish Commission, annexing principles and programme of action), A/49/399 and A/49/593 (ministerial meeting following up on resolution 46/152), E/RES/1992/1 (establishment of Commission), E/RES/1992/22 of 30 July 1992 (mandate of Commission), and E/1992/30, Report of the Commission at its First Session (21-30 April 1992).

[45] See the Report of the Commission at its first (April 1992) Session, E/1992/30, E/CN.15/1992/7 and E/RES/1992/22 of 30 July 1992.

[46] The Commission Secretariat became the U.N. Centre for International Crime Prevention (CICP) in 1998. In 2003 it was merged with the Secretariat for the Commission on Narcotic Drugs, the U.N. Drug Control Programme (UNDCP) to become the U.N. Office on Drugs and Crime (UNDCP).

[47] These are institutes operated under the auspices of the U.N. but funded and directed by individual Member States. They are: Australian Institute of Criminology (AIC, Canberra), the College for Criminal Law Science at the Bejing Normal University, European Institute for Crime Prevention and Control (*Yhdistyneiden Kansakuntien yhteydessä toimiva Euroopan kriminaalipolitiikan instituutti*, HEUNI, Helsinki, Finland), Institute for Security Studies (ISS, Pretoria, South Africa), *Instituto Latinoamericano de las Naciones Unidas para la Prevencion del Delito y el Tratamiento del Delincuente* (ILANUD, San Jose, Costa Rica), the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR, Vancouver, Canada), the International Centre for the Prevention of Crime, (ICPC, Montreal, Canada), International Institute of Higher Studies in Criminal Sciences, (ISISC, Siracusa, Italy), International Scientific and Professional Advisory Council (ISPAC, Milan, Italy), Korean Institute of Justice (Seoul, Republic of Korea), Naif Arab University for Security Sciences (NAUSS, Riyadh, Saudi Arabia), National Institute of Justice, (NIJ, Washington, USA), Raoul Wallenberg Institute of Human Rights and Humanitarian Law, (Lund, Sweden), United Nations Asia and Far East Institute For the Prevention of Crime and the Treatment of Offenders (UNAFEI, Tokyo, Japan), African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI, Kampala, Uganda) and the United Nations Interregional Crime & Justice Research Institute, (UNICRI, Turin, Italy).

resources for general purposes or "earmarked by the donors for specific projects or purposes, and overseen by the Commission itself on a trust basis.[48]

The question of how the Crime Prevention and Criminal Justice Programme, including the new Commission and its Secretariat, would itself be funded and of the scale of funding and scope of the new Programme was also contentious when the Commission was established. At the level of the U.N. itself, there have been recurring debates about the need for funding decisions and the allocation of resources, whether voluntarily or as part of a Member State's assessed contribution, independently of political considerations in order to ensure that the work done is not selected or carried out based on donor considerations as opposed to intrinsic necessity or merit. The underlying issue is the question of ensuring the independence of the work and priority-setting by the body as a whole and not individual donors, while at the same time ensuring a sufficient degree of accountability to ensure that resources are used as intended, not wasted, and satisfy the domestic audit, legal and other requirements of the donor States.

This had been a major issue in the General Assembly in the years prior to the establishment of the Commission, and it became one in the 1990-91 deliberations as well.[49] Two basic models of the Commission were in issue.[50] The United States proposed a body which would replace much of the existing structure, including both the Crime Congresses and the existing Committee, with the intergovernmental Commission, supported by a minimal Secretariat and funded from within the levels of pre-existing resource allocations. France, on the other hand, saw the Commission as a new addition bringing an intergovernmental element to the existing institutional landscape, with an expanded budget not only supporting the procedural requirements of the Commission itself, but also injecting badly-needed resources into the anti-crime work of the Programme in general. The resulting compromise was the Commission as it was created, but the underlying disagreements over the basic scope of the work, how it should be funded, and the balance between Member

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[48] The Fund was renamed as such by A/RES/46/152, which established the modern Crime Programme and the Crime Commission in 1992. Control of the Fund was transferred from the Undersecretary General for Finance in New York to the UNODC Executive Director on 1 January 2003. For a history and how the Fund is managed, see E/CN.15/2005/18, Part VI. Concerning contributions prior to 1995 see: E/CN.15/1996/8, paragraph 75. Annual contributions to the Drug Control Programme at the time were approximately $50-60M (E/CN.7/1996/2, paragraph 138). Concerning present use of the Fund and the allocation of resources, see Part F.II, "Issues related to the contribution and management of financial resources", below.

[49] See Luck, E.C., "Reforming the United Nations: Lessons from a History in Progress", in Krasno, J.E., *The United Nations: Confronting Challenges in a Global Society*, Rienner, London, 2004, chapter 11, pp. 359-97 at pp. 381-87. See also, in the same volume, Laurenti, J. "Financing the United Nations", chapter 9, pp. 271-310.

[50] For discussion of the debate over resources and visions of the Commission and Programme, see Clark, 1994, chapter 2 at pp. 33-37 and A/AC.239/L.3, L.4 and L.5, containing, respectively, the proposals of Australia, France, and the United States.

States which prefer a Programme which develops and maintains a standing level of substantive crime prevention and criminal justice capacity and those which prefer a more focused and ad-hoc approach to the work as allocated and funded by the Member States year-by-year and issue-by-issue remain.[51]

The Commission described as both a "standing" body in the sense that it has been established based on an ongoing and open-ended mandate as (as opposed to an "ad-hoc" body established for a specific purpose and which ceases to exist once its mandate is discharged), and as a "functional" body, in the sense that it has been assigned the specific substantive subject area of crime, as opposed to a more general mandate that it or its parent body could modify from time to time. It reports to and is subsidiary to the ECOSOC, but is politically autonomous in the sense that its membership is determined by a separate process of election from among all Member States of the U.N. and not election or appointment from among the States who may be Members of the ECOSOC itself from time to time. It is one of nine functional Commissions established by either the General Assembly or the ECOSOC itself as subsidiary to the ECOSOC.[52] It is composed of 40 Member States, elected for three-year terms and reflecting geographical distribution.[53] It is required to hold regular annual sessions of eight working days and not more than ten working days,[54] and to report annually to the ECOSOC.

Its primary inputs have been substantive reports prepared by the Secretariat, political direction in the form of resolutions by the ECOSOC and General Assembly, and views expressed by delegations in its sessions.[55] Its principal

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[51] See Part F.II, "Issues related to the contribution and management of financial resources", below.

[52] Several of these, including the Commission on Narcotic Drugs, were established by the ECOSOC in the early years of the U.N., from 1946-50. A second group, including the Crime Commission, was established from 1991-93, and one further body was added in 2000. The Commission on Human Rights (replaced by the Human Rights Council in 2006) was convened by the ECOSOC at its first session, but is based on authority from a treaty, the *U.N. Charter* itself. Other Commissions, such as the Commission on International Trade Law (UNCITRAL), have been established by and are subordinate to the General Assembly itself.

[53] The formula is not quite equitable geographical distribution – a modified formula gives slightly greater representation to the African and Asian groups at the expense of WEOG and Eastern Europe. See A/RES/46/152, Annex, paragraph 24 and footnote 216.

[54] A/RES/46/152, Annex, para. 25. See also E/CN.15/1993/9 – E/1993/32, Report of the Commission at its Second Session, 13-23 April 1993, Draft Decision II, subparagraph (b), deciding that the duration of future sessions should be eight days. This was reduced to only five days on an "exceptional and non-precedential basis" for the session following the 2005 (Bangkok) Congress, but the meetings were never expanded again and since then the practice has been to only meet for five days. See "Insufficient Duration of the Annual Sessions", below, and *Report of the Commission at its 13th Session*, E/2004/30, E/CN.15/2004/16, Draft Decision #1, paragraph (c).

[55] Reports of the Secretary General to the Commission and Annual Reports of the Commission itself for sessions since the 5th (1996) session can be found at: http://www.unodc.org/unodc/en/crime_cicp_commission.html.

outputs are its Annual Report, which includes decisions and resolutions of the Commission itself, and draft resolutions adopted and/or submitted to the ECOSOC or to the General Assembly *via* the ECOSOC. Resolutions often annex substantive texts, such as the results of research carried out by subsidiary bodies and "soft law" standards and norms. Whether resolutions are adopted only by the Commission itself or transmitted on to the ECOSOC or the General Assembly depends partly on content and partly on politics. The practice has been to submit most resolutions to the ECOSOC for its consideration and adoption, with a few from each session addressed to the General Assembly, *via* the ECOSOC.

Once substantive content has been agreed in the Commission it is rarely altered before adoption by the other bodies, and this has become even less likely since the pre-existing Committee on Crime Prevention and Control, a body of experts, was replaced by the intergovernmental Commission in 1991. The intended process is one in which crime prevention and criminal justice substance developed in the Commission and its subordinate bodies is then reviewed and adopted – or not – by the ECOSOC and General Assembly in accordance with the political wishes of the delegations. Member States rarely, if ever, send crime experts to meetings of the New York bodies, and they are reluctant to re-open substantive elements, although this may occasionally be done to correct errors. Prof. Clarke describes proposals in the ECOSOC by the U.S.A. in the mid-1980s to increase the focus on transnational organized crime, but even the 1998 resolution mandating the negotiations that eventually produced the Palermo Convention does not appear to have attracted much, if any, debate in either the ECOSOC or General Assembly, where the vast majority of subject matter originating in the Commission is adopted without either debate or vote.[56] A rare exception was the adoption of the Palermo Convention in 2000, when the Chairman of the Ad Hoc Committee mandated to develop it and four Member States spoke, all in support.[57] Apart from this, actual debate once the Commission Report and resolutions reach the ECOSOC and General Assembly have generally been confined to budgetary, organizational and political matters.

The practice of the Commission has been to address resolutions to the General Assembly only where they raised major or cross-cutting policy issues of importance to other elements of the U.N., where budgetary implications were raised,[58] or where the Assembly itself had so directed.[59] The general practice of

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[56] See Clark, 1994, chapter 3, pp. 65-70 at p. 69 See also Report of the ECOSOC to the General Assembly for 1998, A/55/3, p.82, adopting and transmitting E/RES/1998/14, later adopted by the General Assembly as A/RES/53/111, also without discussion, A/53/PV.85 of 9 December 1998.

[57] See A/55/PV.62, A/55/383 A/55/383/Add.1, and A/RES/55/25, Annex. The Convention was elaborated by an Ad Hoc Committee of the Assembly itself and not the Commission, and hence was transmitted there directly *via* Third Committee.

[58] All questions affecting the Regular Budget of the U.N. must be reviewed by Fifth Committee (Administration and Budget) of the General Assembly. This includes any new mandate which

the ECOSOC has also been not to interfere with decisions of the Commission about where each resolution was addressed. This was departed from when the ECOSOC at its 2005 session decided not to transmit to the General Assembly several resolutions so addressed by the Commission, but this caused problems and has not been repeated.[60] States sponsoring substantive resolutions sometimes seek referral to the General Assembly to underscore the political importance of an issue and occasionally succeed, but as the number of resolutions placed before the General Assembly has steadily increased,[61] so has the pressure to consolidate, and where possible, deal with subject matter such as crime at a lower level, the reason given by ECOSOC for not transmitting the Commission resolutions on to the General Assembly in 2005. While the intended function of the Commission is to have crime proposals vetted by experts before they proceed further, Member States are also free to submit resolutions dealing specifically with crime directly to the General Assembly,[62] and many resolutions of the Assembly and other bodies, such as the Human Rights Commission and Human Rights Council, also deal with crime matters incidental to their primary substantive mandates.[63]

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cannot be delivered within existing budgetary resources and for which no extra-budgetary source, such as voluntary contributions from one or more Member States, is identified. It does not include mandates which are made contingent on or subject to the availability of extra-budgetary resources.

[59] See, for example resolutions 51/120, 53/111, 55/25 and 55/255, calling on the Commission to consider a possible legal instrument against transnational organized crime, establishing an ad hoc Committee of the General Assembly to negotiate the instruments, and adopting the finalised texts. These required the attention of the Assembly for both substantive and budgetary reasons. See also resolutions 53/110, calling for the Tenth Crime Congress and deciding to convene it in Vienna, and 55/59 and 55/60, following up on the Congress and taking note of the Vienna Declaration on Crime and Justice produced by the Congress. Only resolutions which affect the U.N. Regular Budget require a review by the General Assembly's 5th Committee; the majority of resolutions calling for action on the part of UNODC are made subject to the availability of extra-budgetary resources and do not require such a review. See, for example, resolution 56/261, taking notice of Plans of Action for the follow up and implementation of the 2000 Vienna Declaration.

[60] Two of the three resolutions blocked had expressly been requested by the Assembly and had eventually to be submitted directly by sponsoring Member States and re-negotiated in New York. See A/RES/59/157, paragraph 9, and A/RES/59/151, paragraph 19 (requests) and the adopted resolutions, A/RES/60/175 (transnational organized crime) and A/RES/60/177 (follow-up to the Tenth Crime Congress).

[61] Numbers of resolutions actually adopted at each session have gone from fewer than 100 around 1960 to 250 in the mid-1980s, and to over 300 in the years since 2000.

[62] One example is resolution 55/63, "Combating the Criminal Misuse of Computer Technologies".

[63] Concerning present and possible future practice regarding reasons for the referral of resolutions to the ECOSOC and General Assembly, see Part G, Recommendation #9, below.

Proceedings of the Commission itself are governed by the ECOSOC Rules of Procedure and the Rules for functional Commissions of the ECSOSOC,[64] as well as modifications within the framework of those rules (such as the adoption of standing agenda items) adopted by resolutions or decisions of the Commission and/or ECOSOC from time to time. Parallel meetings within each session are common, with a Committee-of-the-Whole refining draft resolutions and other substantive texts before they are taken up in the plenary. Decisions are taken on consensus: there has not been a single vote since the body was established, reflecting the desire of most delegations to emphasize the role of the Commission as a technical forum for the exchange of substantive information and policy ideas as opposed to a body for political decision-making. That said, the increasing importance with which many Member States have begun to regard crime issues has led to a trend in which the proceedings have tended to shift to a more political and politicised focus, and if this continues, the practice of consensus-based decision making may well be discarded in favour of voting at future sessions.[65] In recent sessions, several resolutions, not finding consensus, have been withdrawn rather than being put to a vote. The Commission has not established standing or ad-hoc sub-commissions or sub-committees under the ECOSOC Rules, but it has frequently established and relied upon the work of expert panels, both to conduct research studies and to review materials produced by the Secretariat for technical assistance and other purposes.

The Commission meets once each year, usually in April. This falls after the annual session of the Commission on Narcotic Drugs, but still early enough to permit production and circulation of resolutions and the Commission's Annual Report in time for the June session of the ECOSOC. The two Commissions oversee the work of the U.N. Office on Drugs and Crime, and following the merger of the former Crime and Drug Secretariats in 2003, the consolidation of budgetary measures has led to a practice in which parallel deliberations are conducted at each Commission, and consecutive extended sessions of both bodies are held in December each year to finalise both. The Crime Commission also usually holds intersessional meetings. These have no formal standing under the ECOSOC Rules and last only a few hours. They are generally limited to procedural matters, such as agenda-setting, because they are attended only by Vienna-based diplomats and not crime experts.[66]

Proposals have been made over the years to simplify the organizational structure and reduce costs by merging the various bodies, and as discussed above, attempts were made to create a single body by merging the mandates

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[64] E/5715/Rev.2 (ECOSOC Rules), and E/5975/Rev.1 (Rules for Commissions). The Rules for the Functional Commissions were last revised in 1983.

[65] For a discussion of the possible implications of voting, see Politicisation of the Commission, Part F.I.1, below.

[66] For discussion of limits on what intersessional and re-convened sessions should be allowed to consider, see Part G, recommendation 12, below.

and functions of the antecedent Committee and the Crime Congresses into the new Commission when it was established in 1991-92.[67] Other proposals to merge the two Commissions themselves have not been accepted by the Member States, although those seeking a more streamlined governance structure for UNODC keep trying.[68] Proposals to greatly reduce or dissolve the Crime Commission following the establishment of the Conferences of Parties to the Palermo Convention and Merida Convention have fared no better. Often debates have been as much between diplomats, whose focus is on institutional efficiency and political decision-making, and crime prevention and criminal justice experts, whose focus is on substantive research, the sharing of information and expertise about crime, and policy-making, as it has been between the national delegations of the Member States themselves. The same is true within the Secretariat: the most recent merger proposals are discussed as a means of simplifying the complex governance structure of UNODC by the U.N.'s Joint Inspection Unit, which looks primarily at governance, but not accepted by either the J.I.U. or the Office itself.[69] The J.I.U. cites resistance to the idea on the part of the Member States and the sheer difficulty of implementing such reforms in the U.N., mentioning the difficulties associated with the 2006 replacement of the Human Rights Commission with the Human Rights Council (at significantly increased costs) in 2006. Within UNODC itself, concerns include the difficulty of managing political and substantive issues in a larger and more complex Commission, and the high probability that a merged and "streamlined" body would retain even less capacity to consider substantive matters regarding either crime or drugs than the already-inadequate combined capacity of the two existing Commissions.

Apart from the general reluctance to "streamline" the work of the U.N. by extinguishing existing bodies, there are significant substantive reasons why the Commission remains as it does. Primary among these is the comprehensive jurisdiction of the Commission to consider any form of "crime" and any issue placed before it which is seen as relating to "crime" in the most general sense, by any Member State. All of the other bodies deal with specific substantive issues delineated by their mandates to deal with narcotic drugs, transnational organized crime and corruption, respectively, and the inherent difficulties in defining and describing crime make it an important forum. Apart from

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[67] Clark, 1994, chapter 2 at p.26 (concerns prior to the establishment of the Commission) and pp. 33-34 (proposal to merge the pre-existing Committee and the Congresses, but not CND, in 1991. See also A/41/49, the Report of a 1986 group of high level experts established to consider institutional reforms, calling for, inter alia a process to "...identify measures to rationalize and simplify the intergovernmental structure of U.N. functional bodies" (Recommendation 8, subpara.3(a)), and A/AC.239/L.5, proposal of the United States to the Open-ended Intergovernmental Working Group on the Creation of an Effective International Crime Prevention and Criminal Justice Programme (August 1991).

[68] See, most recently, Joint Inspection Unit, 2010, Review of management and administration in the UNODC, A/66/315, Part II.B, Option 1 (Merger), which the Report chose not to recommend.

[69] A/66/315, Part II.B, Option 1

considering new and emerging forms of criminality, it also has the ability to consider problems from a substantive standpoint without the requirement for consensus on definitional matters beforehand. This allows for processes which can include the task of creating new definitions as the basis for research and/or substantive work, and which can consider various aspects of a new problem as the basis of deciding whether it is best dealt with in the Commission, one of the other crime bodies, or in some other U.N. forum altogether. Added to this in the case of CND is the fact that its mandates to deal with narcotic drugs and psychotropic substances integrate matters seen by many States as having aspects of both public health policy and crime-control.

Looking beyond the immediate tactical and political motivations on each side, the underlying positions relate to two different perceptions of crime and the functions of the Commissions themselves by these two groups. Those seeking a more streamlined, efficient and accountable management structure and/or a single Commission which administers and oversees the entire Programme as opposed to developing policy in either of the present areas support merger of the two. This includes some management experts within the U.N. itself, and in some cases political pressure from the States *via* their diplomats seeking to reduce the political risks associated with a more substantive body. Experts on crime and drugs, within the Secretariat itself, from the interior, health, and justice ministries of the Member States, and most academic and non-governmental crime experts favour the higher profile and greater substantive capacity of a stand-alone Commission and Secretariat.

A single merged Commission would clearly make the diplomatic oversight of management and budgetary matters easier for the Member States and for UNODC itself, and in theory, a larger crime and drug Commission could deal successfully with the merged subject-matter, including the public-health element of the present work of CND. Such a reform would be a major undertaking for the Secretariat, however, and would also require the political will of the Member States for a fairly fundamental reorienting of their own present domestic and international work on both issues. By and large, the problems that arise from having two separate bodies relate to management and not substance, and a merged body would probably still require sub-committees to deal with many of the major issues, such as organized crime, drug-trafficking and corruption. The reorganization and reorientation would also likely take years, during which the effectiveness of political oversight, and with it the funding and effectiveness of the work of UNODC would probably be reduced. It seems a high price to pay for a more streamlined oversight structure with little or no increase in substantive effectiveness and a high risk that substantive capacity would be further eroded.

As with most U.N. entities, the Commission is an “intergovernmental” body, in the sense that only Member States of the U.N. itself can have full status as Members. This is consistent with the international view that crime prevention and criminal justice issues are matters of domestic national sovereignty and the domestic view of most governments that they should be treated primarily or

exclusively as public-sector issues. That said, the complexity of crime and the growth of the community of international non-governmental organisations and the international commercial private sector has generated pressures to take into consideration the views of private commercial interests, especially in areas such as economic crime, identity-related crime and cybercrime, and more generally, the views of non-governmental organizations (NGOs).[70] Non-governmental organizations may be accorded consultative status by the ECOSOC Committee on NGOs under Part XIII of ECOSOC Rules, and where such status is accorded, NGOs are permitted to attend and observe open plenary proceedings of the Commission, but not closed plenary proceedings or informal or parallel proceedings, including the Committee of the Whole, where most of the draft resolutions and other political texts of the Commission are considered. In the plenary, NGOs may be permitted to intervene,[71] but are generally only given the floor if there is time remaining after all of the Member States wishing to intervene on a particular agenda item have done so.

Within the overall structure of the United Nations, the Commission is the forum in which all of the critical elements of anti-crime efforts converge. As the political oversight body, it is the primary forum in which the work of crime prevention and criminal justice elements of the Secretariat is overseen and directed by the Member States. It also bridges or connects scientific and diplomatic experts and agendas. Crime prevention and criminal justice policy issues tend to progress from the work of substantive experts in matters such as social science and criminology, law, law enforcement, penal policy and forensic science to reviews by bodies which represent the political interests of the Member States. Most of the bodies and processes established by and subordinate to the Commission are composed of substantive crime experts, and transmit substantive information and analysis to it. The history of the U.N. Crime Committees prior to the Commission shows a gradual shift from bodies composed of independent criminological experts to experts nominated by governments in an effort to gain influence and recognition, but which also reduced independence and shifted the focus away from policy deliberations based on social science in the direction of a more political dialogue among the Member States.[72] This trend has continued since the Commission itself was established. Where the Committees prior to 1992 were composed originally of independent criminological and other experts, and eventually of similar experts nominated by the Member States, the convening mandate is that of a body

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[70] See Commission Resolution 19/1, "Strengthening public-private partnerships to counter crime in all its forms and manifestations", Report of the Commission at its 19th Session, E/2010/30, Chapt. I, Part D. The 2010 resolution transmitted by the Commission to the General Assembly following up the Twelfth Crime Congress, A/RES/65/230 also makes several references to the need for action by or cooperation with the private sector, as does the annexed Declaration of the Congress itself.

[71] ECOSOC Rule 84, paragraph 2, E/5715/Rev.2, and E/RES/1996/31.

[72] See: Clark, 1994, chapter 1 at pp. 19-23 and chapter 3 at pp. 42-46.

which would have diplomatic delegations that "include" such experts to ensure substantive deliberations:[73]

> 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.

The balance since 1992 has gradually shifted in favour of diplomatic delegations, both in terms of the selection of delegates by many Member States and of the duration of the sessions and opportunities for substantive discussions. To some extent, however, the deliberations of the Commission itself still feature both diplomatic and criminological or legal debate, and the bodies to which the Commission itself reports, the Economic and Social Council and the General Assembly are almost exclusively diplomatic in nature. As the primary forum for substantive deliberations on crime, the Commission is also the primary access point for the U.N. programme network institutions and non-governmental organisations, and in recent years, as consideration of economic crime and cybercrime have increased the Commission and its subordinate bodies are also the primary access point for interested private sector entities.

[73] GA/RES/46/152, Annex, paragraph 24.

SUBSTANTIVE WORK AND MANDATES OF THE COMMISSION

(i) Subject matter within the 1992 mandates

The Commission is intended to be the principal U.N. policy-making body with respect to crime prevention and criminal justice[74] 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.[75] 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. 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.[76] This ensures that there is comprehensive coverage of the subject matter, but can also lead to duplication. The inherent difficulty in distinguishing between purely "crime" issues and the use of the criminal law in support of other policies makes a broad mandate necessary, but it can lead to "forum-shopping" scenarios in which delegations unsatisfied with results in other *fora* seek to re-open issues based on their criminal aspects.

The scope of the substantive issues and subject-matter before the Commission is established by the convening resolution and the extensive Statement of Principles annexed thereto, which mandates the U.N. Crime Programme and gives the Commission political oversight over it. The stated goals of the programme include the following:[77]

- the prevention of crime "within and among States";
- control of crime both nationally and internationally;

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[74] E/RES/1992/22, Part IV, paragraph 4.

[75] See, for example GA/RES/46/152, preambular paragraph 7, referring to "… assistance to States in combating both national and transnational crime", and operative paragraphs 3 ("…whose aim will be to respond to the most pressing priorities and needs of the international community in the face of both national and transnational criminality") and 5 ("… in order to achieve the goals of preventing crime within and among States …"). Similar references appear in the annexed Statement of Principles (e.g., para.15, subparagraphs 16(a) and (b), paragraph 17 and subparagraph 17(e).

[76] The Commission may consider overlapping issues, but is called upon to consider, *inter alia*, "…avoidance of overlapping with the activities of other entities of the United Nations system or of other organizations…" in establishing its own programme priorities. See GA/RES/46/152, Annex, subparagraph 21(g).

[77] A/RES/46/152, Annex, paras.15 and 16.

- strengthening regional and international cooperation;
- the integration and consolidation of the efforts of Member States;
- the more efficient and effective administration of justice, with due respect for human rights; and,
- the promotion of the highest standards of fairness, humanity, justice and professional conduct.

The statement of principles also draws specific attention to the links between crime prevention and criminal justice issues and a wide range of other issues of ongoing concern, including the support, protection or enhancement of: the rule of law;[78] "equity, constructive social change and social justice";[79] progress and development;[80] human rights;[81] democracy, peace and security;[82] and improvement of social conditions.[83] Also highlighted are the need to generate new responses to the growing internationalisation of crime and its exploitation by organized crime,[84] and the need to match increases in crime with increased capacity, especially in developing countries.[85]

The work actually done by the Secretariat under the mandates of the Commission, ECOSOC and the General Assembly has been expanded to include terrorism-prevention, and merged to some extent with anti-narcotics work under CND mandates since 2003. In 2007, a strategic review broke the work down into three basic categories: "normative services", which included support for the various international legal instruments and "soft law" instruments, as well as supporting the development of new legal instruments where appropriate; research and analysis functions; and the development and delivery of technical assistance.[86]

Over the 20 sessions held between 1992 and 2011, the attention of the Commission has been directed over the full range of crime prevention and criminal justice issues of concern to its Member States. Issues raised at the 1st through 20th sessions include an impressive list of subject matter:[87]

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[78] A/RES/46/152, Annex, paragraph 1, and E/RES/1992/22, Part I, paragraph 3, subparagraph (b).

[79] A/RES/46/152, Annex, paragraph 2.

[80] A/RES/46/152, Annex, paragraphs 4 and 8.

[81] A/RES/46/152, Annex, paragraph 1.

[82] A/RES/46/152, Annex, paragraphs 1 and 7.

[83] A/RES/46/152, Annex, paragraph 3.

[84] A/RES/46/152, Annex, paragraph 5.

[85] A/RES/46/152, Annex, paragraph 8.

[86] UNODC Strategy for 2008-11, E/RES/2007/12, Annex.

[87] In many cases the characterisation of issues has also evolved from session to session. The items listed are general descriptions and characterisations of the author only and many

computer-related crimes and cybercrime cooperation between the CICP/UNODC and other U.N. entities and other bodies corruption issues (corruption offences, transnational corruption, corruption in criminal justice systems, international cooperation, proceeds and asset recovery) crimes against children (missing children, sexual and other exploitation, trafficking) and protection of child victims and witnesses crimes against cultural property and trafficking in cultural property Crime Congresses (general organization, periodicity and development of agendas and documents for each Congress) crime data: collection, reporting, and statistical research and analysis issues crime prevention (general and specific crimes, community-based prevention) death penalty environmental crime economic crime issues, including money-laundering and proceeds of crime issues, economic fraud and other economic crimes regulation of firearms good governance hate crimes and incitement of racial hatred or religious fanaticism human rights in criminal justice systems identity-related crime (criminal misuse and falsification of identity) use of information technologies in crime prevention and criminal justice	gathering, storage, use and sharing of information in criminal justice matters international cooperation issues (extradition, mutual legal assistance, informal cooperation) international criminal court juvenile justice issues and issues relating to children as offenders, victims and witnesses kidnapping legal aid and access to justice issues management of criminal justice systems medico-legal issues in prevention, sentencing and treatment migrant smuggling non-custodial measures, diversion from custody and reduction of pre-trial detention organized crime (domestic and transnational, including gangs) peacekeeping and post-conflict reconstruction (criminal justice issues, institution-building, role of U.N. Crime Programme) prison and custodial issues, and non-custodial alternative options (remand, probation, diversion and reduction, prison conditions, parole, combating HIV/AIDS) reform of criminal justice systems restorative justice, mediation and related issues reporting issues (research and reporting on general trends and specific crimes, proposals for World Crime Report) roles of criminal justice officials (lawyers, prosecutors, judges, prison officials etc.)	research and data methods and issues (crime statistics, use of questionnaires and other research methods) rule of law, transparency, integrity and related issues standards and norms on: capital punishment; child victims and witnesses; human rights; international cooperation issues (model laws and treaties); juvenile justice; law enforcement (codes of conduct and guidelines); non-custodial measures; judicial independence; roles of participants in criminal justice (judges, lawyers and prosecutors, law enforcement etc.); torture; treatment of prisoners, technical assistance, international advisory services and resource-mobilization terrorism issues (relationships between organized crime and terrorism, work of CICP and UNODC terrorism branches, implementation of treaties) trafficking in human beings trafficking in commodities, including: cultural property, explosives, firearms, human tissues and organs, motor vehicles, forest products, genetic material, and protected flora and fauna, treaty issues (development of treaty mandates, application to successor States, support of ratification and implementation of 2000 and 2003 treaties) urban crime victims of crime violence against women and girls violent crime

A review of the topics considered by the pre-1991 Committee on Crime Prevention and Control and its predecessors back as far as the early days of the U.N.[88] suggests that the shift from independent crime experts to an intergovernmental body of substance and diplomatic experts representing the

encompass several specific issues raised in the Commission. The list is not necessarily exhaustive or comprehensive.

[88] Clark, 1994, chapter 1 at pp. 14-15, citing Lòpez-Rey, 1960, p. 4.

Member States directly shows to some extent a general shift from prevention and treatment-based matters to more legislative and reactive ones, a trend which will not surprise criminologists. That said, there is also a striking degree of continuity of issues in areas such as crime research and reporting, juvenile justice and prison conditions, no doubt due to the fact that while political approaches to crime may change from time to time and State to State, the actual problems posed by crime, such as prevention, suppression and the interests of specific participants such as offenders, officials and victims, does not.

A recurrent theme has been the consideration of issues relating to technical assistance and the mobilization of the resources needed to develop and deliver the necessary projects and related materials.[89] These have been considered both in general and in relation to the execution of specific mandates, such as the calls on the Secretariat to promote and assist ratification of the 2000 and 2003 treaties before these came into force and their respective Conferences of States Parties were convened, and most recently in areas such as cybercrime and identity-related crime.[90] The responsibility of the Commission "… to plan, implement and evaluate crime prevention and criminal justice assistance projects …"[91] is established as part of its general responsibility to oversee and mobilise support for the U.N. Crime Prevention and Criminal Justice Programme, which in turn assesses needs and delivers technical assistance. The specific responsibilities of the Commission include mobilising resources and support[92] and generally overseeing the work of the Secretariat and other elements of the Programme, including in their roles with respect to technical assistance.[93] The Programme itself includes technical assistance among other measures,[94] and the work of the Secretariat specifically includes mobilising resources,[95] bringing together potential donors of criminal justice assistance

[89] Technical assistance is designated as a standing agenda item for the Commission. See E/RES/1992/22, Part VII, paragraph 2.

[90] A/RES/55/25, of 4 December 2000, paragraphs 8-12 (organized crime), A/RES/58/4, of 31 October 2003, paragraphs 3, 8, and 9 (corruption), E/RES/2007/26, of 26 July 2007, paragraph 14 (identity related crime), and Commission Resolution 20/7 (E/2011/30, resolution 20/7, cybercrime).

[91] E/RES/1992/22, Part I, paragraph 3, subparagraph (c).

[92] A/RES/46/152, Annex, subparagraph 26(d) and E/RES/1992/22, Part V.

[93] A/RES/46/152, Annex, subpara.26(b). ECOSOC then designated CICP (now UNODC) as the Secretariat of the programme itself, under the guidance of the Commission. See E/RES/1992/22, Part I, paragraph 1.

[94] A/RES/46/152, Annex, subparagraph 17(e).

[95] A/RES/46/152, Annex, subparagraphs 31(a) and (e).

with countries in need of such assistance,[96] and generally assisting the Commission as it may direct.[97]

(ii) Mandate changes in the 1990s (transnational organized crime, corruption and prevention of terrorism)

Since 1992, there have been at least two substantial changes in the substantive work overseen by the Commission. The subject-matter of transnational organized crime and many aspects of corruption were within the original mandates and can be seen as recurring themes in the first decade of the Commission, and much of the initial consensus-building in support of the *Palermo Convention* (2000) and *Merida Convention* (2003) took place there. The elaboration of the two Conventions changed the mandates to some degree as subject-matter within the scope of application of the new treaties now fell to their respective Conferences of States Parties. The Commission still retains default jurisdiction, in the sense that organised crime or corruption issues outside of the Conventions or of uncertain status can still be raised there, and in practice issues tend to be raised in both bodies, with the result that Commission workloads have not been significantly decreased. Delegations unable to find support for a proposal in one forum also sometimes re-label it and re-introduce it in the other. Overall work in these two areas has increased, which places additional demands on the Secretariat, but not for the most part on the Commission itself.

The second major change involves the substantial expansion of ongoing terrorism prevention work following the 2001 terrorist attacks and subsequent Security Council actions. Ironically, a comprehensive plan of action against terrorism had been finalised and adopted by the Commission as part of its mandate to follow up on the Declaration of the 2000 Crime Congress (Vienna Declaration) on Friday 8 September 2001. This work has proven highly successful due largely to the fact that UNODC mandates have been confined to providing technical assistance in implementing the existing treaties and Security Council resolutions, and have avoided the political questions relating to the scope and meaning of "terrorism" that have impeded progress in other U.N. *fora*.[98]

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[96] A/RES/46/152, Annex, subparagraph 31(d).

[97] A/RES/46/152, Annex, subparagraph 31(c).

[98] See: E/CN.15/2009/5; E/CN.15/2010/9 and E/CN.15/2011/4 and earlier reports.

MAJOR FUNCTIONS: WHAT THE COMMISSION ACTUALLY DOES

As noted above,[99] views about the *raison(s) d'être* for the Commission, how "crime" should be characterized in political, scientific and institutional terms, and whether the Commission should be regarded as a forum for the discourse of political representatives from the Member States or experts in social science and law have changed over the decades since the U.N. itself was established and the Commission evolved into its present form. The links between crime itself, crime-prevention and criminal justice responses to crime, the work of the new Commission, and human rights, democracy, the rule of law, security at both the State and human levels, development and the social conditions of populations, the differing interests of developed and developing countries and their populations, the need to address both domestic and transnational crime, and the need to include other U.N. entities and Institutes, as well as other intergovernmental and non-governmental organizations, are all prominently mentioned in the preambular and/or operative paragraphs of the convening resolution.[100] The relationship between its different expert constituencies – the respective roles of diplomats and procedural experts and of substantive crime experts representing Member States or independent of them – is much less prominent, but also addressed.[101]

These issues remain very much open as the Commission begins its third decade, and it is my view that this arises not from the political or institutional dynamics of the U.N. or the various interested Member States, but from the inherent subject-matter itself. The reality is that what we as Member States, and as individuals regard as "crime prevention and criminal justice" issues inevitably raise aspects of the rule of law, the human rights of offenders and victims, the collective rights of societies, the stability and development of States and regions. There has been some shifting and clarification of these aspects and how they interact and knowledge has been refined since 1949 and

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[99] See note 27, *supra*, and Clark, 1994, chapter 1, pp. 4

[100] A/RES/46/152 of 18 December 1992, preambular paragraphs 1, 2, 6, 10, and 11 and operative paragraph 8.

[101] The text refers to the need for "direct involvement" of the Member States to ensure the effectiveness of the programme (preambular para. 7), while the expert members of the pre-existing Committee are expressly invited to attend only for the first two days of the 1992 inaugural session (operative para. 12), The need for States to include crime prevention and criminal justice experts in their delegations appears only in the annexed Programme of Action, A/RES/46/152, Annex, Part II.E, paragraph 24: "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." For discussion, see Clark, 1994, chapt. 2 at pp. 42-46 and "Possible Reforms (The greater involvement of substance experts, including independent experts)", below.

as the institutional structure of the U.N. itself has evolved, but the fact is that crime has always had social, economic, political and security aspects at the local, national, regional and global levels. This, in my view, is essential to understanding the history and present status of the Commission and its Secretariat, and to critical and effective thinking about its future.

In this context, the most basic function of the Commission is to provide a forum in which Member States can communicate collectively about crime prevention and criminal justice issues and in which all of these legal, social, economic and political threads can woven into a cloth that serves the shared interests of individuals, Member States and the international community as a collective. This includes a forum for the States to provide information to one another about crime and their policies, laws and other responses to it, raising problems or issues for consideration by other States, and gathering information from one another that can be used to support the development of effective domestic responses to crime and more effective participation in regional and globally coordinated responses to it. State-to-State information exchange is the primarily-political function that is regarded as the primary function by most of the Member States, but arguably the Commission should go beyond this. It should also be a forum in which there is dynamic and effective interaction among the human rights, development, rule of law and security elements of the U.N. that share interests in the prevention and suppression of crime and who generally have mandates that overlap with those of the Commission. Beyond that, the Commission also has, or should have, value as a forum in which there is a similar interaction between the Member States as individuals and as a collective, and legal, criminological and other policy experts as appropriate for the various issues it is called upon to consider by its Members.

I. Substantive functions

1. Issue identification and definition

The Commission is an open forum in which any State which identifies an issue as a "crime prevention or criminal justice" issue may raise it. The sponsoring State is afforded an opportunity to explain the problem and why it believes a domestic and/or international criminal justice response to be necessary. As discussed above, what constitutes "crime" for purposes of domestic and international responses and the extent to which criminal justice mechanisms should be used in support of non-criminal social policies can itself be an issue, making the Commission an important forum for determining the definition and scope of crime itself. The Commission also affords States an opportunity to identify new and emerging crime issues, alerting others to the problem and allowing a global definition and description to develop as the perspectives of different States and regions are added to the discussion. This in turn forms a more viable basis for research, technical assistance and the development of focused and appropriate policies, domestic laws and international cooperation frameworks. It also allows States to hear and assess the perspectives of other

States on new developments as they are reported. Crime definitions and typologies are seldom stable over time. Re-assessment of crime issues is a constant element of popular and academic discourse, and the Crime Commission provides an important forum in which key definitions and typologies evolve in ways which influence and are influenced by the political and criminological thinking of governments themselves.

2. Policy-making

Once issues are identified, the Commission is, first and foremost, the primary body within the U.N. for the development of policy on crime prevention and criminal justice. As discussed above, the term "policy-making" is itself fairly elastic. Some delegations have tended to interpreting it narrowly, as a reference to simply setting out the positions of the various Member States and trying to reach a political consensus on what ought to be done at the international and collective level. Others have taken a rather broader interpretation, seeing the past and future potential for the Commission as a body in which substantive experts can meet and freely discuss evidence and policy issues with a view to generating not only consensus on collective international responses to crime, but also to the generation of new and innovative policy approaches for the Member States themselves, and to the coordination of domestic policies to maximise effectiveness and avoid inconsistencies and gaps that could be exploited by offenders.

To a certain extent the present work of the Commission reflects both models and a range of policy-related activities. Some international policies reflect consensus and/or compromise among the domestic policies articulated by the Member States, while others originate in the Commission itself. Collective or multilateral crime policies are developed and periodically assessed and revised, which entails the gathering and assessment of policy-related information such as crime statistics and the views of experts within States, by the Secretariat, and by the Commission and by *ad hoc* bodies established and mandated by it. The Commission and its Secretariat also assist individual Member States in developing domestic policies and bringing these into coherence or conformity with international ones, and supporting the transfer of policy-related ideas and experiences from one Member State to another.

3. Information-sharing

In a more general sense, the Commission also provides an important forum in which substantive crime prevention and criminal justice experts can meet regularly and exchange a wide range of information. This includes identifying experts on a specific issue in various Member States and opening formal and informal channels of communication, and the sharing of almost every conceivable type of information, ranging from general theoretical assessments of problems, to examples of policy and legislative responses and even criminal intelligence or investigative information. Discussions on general themes and

specific agenda items serve to help identify new trends or problems, bring together groups of States or regions which share common crime-related problems, identify needs and capacity for research, review relevant work being carried on within States and in other international bodies, and similar matters. Often the general exchange of information leads over several years to more focused consideration and action on specific topics as the need becomes apparent.

4. The development of expertise and transfer of knowledge

Information-sharing can take on an additional dimension in the context of new and emerging crime issues and in the relationships between developed and developing countries. New knowledge and expertise tends to be created in one of two scenarios. Specialised knowledge and expertise is developed among those who are first to encounter a new form of crime, which may have a regional or geographical aspect driven by factors such as the relative locations of supply and demand or the relative strengths of organised crime and crime-control mechanisms, and practical knowledge is thus brought to sessions of the Commission or its subordinate expert bodies by experts from the affected regions. Specialised knowledge is also developed in some cases by Member States with the expertise and financial resources to commit to research and assessment of a new crime problem. In many scenarios where globalised transnational crime is involved, some combination of Member States will bring different perspectives and knowledge to the proceedings like the pieces of a puzzle. The expertise and perspectives of Member States on trafficking in persons may differ, for example, depending on whether the State concerned is a source of trafficking victims, a place through which victims are trafficked, one in which victims are held and exploited, or a destination of proceeds of the criminal scheme.

The transfer of knowledge and expertise is a critical function for several reasons. Synthesizing the knowledge of all relevant States on a problem usually results in a more complete understanding of the problem which is greater than the sum of its parts, and which may be developed much more quickly than if each Member State had done so on its own. At the international level it also supports effective cooperation by encouraging States to develop and implement policies which tend to be more coherent with those of other States and therefore more interoperable. It also strengthens individual States and reinforces national sovereignty and autonomy by helping those which lack knowledge or domestic capacity to develop it for themselves. This in turn makes them more able to assess their own legitimate national interests and to articulate them effectively in multilateral contexts, which increases the likelihood that viable policy compromises will emerge.

5. The development of experts

Implicit in the development of institutional expertise is also the development and enhancement of individual experts. This tends to occur more in the less-formal environments of the many subordinate expert group meetings, technical assistance meetings and similar processes than in the Commission plenary itself, but it is nonetheless a distinct and important function. For Member States with well-developed academic and governmental research, policy and legislative capacities, the pattern tends to be one of sending individuals with domestic expertise into the process, where their understanding of both the issues at hand and of crime in general are expanded by encountering the views of other experts and the experiences and perceptions of other (developed and developing) States. Almost every aspect of crime prevention and criminal justice, whether it relates to criminal offences such as cybercrime, economic crime, domestic violence or the sexual exploitation of children, or to the functioning of criminal courts, law enforcement agencies or prisons, are very different in developed and developing countries, and it is rare that experts from one do not benefit substantially from encounters with the realities of the other. These experts take what they have gained back to their States of origin, where it influences everything from fundamental thinking about the nature of crime and State responses to it to the very practical aspects of transnational crime and international cooperation in its prevention, investigation and prosecution.

6. Resource mobilization

A major stated objective of the establishment of the Commission was to enhance resource mobilisation and encourage Member States to treat crime problems as a question of using foreign aid resources in support of sustainable development and good governance,[102] and this has been a major preoccupation ever since. Specific concerns include: overall levels of funding; the extent to which contributions tend to be earmarked for specific projects; and the extent to which financial accountability should be dealt with in the Commission generally or by individual States on a project-by-project basis.[103]

7. Developing technical assistance

"Technical assistance" is the term used in the U.N. to refer to assistance provided to U.N. Member States under the auspices of the U.N. by other Member States, the U.N. itself, or other providers, such as the Institutes of the Programme Network. Such assistance, described also in some contexts as

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[102] See Note of the Secretary General transmitting the report of the Ministerial Meeting on the Creation of an Effective Crime Prevention and Criminal Justice Programme (Paris, 21-23 November 1991), A/46/703 (paragraphs 40-41 and 52-53, see also A/CONF/156/3).

[103] These functions and past and current resource issues are discussed in detail in Part F.II, below.

"capacity-building" can range from simply providing financial or material resources to providing technical expertise or materials. In the context of crime prevention and criminal justice, most technical assistance efforts contain both elements. A project might assist with setting up and equipping a new forensic science facility as well as expert training in the form of instructors and materials to teach scientists and law enforcement in the recipient State how to use it, for example. The Commission does not actually deliver technical assistance. It serves as the primary U.N. forum in which the demand for such assistance is linked to the supply. Various source documents refer to the Commission as a having a "clearing house" function in which States in need of technical cooperation or technical assistance can seek and receive such assistance.[104] Actual technical assistance is either delivered by the UNODC itself, in the form of materials and training activities, or under its auspices by the Institutes of the Programme Network, individual contractors or other providers. This is also often done in concert with other international or regional organizations such as the Organization of American States and the Commonwealth Secretariat. In many cases the primary role of UNODC is not to maintain and provide substantive expertise, but to function as a broker, organising activities which bring together expertise from Member States which have it and Member States which request assistance.

8. Treaty and international law functions

The Commission has played a role in the development of the 2000 Palermo Convention and 2003 Merida Convention, but these functions are more limited than many Member States believe. Clearly, the application of international law and legal instruments must be considered as an important option in responding to globalised crime problems, but the very high degree of consensus needed and the lengths of time and elaborate and expensive processes needed to build and establish the necessary consensus and then to refine the subject matter and actually elaborate a viable legal instrument make them something of a response of last resort. The vast majority of the mandates adopted by the Commission do not even propose treaty-making, and of the several hundred resolutions adopted by the Commission during its first 20 sessions, only a handful deal with treaty negotiations.

The Crime Commission itself was not established by a treaty, and unlike its counterpart the Commission on Narcotic Drugs (CND), its mandates do not include the oversight of any of the treaties for which its Secretariat is responsible. The Conventions of 1961, 1971 and 1988 dealing with narcotic

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[104] Early texts tend to refer to "technical cooperation" in the same context. See Note of the Secretary General transmitting the Report of the Ministerial Meeting on the Creation of an Effective Crime Prevention and Criminal Justice Programme (Paris, 21-23 November 1991), A/46/703, paragraphs 48, 52 and 58. See also E/RES/1992/22, Part I, subparagraph 3(e)). Technical assistance was subsequently designated as a standing agenda item for the Commission. See E/RES/1992/22, Part VII, paragraph 2.

drugs designate CND and the INCB as responsible for oversight of the instruments and the conformity of the States Parties with them,[105] but in the Palermo and Merida processes it was decided instead to follow the more general practice of establishing a specific new body for each of the crime conventions, the membership of which would be drawn from the States Parties and not the Member States of the U.N. as a whole. Thus, while the Crime Commission still retains residual jurisdiction over the subject-matter of organized crime and corruption in general, matters covered by the two Conventions and relating to the operation of the Conventions themselves are for their respective Conferences of States Parties.

The Commission does not play a significant role in the actual negotiation of new treaties, because these are prima facie open to the participation of all U.N. Member States and not only the 40 who happen to have been elected to serve on the Commission at any given time. In both the Palermo and Merida processes the actual negotiations were carried out by Ad Hoc Committees of the General Assembly established for this purpose, and the later stages of the processes leading up to the commencement of formal negotiations were carried out by intergovernmental expert groups designated as "open-ended" so as to ensure the participation of as many States as possible.

The fact that the work of the Commission has recently led to the development of four global legal instruments against transnational organized crime and corruption this has led to raised expectations for some delegations that further treaty-making should be seen as a major response to crime problems and a much larger portion of the work of the Commission. For other delegations it has led to fears that other proposals put to the Commission, not so amenable to legal measures, might follow a similar path. It should be borne in mind that the primary function of the Commission is to act as a general policy forum, and that the treaties were developed in other bodies established and convened for that express purpose. While the Commission remains the logical place to start such initiatives, and treaty-making is always a possible outcome in Commission deliberations, it is not the only or even a common outcome: of the 55 general topics considered by the Commission at its first 15 sessions, only four have resulted in treaties. The elaboration of new legal instruments is important, but should not be seen as the sole measure of success of the Commission. Similarly, the fact that deliberations on particular subject matter might eventually lead to proposals for new legal instruments or other outcomes which may raise political or diplomatic concerns should not be the basis for blocking such deliberations at their inception. All responses to crime should be, first and foremost, evidence-based. Treaty-making exercises are no exception, and in such cases the evidence has to include not only the nature and extent of the problem, but the relative difficulties of treaty and other responses and the

[105] See Articles 21-22 of the 1988 Convention and Commentary on the U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, E/CN.7/590, U.N. Publication Sales No. E.98.XI.5, at pp. 368-86.

predicted effectiveness of any treaty measures that are seen as likely to find consensus.

II. Political and procedural functions

1. Building and managing consensus

The Commission is primarily a consensus-based organization, and a major function is to provide conditions where issues can be clearly understood and consensus can be reached if possible. As an intergovernmental body, the primary focus of most participants is on finding consensus among Member States. This is certainly a critical function, but it often masks the fact that the need for another sort of consensus often emerges in its deliberations. Horizontally, the Commission brings together Member States with differing views and priorities, but vertically, it is also the primary forum in which the legal and technical perspectives of the crime experts that participate in most of its subordinate processes first encounters the political perspectives of the Member States themselves. It is also the forum in which the political views of Member States at different places on the right/left partisan spectrum sometimes collide. The resulting tension between partisan views and between politics and science echoes similar tensions in many of the Member States, but the need to achieve both inter-State consensus and consensus between scientific and political interests can make deliberations in the Commission more unstable and difficult, especially in negotiations where some States are represented by diplomatic experts articulating their political interests and others are represented by substance experts committed more to legal and criminological objectives. Getting the right mix of these two perspectives and ensuring that each understands the agenda of the other can in many cases be critical to finding compromise and consensus on results that are appropriate for everyone.

2. Integrating and moderating of partisan political views on crime

As discussed above, in the various Member States where democratic political systems exist, there tends to be a pattern of oscillation between right-wing and left-wing partisan political governments over time, and this has a significant impact on many aspects of crime prevention and criminal justice policy. The Commission builds consensus among the various partisan political perspectives, and because the right/left oscillation in the various States does not coincide, the collective effect in the Commission is to generally reduce the more extreme perspectives and over time, to push policy consensus in the direction of more moderate, centrist views. In effect, at any given time, the various Member States are at different points on the political spectrum, and positions in the centre are the only ones that can find consensus. That said, the Commission is not entirely free of policy oscillations of its own, and the balance between proactive and reactive policies changes over time. Many long-

time participants view its first decade as focused primarily on crime prevention and sociological or criminological approaches to crime, followed by a more reactive period from 1997 to 2005, during which activities were dominated by the processes before, during and immediately after the development of the two Conventions. Once the treaties were established, States tending to prefer reactive policies sought to narrow and focus work on the "hard law" treaties and related matters, while States leaning more towards proactive areas sought to re-balance the Commission's work by returning more to crime prevention and the "soft law" U.N. Standards and Norms on Crime Prevention and Criminal Justice.[106]

3. Establishing legitimacy

Just as the political accountability of national legislative bodies and their members to general populations serves to establish legitimacy within individual Member States, the Commission performs a similar function at the global level. As the Commission is an intergovernmental body, delegations representing each Member State are expected to represent its political and expert views, and their decisions to join consensus on the actions taken by the Commission politically commit or bind the States they represent. In the process of developing consensus on each issue, the articulation of positions and their adjustment by delegations in the course of negotiations perform several simultaneous functions. Limits on the extent of each policy proposal are established, in some cases eliminating some proposals from further consideration. Within those limits, diverse interests are reconciled to reach consensus on what remains. The negotiation process both establishes the content of the consensus and, ideally, convinces each Member State that its views have been considered and to the extent possible, incorporated into the final product. Having made concessions and accepted the concessions of other States, each State becomes politically committed to the outcome. This is further removed from the ultimate consent of the people in each Member State, but is otherwise similar and in many ways parallel to the process of compromise and consensus in national legislatures, and in States where they exist, within coalition governments.

4. Merging political, diplomatic and substantive perspectives

As noted in the introduction and the previous segment, a critical issue for the Commission is the maintenance of a balance in which there is sufficient substantive social science expertise to ensure valid and viable policies and in

[106] This debate has frequently taken place and many examples can be found in the deliberations of the past decade. See for example the Report on the reconvened 10th Session, which took place in April and September of 2001, just after the Palermo Convention was adopted by the General Assembly in October of 2000, E/CN.15/2001/30/Rev.1, at paragraphs 67 and 93-94.

which there is also sufficient political influence and oversight that those policies are seen as legitimate. Many of the functions of the Commission relate to the integration and reconciliation of the national and political interests of the various Member States, but compromise and reconciliation between politics and policy are equally important. The overall task is to develop policies which will actually be effective against crime, while respecting not only the divergent views of Member States in different places on the continuum of social and economic development and right-left political ideologies, but also the divergent views of diplomats representing governments and social science and legal experts representing criminology, human rights and other such perspectives.

5. Institutional coordination

As discussed above, it is in the nature of "crime" or the penal law that it is recognized as a distinct area of domestic policy and law, but also as a means to the ends of a wide range of other public policies. Other functional bodies of the U.N. and elements of its Secretariat charged with health, development, air and sea matters, the environment, migration, refugee and humanitarian matters and trade and commercial matters all have interests in crime prevention and criminal justice matters, and many elements of the Secretariat have experts or units that deal with crime matters as they apply to the subject matter at hand. This is also true of human rights and rule of law matters and institutions, but here the relationship is more complex and reciprocal. As with other subject-areas, the criminal law is often needed to protect the rule of law through offences protecting governance in general and the integrity of the legislative and judicial processes in particular, and it is also needed as a means of protecting human rights and criminalizing abuses such as torture. But these areas are also essential elements of criminal law and criminal justice itself, which makes the links between human rights, criminal justice, and the rule of law, and among elements of the Secretariat mandated to develop and maintain them, more important. In this context, the Commission and the U.N. Office on Drugs and Crime function as a basis of expertise in a structural or substantive sense, but they also function as a nexus through which mandates and work of a multidisciplinary nature can be coordinated in a procedural sense. Whether a particular project is characterized as a human rights project with crime prevention and criminal justice elements or *vice versa*, for example, can often depend on relatively inconsequential matters of timing or political debate. What matters is that the content of the project and its means of delivery both respect the institutional structures and mandates and reflect the expertise of all of the various disciplines needed to ensure efficient delivery and effective outcomes.

6. Priority setting

The Commission provides the primary forum in which competing crime issues are debated and priorities are set, giving due consideration to the views and

priorities of all of the Member States and input from experts in all relevant substantive areas. Nominally, the Commission is directly responsible only for the priorities of the U.N. Crime Programme,[107] but its deliberations also assist in the setting of priorities in other U.N. entities and within the Member States themselves. Effectively, the Commission also sets its own priorities, subject to the affirmation of the ECOSOC, and for some subject matter, the General Assembly. This is now done session by session, although an initial list of priorities for its work from 1992-1996 was set by the Commission and affirmed by the ECOSOC.[108] Efforts at setting priorities inevitably fall prey to the fact that Member States cannot agree on what the priorities are or should be, and in a consensus-based process, this tends to produce gradually longer lists until every imaginable sort of crime or concern about crime has been added to the list either at the behest of a Member State, or in an attempt to bring one or more reluctant States into the consensus. Once the process has reached the saturation point someone proposes to "refocus" or "revitalise" strategic priorities and starts the process all over again. In early 2007, there was some discussion of how priorities should be set during the negotiation of a mid-term strategy for the UNODC. [109] Some States argued that the proposed strategy should set priorities or allow the Secretariat to do so, while others argued that this was the exclusive prerogative of the two Commissions themselves. The agreed text affirms the exclusive authority of the two Commissions to set priorities, and that the Strategy is based on existing mandates and does not modify them, which preserves existing priorities. As sovereign bodies, it is of course always open to the Commissions to establish new mandates or set new priorities at any time. Presumably, as bodies of Member States, the two Conferences of States Parties will also have some influence in setting overall priorities. This has not arisen with the Commission on Narcotic Drugs because the Commission itself fulfils both roles, supplemented by the International Narcotics Control Board.[110] A related issue, discussed below, is the extent to which priorities should be set in the Commissions and Conferences on a political basis, as opposed to the *de-facto* priority setting that is done by donor States in deciding what projects they will fund.

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[107] E/RES/1992/22, Part I, paragraph 3, subparagraph (l).

[108] E/RES/1992/22, Part VI.

[109] E/CN.15/2007/5, E/CN.7/2007/14, Part I. The Strategy applies to all of UNODC and was adopted by the 50th session of the Commission on Narcotic Drugs and the 16th session of the Crime Commission.

[110] See Single Convention on Narcotic Drugs, *1961* Articles 9-16, and *Final Act of the Conference to Consider Amendments to the Single Convention on Narcotic Drugs, 1961*, Resolution 1, 25 March 1961.

7. Strategic planning (work of the Crime Programme and Secretariat)

As part of its management and oversight functions, the Commission is the forum in which strategic planning for the Secretariat and other elements of the U.N. Crime Programme is done, and strategic planning for the Programme was added to the standing agenda of the Commission at one of its early sessions. The major substantive challenge is that many priorities cannot be predicted very far in advance, both because crime itself is inherently unpredictable, and because the partisan views and substantive policy priorities of the Member States themselves are constantly shifting. Added to this, as noted above, is the fact that in any consensus-based process, once a list is started, more and more "priorities" are added to it until saturation is reached and the process repeats. Underlying all of this are political and economic differences between developed and developing Member States. As donor States, the developed countries contribute most (approximately 90%) of the resources and tend to use this to focus the strategic agenda on what they see as priorities. The developing countries, on the other hand, emphasize the equality of Member States in the U.N., and want priorities chosen and strategic planning done in the Commission itself. This long-standing issue is discussed in more detail below.

8. Strategic planning (work of the Crime Commission itself)

The ability of the Commission to plan multi-year strategies for its own work is more limited. As discussed above, there has been some success in establishing standing or recurring agenda items, but emerging issues annual priorities and the content of resolutions submitted each year cannot be predicted very far in advance. Generally, the priority-setting and strategic planning functions of the Commission must compromise between two conflicting objectives. On one hand, conducting substantive discussions requires time in advance, to allow Member States to consider the domestic implications of issues and options, consult with other States and prepare their delegations, which requires that issues be clarified and any supporting documentation from the Secretariat be disseminated well in advance. On the other hand, both crime itself and the political priorities of Member States are inherently unpredictable, and most delegations wish to maintain as much flexibility as possible to raise issues of concern to them with little or no advance notice to the Commission. At the 20th session, in April 2011, frustrations arising from this problem led to a decision of the Commission on several reform measures, including requirements that draft resolutions be submitted a month in advance to permit time for the Secretariat to translate and disseminate the texts in all languages and to allow Member States to select appropriate experts, and a requirement that there be a sufficient interval between the sessions of the Commission on Narcotic Drugs

(usually held in March) and the Crime Commission (usually held in April) to permit the Secretariat and delegations to efficiently prepare.[111, 112]

9. Oversight of the Secretariat by Member States

The two Commissions are the primary mechanisms whereby Member States oversee and direct the work of the UNODC. As noted above, the Commission and Secretariat were established jointly, and their functions are closely related: anything that the Secretariat is called upon to do, the Commission is called upon to oversee. This oversight can be notionally broken down into several distinct aspects, including oversight and input into policy-development and programme planning and priority setting; oversight of the ways in which projects and other work are carried out, and financial oversight or accountability. The Commission also exercises a more limited oversight role in areas where the subject matter involved may be within the mandates of other bodies as well. As discussed below, the oversight functions of the Commission and the amount of attention paid to this function, have increased substantially since the Commission was first established, partly due to the substantial increase in resources and mandates for crime prevention and criminal justice activities by the Secretariat and partly as a result of the increasing tendency to perceive the work as being sufficiently important and serious to raise political sensitivities. The need for continuity and coherence in the oversight of the Secretariat by the two Commissions led to the joint establishment of a standing open-ended intergovernmental working group on governance and finance by the Crime and Drug Commissions in 2009, and the mandate of this Group was continued by joint resolutions of the two bodies at their 2011 sessions.[113]

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[111] See E/2011/30, Draft Decision 20/1, "Report of the Commission on Crime Prevention and Criminal Justice on its twentieth session, provisional agenda for its twenty-first session and organization of work of its future sessions." Generally, the timing of the two Commissions must balance among ensuring that Member States have enough time to prepare, the conflicting demands of crime, drug and other Vienna based processes (notably those of the International Atomic Energy Agency) for document translation and other Secretariat support, and the need to ensure that the Reports of both bodies, including resolutions addressed to the ECOSOC and/or General Assembly, are processed and disseminated early enough to permit consideration and the next annual sessions of the ECOSOC, which usually take up the crime and drug subject matter in June or early July each year.

[112] See also the discussion of thematic planning for the Commission itself, Part G, recommendation 5, below.

[113] See resolutions 52/13 of the Commission on Narcotic Drugs and 18/3 of the Crime Commission. Documents generated by the group, commonly known as "Fin-Gov", can be found at: http://www.unodc.org/unodc/en/commissions/wg-governance-finance-2.html.

CURRENT ISSUES, CHALLENGES AND OBSTACLES TO PERFORMING BASIC FUNCTIONS

I. Issues relating to the capacity and function of the Commission itself

1. Politicisation of the Commission

Most observers agree that, while the Commission was originally intended to deal with crime prevention and criminal justice issues primarily from a scientific and technical perspective, the emphasis has shifted in recent years more in the direction of diplomatic and political perspectives on crime issues and an expanded role in overseeing the work of the Secretariat. Lawyers and criminologists have tended to regard this trend with some dismay, but it is important that the reasons for it be explored.

The gradual shift from a primarily criminological and social-science based body to a more governmental, political and diplomatic focus began long before the present Commission was established. The pre-1991 Committees began as small ad hoc advisory committees of independent academic experts in the 1950s and gradually became more closely tied to the Member States as nominations became governmental and the bodies expanded to represent all of the geographical regions through to the mid-1980's. The process which led to the establishment of the Commission itself was to some extent a "deal with the devil" in scientific terms, seeking greater governmental and political involvement as a means of mobilizing greater resources and governmental commitment to the outputs of the new Commission, but increasingly at the expense of the independence and scientific calibre and validity of its deliberations.[114]

Prof. Clark argued at the time the Commission was first established that it required substantive experts with both governmental and non-governmental perspectives, and this continues to be true, but two further layers have been added. A greatly-expanded Secretariat has taken a much more active and substantive role, not just in running the sessions of the Commission, but it providing it with substantive reports and discussion outlines intended to better inform its deliberations and to some extent to focus discussions more closely. It also often provides Member States with advice and assistance in representing their interests and on the sorts of mandates it feels it needs to do its work, a role supported by some delegations and criticised by others as an erosion of neutrality. The other major shift has been towards representation by Vienna-based diplomats who are experts in multilateral diplomacy and the

[114] See: Clark, 1994, chapters 1 and 2 at pp. 19-23 and 42-46.

management of the UNODC and other U.N. institutions, but in many cases know relatively little about the study of crime or the mechanics of prevention and criminal justice itself. They can serve as a conduit for the exchange of information and the representation of the interests of their governments in negotiations within parameters defined by their instructions, but they are not able to participate effectively in interactive criminological or policy deliberations of a substantive nature and generally lack the instructions to do so even if they had the substantive expertise.

This evolution has taken the form of gradual changes in the composition of national delegations in the Commission and other U.N. bodies, but it is more than just a gradual shift in diplomatic practice. It has been strongly influenced, if not driven by, the evolution of crime itself during the twentieth century. As discussed above, the concept of "crime" itself has evolved substantially from early views that it should be considered as a matter of the individual human rights of offender and/or victims and of collective social rights to be free of crime, and as a primarily social issue to be dealt with mostly within States. Globalisation and changes both to the seriousness and extent of transnational crime, and the strategic and security interests in areas such as terrorism, global economic stability, the rule of law, human rights and development assistance have led to greater consideration of crime as a national, regional and global security issue, and to more frequent consideration of crime issues by the Security Council and the General Assembly. The same developments have also led to increasing substantive and institutional overlap with security, economic, development, human rights and other thematic subject-matter, and the range of substantive issues raised in the Commission has expanded significantly, as Member States seek to take up the criminal justice aspects of otherwise non-criminal subject matter, such as the protection of cultural property or protection of the environment.

Whether this is a legitimate attempt to focus criminal justice expertise on the problem or simply an attempt to raise controversial issues that did not achieve satisfactory outcomes in one forum in another forum, the practical effect has been to raise the political temperature of some deliberations and to bring into the Commission a broader range of diplomatic and other experts from outside of the traditional crime prevention and criminal justice field. The adoption of the Palermo and Merida Conventions also follows the precedent of the earlier narcotics instruments in using international law to induce individual Member States to adopt, strengthen and apply domestic criminal law measures to individuals, as discussions of crime issues have matured and consensus on the scope of actions to be taken and the willingness to move more in the direction of prescriptive and legally-binding measures has increased.

The same pressures which have expanded the quantity and scope of the subject-matter before the Commission have also greatly expanded the work of the Secretariat, including into the politically-sensitive area of terrorism prevention. The last two decades have seen large increases in workloads, personnel and resources allocated to UNODC. The assessment of trends in

workloads and budget or resource issues is complicated by the 2003 merger of the former U.N. Drug Control Programme (UNDCP) and the Centre for International Crime Prevention (CICP), but the overall picture is clear. There has been a major expansion in staff and budget, and the vast majority of the increases have been in areas that fall primarily under the oversight of the Crime Commission. Resource issues are examined in detail below, but the combined budget for crime and drugs (and after 2003, terrorism) increased about 400%, from less than $60 million in the early 1990s to a peak of almost $250 million in 2008, and deliberations over how the funds are raised, how they are spent and how they are accounted for have become a major issue for the Commission, and since 2008, the intergovernmental group on finance and governance.

Paradoxically, as the concern about crime, the breadth of the range of subjects raised at each session, and the scope of the Secretariat work and resources overseen by the Commission have all increased the amount of time available for deliberations has been sharply reduced, which has tended to further politicise matters by reducing the substantive evidence before the Commission and the attendance of the substantive experts needed to assess it and develop substantive legal and criminological outputs as opposed to political ones. As discussed below, political risks to the Member States may have been reduced by this, but so has the value of the Commission and its work in developing accurate assessments of the nature and scope of crime and effective responses to it.

As noted above, while the Commission could in theory vote on the resolutions and decisions it makes, the practice is to adopt on consensus or not at all, and it has never voted. This is consistent with technical and scientific conceptions of the Commission, which place more emphasis on exchanging information and developing new knowledge and policy options than on concrete actions, but to a certain degree it also reflects fairly shrewd political strategies among the States concerned. Given the strict approaches taken to national sovereignty in the making and enforcement of the penal law, most delegations have recognised that getting any sort of effective results out of the Commission requires persuasion ahead of coercion or majoritarian decision-making. In this, among the delegates, the diplomats tend to have the advantage over many of the national crime experts, who are sometimes prone to forget the fundamental differences between making laws in a constitutional legislative system and establishing legal or other principles based on the consent and actual support of Member States at the international level.

Whether voting will come, and if so what the effects will be, is difficult to predict. Faced with the possibility of voting, it becomes more likely that delegations will arrive with pre-determined voting instructions, which may exacerbate the existing trends away from actual knowledge-transfer and active policy-making during the Commission sessions. It is also possible that tactical measures might be used to keep sensitive items off the agenda by those who fear an adverse decision, which could short-circuit the sort of deliberations and

negotiations that, over time, form the basis of consensus. Voting might transform the hitherto-chaotic attempts to set strategic priorities, enabling concrete priorities to be set, but this might not prove the *panacea* that many delegations seek. Such voting could alienate those States whose priorities were voted down and could trigger the same sort of budgetary problems encountered in the General Assembly in the 1980s: if larger numbers of small developing Member States can use voting to control priorities, then the financial support of the smaller number of developed Member States whose priorities are not chosen could evaporate. This does not occur in consensus-based decision making, which requires each group to support the priorities of the other to some degree in order to set priorities and adopt mandates.[115]

Ultimately, the effectiveness of the Commission lies not just in its ability to make concrete decisions, but its ability to do so based on factual evidence and sound analysis which combines technical validity and political viability, and to reach decisions that enjoy the support of the Member States to the point where the will of other States will be respected and the decisions actually implemented. A major risk, should voting become commonplace, is that it would weaken or reduce the capacity to negotiate consensus-based decisions. At present, delegations must often weaken texts or accept compromises, and if these go too far or make the proposal ineffective, then its proponents have the option of withdrawing or abandoning it, perhaps with a view to building the necessary support over the longer term. Faced with the prospect of voting, much of the pressure to compromise – and much of the debate needed to work out the substantive details – would be lost. In substantive terms more and stronger decisions might be made, but they might also not be implemented, especially by some of the Member States whose interests are most affected and whose support is most needed. In domestic political structures, legitimacy springs from the recognition that elections are fair, decision making is majority-based and transparent, and that all else being equal, the social benefits and cohesion of acceding to the will of the majority is more beneficial than non-conformity. In the U.N., it is not at all clear that the same dynamic would apply. At the Commission, legitimacy and long term support for a course of action on crime prevention or criminal justice is more likely to attach to consensus-based decisions than majoritarian ones.

It seems apparent that the Commission has become more politicised primarily because the Member States have begun to take crime, and in consequence, Commission itself, seriously. While this clearly has disadvantages when efforts to find technical and legal solutions to specific technical crime problems are impeded, the greater political engagement is essential to preventing and suppressing crime and is a positive development. Political aspects of crime prevention and criminal justice are a factor in every Member State, and they

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[115] See "Issues related to the contribution of financial resources", Part F.II, below, and Luck, 2004, at pp. 381-87. See also, Laurenti, 2004. Ultimately, after an extended budgetary crisis, the General Assembly decided to revert to consensus-based budgeting, subject to the ultimate authority of Article 18 of the Charter of the United Nations (⅔ majority vote on certain issues).

can become even more problematic at the multilateral level, where many different political concerns will usually be engaged and consensus or near-consensus must be found. Such developments may make consensus more difficult, but the functions of the Commission go beyond consensus-building. Commission delegations do not just bring the political views of their governments into the forum, they also take out of it their assessments of how other Member States perceive the issues, and this form of dialogue, while laborious and time-consuming, is ultimately essential to forming the more fundamental global consensus at a political level that is needed to deal with the problem that globalised crime has become. It is for technical experts to develop practical responses to crime and to explain what needs to be done, how it would be done and why it needs to be done, but ultimately getting it done depends on the individual and collective political will of the Member States.

2. Regional groups and equitable geographical representation

The practice in the U.N. is that intergovernmental processes should represent the five regional groups more or less equally. This applies to the election of Member States to the Commission itself, and this has never been a major problem, but it also applies to many of the subordinate bodies and processes established or undertaken by the Commission, and this becomes problematic when the needs for regional representation and representation of substantive subject matter or expertise do not coincide. This conflict frequently arises with respect to the composition of expert panels for thematic discussions, in subjects where most of the available expertise resides in the developed countries concentrated in WEOG, for example. In some cases, substantive experts from one group have been turned away, even though places allocated to another group remain vacant as it has no experts or is unable to reach consensus on which ones should be invited to participate. The basic composition of the regional groups, which have no official U.N. status, is also at best a very rough approximation of the social, political and economic patterns that underlie the sorts of crime that come before the Commission. In Commission deliberations, regional interests most commonly break down as between the developing countries which seek technical assistance and the developed countries which provide the expertise and resources, and on other interests unrelated to regional group status. States with large coastlines and maritime interests have enhanced interests in subject matter such as maritime piracy, the smuggling of migrants and some forms of environmental crime, for example, and this is equally true for States in Europe, Africa, the Caribbean, or Asia. A further complication for the Commission and other U.N. bodies arises from the fact that most Members of the Eastern European Group were in the Warsaw Pact when it was established and are now politically part of the European Union, the other Members of which all belong to the WEOG group.

3. Difficulties predicting subject matter and preparing for sessions in advance

There is an ongoing tension between the need to maintain a Commission which is flexible and responsive to the needs and priorities of the Member States on one hand, while on the other hand ensuring that delegations and experts have sufficient time to prepare properly and where necessary to consult on the positions they will take during the session. Commission agendas include some predictable elements, in the form of thematic discussions and standing agenda items, which are supposed to be set sufficiently far in advance for appropriate experts to be selected and presentations to be prepared and coordinated. The other major element is composed of the resolutions proposed at each session. These are not as predictable because Member States are free to introduce them until noon of the first day of the session, and many wait until the last minute.

Both of these have proven problematic. In the case of thematic debates and standing agenda items, the failure to reach consensus on topics and sub-topics in the annual sessions when substantive crime experts are present has led to intersessional negotiations among the representatives from the permanent missions who do not understand the substantive issues well enough to arrive at topics which are valid in legal and criminological terms, and who often do not reach consensus on the items until a few weeks before the session, by which time it is too late to locate, prepare and coordinate among appropriate experts. In the case of draft resolutions, the rules of procedure (which were made on the basis of eight-day sessions and not the present five-day duration) permit introduction up until the first day of the session, which means that in some sessions, texts are not available in all languages until as late as the third day of the five-day session, and those which are not agreed in the Committee of the Whole by the end of the fourth day are not available in translated and revised versions for adoption by the plenary on the final day. Distribution of copies during the final hours of each session has become common and verbal adoption followed by dissemination of translated texts only as part of the report after the session has adjourned has occurred on several occasions. The increasing diversity of subject-matter raised by Member States has led to larger numbers of resolutions at each session, and increases in the time needed to negotiate them. The higher volume of resolutions and the reduction of the duration of Commission sessions from eight working days to only five in 2005 has greatly reduced the role of many developing countries. Their experts are generally not in Vienna to attend the informal discussions of proposed resolutions the Friday before each session, and those with small delegations and fewer substantive experts cannot attend the parallel informal discussions of many resolutions now conducted at the same time during the sessions.

Attempts have been made to induce Member States to submit texts several weeks in advance, so as to permit sufficient time for translation and dissemination before delegations are finalised and despatched by Member States, but without much success thus far. At the 20th session, in April 2011, the Commission recommended to the ECOSOC a formal decision that would

require the submission of proposed resolutions a month prior to each session and dissemination of all proposed resolutions in languages three weeks in advance, and urging the Member States to consolidate and merge proposals where possible.[116] The strong support needed to adopt this draft decision is certainly encouraging, but it remains to be seen how effective it will be in allowing future Chairpersons to resist pressure by Member States seeking to introduce proposals at the last minute. There are on occasion legitimate reasons why resolutions cannot be formulated far in advance, and those which can be submitted early may prove less well-developed and require more time to negotiate during the session. One example of this is the various resolutions setting out the agendas for Crime Congresses, which are usually proposed by the host State, but which require broad consultations and consensus that can only be reached once the Commission is in session. There is also the potential for multiple resolutions on the same subject where the sponsors did not have an opportunity to develop a compromise text, although arguably having two versions in languages at the beginning of the session may still be better than nothing at all. There are also in some cases tactical reasons for States not to disclose proposals in advance, and there may be attempts to circumvent the new rule for this reason. The major advantages of the proposed change include the fact that texts will be available in languages at the beginning of the session and that delegations should be better prepared with instructions and appropriate experts to negotiate them. Since the practice of holding eight day sessions was changed to reduce duration to five days in 2005, informal sessions have been held the Friday before each formal session to permit such preliminary discussions. Most delegations support this as a useful supplement to the formal work of the Commission, but it does marginalise some delegations, as the smaller delegations from developing countries are usually not in Vienna early enough, and the discussions and texts are in English only.

4. Limited capacity to conduct and participate effectively in substantive deliberations

The purely diplomatic elements of the Commission's work, such as the budgetary and management oversight of the Secretariat, are generally carried out by the resident diplomats who represent the interests of each Member State in Vienna.[117] Resident diplomatic representatives regularly participate in oversight processes ranging from bilateral or multilateral discussions of specific projects to ongoing processes such as the standing open-ended

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[116] Report of the Commission at its 20th Session, E/2011/30, Chapter I(C), Draft Decision 1: "Report of the Commission on Crime Prevention and Criminal Justice on its twentieth session, provisional agenda for its twenty-first session and organization of work of its future sessions".

[117] Not every country has such representation, but in 2011 about 135 of the 193 Member States, as well as Palestine and the Vatican have diplomatic or consular missions in Vienna, and many of them have either separate missions to the U.N. and other international organizations or mission staff specifically assigned to such functions.

intergovernmental working group on governance and finance and the intersessional meetings of the Commission itself. This provides adequate capacity for the sort of ongoing oversight needed for finance and governance matters, and capacity limits, when they arise, tend to be within individual missions, and within UNODC, which has chronic problems arising from the lack of Regular Budget resources and the fact that voluntary contributions tend to be "earmarked" for specific projects and cannot be used for internal management and other core functions.

Capacity to conduct and effectively participate in substantive deliberations on crime issues presents a much greater problem. Substance experts must be sent from national capitals, which is expensive and diverts them from work on domestic issues at home. In developed countries, transnational crime problems in general, and the work of the Commission itself usually form only a small part of the work of lawyers, criminologists and other such experts, which limits the amounts of time available to review agendas, reports and draft resolutions even if they are available sufficiently far in advance. Developing countries may not have the necessary experts at all, and if they do exist, they may not be sent due to the costs, which in turn leads to systematic under-representation. The increasingly diverse range of issues that are now being raised poses a new and significant challenge. Member States usually send crime prevention and criminal justice experts who can address a range of general topics such as criminal law reform, crime prevention, juvenile justice or prison issues as well as core crime areas such as organised crime or corruption issues, but the increasing use of the Commission to take up the criminal justice aspects of non-crime subject matter such as the protection of endangered species or cultural heritage property exceeds the capacity of even most developed countries to include subject-matter experts on their delegations.

5. Insufficient duration of the annual sessions

The 2005 reduction of Commission sessions from eight working days to five has significantly reduced the capacity of the Commission to consider the wide range of issues within its mandate, and has also reduced the quality of some of the deliberations that have taken place. In general, the shorter sessions have reduced the length of time available for the Secretariat to produce in-session documents, including draft resolutions and elements of the Commission's report itself, in the six official U.N. languages, and the amounts of time available for the delegations to review proposals and obtain instructions as well as to negotiate and adopt the resulting resolutions. The reduction of available time in the Committee of the Whole and Plenary has shifted negotiations into informal meetings, which often take place in parallel with proceedings in the Committee, the Plenary and other informal meetings. The effectiveness of many experts is reduced by the need to negotiate several unrelated issues at the same time, and Member States with small delegations are often unable to attend informal discussions on issues where they have an interest. Apart from under-representation, this also leads to the re-opening of issues when the texts

are presented in the Committee and Plenary, often in the later stages of the session when there is little time left to discuss them.

At its 2001 session, the Commission adopted five resolutions, and had before it revised versions in languages of all five, including three successive revisions of one of the draft resolutions, two revised versions of three of the draft texts, and one revision of the remaining text. At its 2006 session, the number of resolutions had increased to 14, of which 12 were adopted, of which only four were translated and distributed as in-session documents before adoption by the Commission. At the 2011 session, 15 resolutions were proposed and all were adopted. Of these, only 9 were revised and disseminated in all languages as in-session documents prior to adoption. Four others were distributed in English only during the final meeting, a portion of which was also conducted in English only after available simultaneous interpretation personnel and resources were exhausted. The remaining two were adopted verbally, in English only, and were not made available until the report of the session itself was released.[118]

The 2005 reduction of the number of days in the annual sessions of the Commission, during a period when the workload expected of it has been steadily increasing is perplexing, even more so in the context of a decision by the General Assembly the following year to increase the time allocated for the deliberation of human rights issues each year from six to a minimum of ten weeks.[119] The initial proposal was to have a five-day session focused on following up the 2005 Crime Congress on an "exceptional and non-precedential basis",[120] but this was quickly disregarded by proponents of a shorter, more diplomatic and less-substantive Commission. Unofficially, the justifications tendered by delegations which supported the change were that it would reduce the accommodation and related costs of attending the annual sessions, and that some of the work of the Commission would be taken on by the Conferences of States Parties to the Palermo Convention, which first convened in 2004 and to the Merida Convention, which first convened in 2006. The treaty bodies have indeed taken up some of the work, but their mandates

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[118] Documentation for the 2001, 2006 and 2011 sessions was reviewed because the previous years in each case followed Crime Congresses and these sessions usually receive fewer proposed resolutions. The 2011 session followed a practice which has evolved of necessity, under which last-minute texts and elements of the draft report which cannot be translated and circulated in time are posted on-line in the draft Report, in English only, a week or two after the session. Other languages are posted as they become available and the Member States are given an opportunity to request changes before the Report is finalised and officially transmitted to the ECOSOC.

[119] The U.N. Commission on Human Rights, established by E/RES/5(1) in 1946, generally convened for six weeks each year. The year after the Crime Commission decided to reduce sessions from 8 working days to only 5 on a "non-precedential basis", the same Member States in the General Assembly decided to replace the Commission on Human Rights with a new Human Rights Council, which is mandated to meet for *at least* 10 weeks each year and usually now convenes for three four-week sessions. See A/RES/60/251, paragraph 10.

[120] Report of the Commission at its 13th Session, E/2004/30, E/CN.15/2004/16, Draft Decision #1, paragraph (c).

are more narrowly circumscribed by the treaties themselves, and they meet only every second year, and any reduction has been overtaken by increases in new subject matter placed before the Commission. No one who has worked in the high-pressure environments of the five day annual sessions could be blamed for asking whether the cost-savings to Member States represent a false economy when the overall value of the functions and work of the Commission are taken into consideration.

6. Limited capacity to produce supporting documentation of Commission inputs and outputs

An ongoing concern has always been the high cost of producing documents in all of the six official languages of the U.N. The Secretariat must first edit source texts, which must be submitted in a U.N. official language, but are often written by authors who may not be fully proficient in any of them. Editing also ensures that standard U.N. terminology is used where possible, and checks for consistency with any prior texts on the same subject to ensure that cross-references are accurate and that translated versions maintain consistency with earlier versions. Once this is done, texts are translated into the other five official U.N. languages, edited again in each language and then printed and posted electronically. Often this is done overnight or in the space of a few hours for in-session documents during meetings, such as draft resolutions under consideration during sessions of the Commission. The cost has gradually risen, and in 2011 was estimated by U.N. personnel at between $1,300-2,000 per page, depending on the nature of the text, the number of words per page and how pages were formatted. Concern within the U.N. about the effects of large volumes on the quality of information and translation, on timeliness of submission and production for meetings, and in various periods of cost or budget constraints, on the high costs of documentation pre-date the establishment of the Crime Commission, and in 1997, the General Assembly adopted a policy that limited the length of documents produced from within the Secretariat (i.e., in which the Secretariat or Secretary General reports to a body on some issue or process) and urged the Secretariat and Member States to exercise restraint on the length of documents which originated with intergovernmental bodies such as the functional commissions and any subordinate intergovernmental bodies.[121]

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[121] A/RES/50/206C, A/RES/52/214, Part B, and subsequent resolutions, including A/RES/59/265, Part III, paragraph 4, and most recently A/RES/65/245. Implementing the policy with respect to UNODC and the Commission, see UNOV/DGB.15-ODC/EDB.15, of 6 November 2002. See also A/RES/36/117, paragraph 5 (1981), which calls for reports to bodies such as the Commission of no more than 32 pages; A/RES/50/206 (1995) complaining that these limits were not observed; A/52/291 and A/RES/52/214, Part B, paragraphs 4 and 7 (1997), calling for reports made from the Secretariat to intergovernmental bodies of no more than 16 pages and for the reduction of reports by intergovernmental bodies from 32 to 20 pages; and A/58/CRP.7, containing guidelines for text that should be included and excluded from these documents to reduce length.

This has not been observed in practice, in the Crime Commission or in other bodies, prompting the Secretary General to note in 2002 that "... documentation had been a chronic problem of the United Nations and that it had worsened to such an extent that the Organization was in danger of being overwhelmed by a flood of documents ..."[122] Targeted at 32 pages, annual reports of the Commission increased from about that length prior to 2000, to over 100 pages in 2010, with some reductions in the 2011 report and further reductions planned for the future.[123] While timeliness and other factors are concerns, the major problem is the overall cost of production, which continues to escalate faster than the U.N.'s frozen budget. U.N. officials briefing the 2011 session indicated that new efforts would be made to bring documentation down to the lengths of 8500 words for documents originating within the Secretariat and 10,700 words for texts originating with intergovernmental bodies, with some provision for waivers of these limits in appropriate cases.

While the need to reduce costs is clearly a serious challenge, the proposed limits raise fundamental questions about the role of the Commission, its subordinate bodies and UNODC. The functions of the Commission include mandating the conduct of research and the development of conclusions and recommendations, the development of normative materials and the development of technical assistance and similar materials. This is done by intergovernmental and technical expert bodies, the Secretariat, consultants and other sources, usually at great cost, and is only documented and produced in the six official languages of the U.N. when it is transmitted back to the Commission. Such reports are in most cases reviewed and accepted or adopted by the Commission to signify the approval of the Member States and authorise their dissemination and use by UNODC and other elements of the Secretariat and the Member States, and this must be done in all languages. Such documents do not usually become part of the annual reports of the Commission itself, but they are archived in the U.N. Official Document System (ODS), which makes them available for use by the Secretariat and Member States. Since 2000, they have been publicly available in all languages at the web site of the Commission, and since 2004, also publicly available through ODS itself. While these texts are submitted to the Commission in response to its requests and to assist it in its deliberations, much of their real value lies in wider dissemination and use, particularly since annual reports contain only very brief summaries of discussions. If it is not the function of the Commission to gather, adopt, archive and disseminate this content, then the question must be asked where, how and with what resources that function should be performed.

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[122] Report on improving the performance of the Department of General Assembly Affairs and Conference Services, A/57/289, paragraph 49.

[123] The annual reports from 2000 onward show a steady increase in length, from 30-50 pages in 2000-01 to 105 pages in 2004, and 120 pages in 2010, with a further 20-40 pages of annexes each session. In 2011, in response to the request for restraint, the length was reduced to 77 pages, and the Secretariat indicated that further cuts would be attempted in 2012.

Similar problems arise with the annual reports themselves. Of the 120 pages of the 2010 report, the first 77 pages are composed of seven resolutions and one decision of the Commission itself, two resolutions and one decision referred to the ECOSOC, and four resolutions transmitted to the General Assembly *via* the ECOSOC. A further 68 pages report on management issues, and only 17 deal with substantive crime issues, including a one-day thematic discussion and follow up to the 2010 Crime Congress, with the latter also being the focus if additional discussion outside of the Plenary and the follow-up resolution subsequently adopted by the General Assembly as its resolution 56/230. The function of the annual reports is only to document what takes place in the sessions and what the Commission actually decides to do with whatever information is transmitted to it, and if the incoming information contains sufficient detail and quality to document the work that has been done and is maintained in accessible records, then the annual reports can be kept relatively brief by using cross-references to the materials under discussion, but it is difficult to see how they could be reduced to the proposed lengths, given the ever-increasing volume and diversity of the subject-matter presented to the Commission each year.

An underlying problem is the fact that the Commission includes and serves several different constituencies, who generally disagree on what needs to be published and why. For the diplomatic constituencies and functions, the priority is to document which Member States have taken part in a process, whether they produced some form of consensus, and if so, on what. This group also generally sees a need to document the oversight functions of the Commission, such as the priority-setting and budgetary information needed to justify and account for contributed resources. For the scientific and criminological element, the priority is to document research data and assessments of crime itself, and the substantive content of technical assistance information, model laws or practices and other such information that can be taken up and used by Member States. Time and resources are expended on disseminating and returning questionnaires and analysing the responses, and there would be little point in this if the results are not then placed on the record in languages so that the Secretariat and Member States can actually make use of what has been learned.

How the new effort to reduce documentation will play out remains to be seen. The core functions of the Commission depend on the use of documents in languages as a key input of substantive information for its proceedings and as a key output whereby what the Commission, its subordinate bodies and the Secretariat produces is actually transmitted to and used by the Member States. This means that reducing document costs will depend first and foremost on avoiding the elimination of content which is essential to these functions and developing some form of process and criteria for distinguishing between what is essential and what is not. Electronic dissemination speeds up the process, but only marginally reduces costs because the vast majority of these are for editing and translation services. Producing texts in only one language (almost always English) is occasionally possible in small group processes, but is not viable as

a general practice because it systematically marginalises non-English-speaking States and experts, which biases the underlying analysis itself. Within the Secretariat, the uptake of new technologies for processing documents and comparing and verifying related texts, may also help reduce costs.

7. Participation of representatives of other intergovernmental and non-governmental bodies, representatives of the private sector and individual

A further issue with respect to the competence and preparation of national delegations is the question of whether individuals who are not members of the delegations should participate in deliberations, and if so, how. As noted above, non-governmental organizations may seek accredited status with the ECOSOC, and having obtained it, may attend the open proceedings during Commission sessions, and may intervene on an issue if time remains after all of the Member States requesting the floor have spoken. In recent years, however, the situation has become more complex, because the broader range of issues and some of the effects of the globalisation of crime itself have drawn in experts from outside of the ECOSOC framework. The majority of NGOs which have regularly attended the Commission are concerned with criminal justice, penal or human rights matters, but recent discussions in areas such as economic crime, identity-related crime and cybercrime have demonstrated the need to include private sector commercial interests and expertise, on the basis that much of the infrastructure in which these crimes occur, and other key interests, such as the development and marketing of crime-prevention security products, are located largely in the domestic and international private sectors.

NGO and other non-governmental experts have on occasion been included in the national delegations of some Member States in order to permit them to participate, but this can be problematic for both the experts, who may prefer to express independent opinions on issues, and for the Member States, who may support the participation of such experts without necessarily wishing to be committed or associated with any views they may express. Private sector representatives may also be from multinational companies or industry associations not associated directly with any individual State. In recent sessions, the traditional reserve of Member States about the engagement of non-governmental interests has faded to some degree in the face of the need for such participation, especially in activities such as expert presentations or panel discussions, and in 2009 a formal decision to allow private sector representatives to participate in a thematic discussion on economic fraud and identity-related crime in their own right was adopted.[124]

[124] Report of the Commission at its 18th (2009) Session, E/2009/30, E/CN.15/2009/20, Chapt. I (D), Decision 18/1, paragraph (c). While this may serve as a precedent for the future, it was addressed only to the thematic discussion in that particular session.

II. Issues related to the contribution and management of financial resources

For obvious reasons, the management of and accountability for the financial resources used to support the Secretariat and its work on crime prevention and criminal justice are a major concern for the Member States, and one of the most critical functions of the Commission.

The management of the Secretariat itself is not within the scope of this book,[125] but a number of its financial and budgetary challenges do affect the way the Commission functions and the way it carries out the Commission's mandates. The basic *quantum* of annual contributions and the breadth of the donor base are recurrent issues. Reliance on a small number of large donors leads to short-term instabilities in funding and a lack of diversity in projects, as the donors are selective in what they are willing to fund. The preference of Member States for allocating resources to specific projects – called "earmarking" – which offer high political profile, accord with their own policy goals and are easily quantifiable to support accounting requirements has under-funded institutional infrastructure and core capacities needed to generate projects and support the Commission itself. The lack of stable, predictable funding is also a problem within the Secretariat, as it makes it difficult to plan long-term projects for greater efficiencies and economies of scale, and to attract highly-qualified staff through offers of stable employment in an area where essential skills and judgment can only be learned through on-the-job experience. Over the past decade, the total volume of work has increased substantially, but the work has been funded almost entirely through a rapid increase in extrabudgetary resources earmarked for specific purposes, leading to a shortfall in resources to support the general management and other functions needed to support the increased substantive workload.

Any assessment of U.N. budget issues (not to mention the work of U.N. personnel in actually managing those budgets) is complicated for the Member States and outsiders by the complexity of the sources of funds, conditions which are placed on their use and other factors. Since the allocations and characterisations of work by donors frequently do not coincide exactly with the allocation of posts and resources within the Secretariat, one frequent result of this complexity is that many specific posts and projects are funded by a complex web of resources coming from many different sources, each with its own requirements for reporting and accountability.

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[125] A number of U.N. reports have examined the functions and organization of the Office on Drugs and Crime. For a recent overview see: U.N. Joint Investigation Unit, "Review of Management and Administration in the U.N. Office on Drugs and Crime", 2010, JIU/REP/2010/10. For an overview of the effects of resource issues, see Report of the Executive Director to the 2008 sessions of the Commission on Narcotic Drugs and the Commission on Crime Prevention and Criminal Justice "Report of the Executive Director on Financial and Budgetary Issues", E/CN.7/2008/11, E/CN.15/2008/15.

For U.N. entities such as UNODC, resources fall into two basic categories and several sub-categories:

- *Regular Budget (RB) Resources* come from the assessments paid by Member States pursuant o membership and the *U.N. Charter*. They are allocated under the biennial programme budget of the United Nations by the General Assembly every two years in accordance with established specific programme planning and budgeting procedures. The Regular Budget resources are linked to specific programme mandates, outputs and the related specific posts and expenditures, including management and support functions (e.g. IT or conference services).
- *Extrabudgetary (XB) Resources* come, as the name implies, from outside of the Regular Budgetary process, in the form of voluntary contributions. The vast majority come from the Member States, but the private sector has become a further source since the late 1990s.[126] XB Resources then fall into three further sub-groups, depending on what, if any, conditions were placed by the donor on how they can be used.
    - *General Purpose Funds* are XB resources which have been contributed without specific conditions and can thus be used for any purpose within the programme to which they were contributed, although donors still generally expect an accounting of how they have been spent.
    - *Special Purpose Funds* are always XB resources which have been contributed either with some general conditions on how they may (or in some cases may not) be used or which have been "earmarked" for use for a specific project, programme or other purpose.
    - *Programme Support Cost (PSC) resources.* These arise pursuant to a decision of the General Assembly that a Programme Support Charge of 13% should be charged against all voluntary contributions.[127] PSC resources are intended to be used to cover the programme support costs associated with the donated resources themselves, so that these costs will not place an added demand on core functions funded by the Regular Budget. PSC resources may be used for purposes directly or indirectly linked to the contributed resources (e.g. various financial management tasks, staff recruitment, project or programme management

[126] The 1997 contribution of $1 Billion by U.S. broadcaster Ted Turner is the largest single such contribution and is regarded as something of a symbolic milestone. Since then specific funds have been established to administer such contributions, which like those of Member States, are often directed at specific programmes or projects. See: http://www.un.org/partnerships/about.html .

[127] In the case of the Crime Programme, see A/RES/61/252, Part XI, paragraph 1.

tasks and programme coordination tasks), but not for other purposes.

As will be seen below, further complexities arise from the fact that the originally-distinct U.N. Drug Control Programme and the Centre for International Crime Prevention were merged in 2003, but are still under the political oversight of the two Commissions, as well as the INCB and the Conferences of Parties for the *Palermo* and *Merida Conventions*. The RB allocations have since been merged into a consolidated budget,[128] but the two trust funds used to account for and disseminate contributed resources for crime and drug mandates remain separate, although many projects are co-funded by both.

Three major resource-related challenges presently confront the Commission and UNODC.

1. The demand for technical assistance and Secretariat services exceeds the supply of expertise and resources

A major function of the Commission is to serve as a forum to identify technical assistance needs and to bring together States which require assistance and those with expertise and/or the resources needed to develop and deliver assistance projects. Resources are never completely sufficient, which raises questions both about the assessment of needs and priorities and mobilization of donor resources in response. Specific challenges include how needs are assessed, how priorities are set, and how resources can be allocated in ways which take into account the views of both donors and recipients, and which meet the requirements of maximum efficiency, transparency, and accountability. While there are never enough resources to meet all demands, voluntary contributions have expanded substantially, especially during the second decade of the Commission's existence. These have provided resources for a range of specific technical assistance initiatives, especially in subject areas the donor States have seen as priorities, such as corruption, terrorism and transnational organised crime. As a result, a number of sources suggest that the greatest challenge is not raising and allocating resources to high-profile demands for technical assistance, but of funding less-glamorous external work in areas such as fundamental reforms in rule of law and criminal justice systems, and the internal core management, institutional capacities and support functions of the Secretariat which are not linked to any specific technical assistance contribution or project. In recent years, the problems associated with a lack of financial support for core infrastructure within the Secretariat, from both the regular and extrabudgetary sources, has grown to the point where the shortfall in core funding might actually jeopardise the ability of UNODC to utilise

[128] A/RES/61/252, Part XI.

resources the Member States were willing to contribute for specific technical assistance or other purposes.[129]

The actual increases in contributions for technical assistance work form the bulk of overall budget increases in the Commission's second decade, and can be attributed to the same basic evolution which has led Member States to take the Commission more seriously as a political body: the understanding that globalised crime affects everyone and that providing assistance to Member States which seek it is no longer just a matter of altruistic development aid, but a matter of direct self-interest. One delegation summed up the basic relationship in discussions of the subject-matter of cybercrime in early 2011, noting that in that area every Member State shared an equal desire and obligation to prevent and combat transnational crime, and that Member States in a position to contribute resources and expertise had as much to gain from technical assistance as did those who were seeking the assistance.[130] This is perhaps more evident with cybercrime, where on-line offenders can easily exploit any Member State which lacks the will, law or technical capacity to investigate and prosecute, but in a broader sense it is true of almost any form of globalised transnational crime. In the words of the former Executive Director of UNODC, Antonio Maria Costa:[131]

"In a global community, to combat crime anywhere requires efforts to combat it everywhere."

2. Whether donors or the Commission set priorities, and unfunded mandates

A chronic problem in the Commission has been the question of whether UNODC priorities should be set politically and strategically by the Commission itself, or on an *ad hoc* basis by the donors, through decisions about what projects they will fund. Developing countries argue that it should be for the Commission as a whole to establish mandates and set priorities, and that resources should be allocated and projects carried out based on collective political consensus. For the major donors the domestic decisions to contribute the resources are frequently based on domestic decisions linked to specific anti-crime priorities, and contributions are therefore often donated with the requirement that they be used for specific purposes. Donor selection of projects

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[129] See U.N. Joint Investigation Unit, "Review of Management and Administration in the U.N. Office on Drugs and Crime", 2010, JIU/REP/2010/10, paragraph 52 and Report of the Commission on Narcotic Drugs at its 51st Session, E/CN.7/2008/15, E/2008/28, paragraph 137.

[130] Remarks of the Delegation of Argentina, from the author's notes, unpublished.

[131] Variations of this observation were made by Mr. Costa on a number of occasions before the Commission and other bodies in the context of transnational crime in general and of specific types of crime, especially those associated with modern technologies. See, for example, his remarks to the U.N. Security Council, 27 February 2010, SC/9867.

is usually based on the domestic or regional priorities of each donor and the ability to meet results-based management accountability requirements. For reasons of both accountability and political profile, projects with fairly clear outcomes and short delivery times tend to be preferred over larger more complex projects or other work with less tangible or quantifiable benefits, such as research work, institutional capacity or core management functions. Thus, while recipient States express frustration at the inability to get technical assistance or other work done in areas where they are able to secure mandates but not resources, major donors reply that it is difficult to persuade national governments and funding agencies to contribute resources to work that is undefined or not in accordance with national priorities.

The third variable, the U.N. regular budget, is intended to address some of these concerns, in the sense that it is generated from the general assessments paid by all Member States under the *U.N. Charter*, but it has been the subject of a similar debate in the General Assembly, and has not grown significantly for many years. There the outcome was a decision that major budget decisions would be adopted on consensus, effectively giving a veto, if not to each Member State, then to any group large enough to block consensus without being isolated.[132] The effect on UNODC, which is discussed in the following segment, is that the portion of the Office's overall budget which is provided from regular budget (RB) resources has fallen over the past two decades, and is well below the minimum levels needed merely to maintain core Secretariat functions (management, substantive services, institutional support and internal capacity-building). Some substantive work, such as the servicing of expert meetings, has been done using RB resources allocated for the holding of major meetings, but in practice, RB resources are seldom if ever used for technical assistance and other project work.

In the Commission, where the practice is to adopt resolutions on consensus, the same problem should not have arisen as in the General Assembly, but the practice has been not to block consensus only for financial reasons, and many resolutions containing un-funded mandates have been adopted over the years. These serve a useful purpose in articulating the collective (and over the years, cumulative) political will of the Member States, but are either subject to a statement of Programme Budget Implications or a paragraph making implementation subject to the availability of resources. The effect, in either case, is to make them contingent on either the allocation (extremely rare) of resources from the regular budget, or the contribution of the necessary extrabudgetary resources by a Member State. Large numbers of un-

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[132] See A/RES/41/213, paragraphs 5-7 and Annex (opinion of the Legal Advisor), based on a report of a high-level group of experts dealing with a number of reform questions, A/41/59, at paragraphs 8 and 51-71. Generally, the decision involved substantial reductions in senior level Secretariat posts, and consensus-based decision-making, subject to the ultimate authority of Article 18 of the U.N. Charter, which provides for decisions based on a 2/3 majority vote on "important questions" if consensus fails. For an assessment of the 1985-86 process, see Luck, 2004 at pp. 381-87. See also Laurenti, 2004.

implemented or partially implemented mandates have accumulated, prompting periodic proposals to consolidate or extinguish them,[133] and raising concerns that with so many mandates, attempts to focus the work along strategic lines are illusory, because the timing of projects is governed by decisions based on funding decisions by individual donors rather than any sort of collective strategy. In effect, attempts at strategic planning in the Commission have been trapped between the inability of the Commission itself to reach consensus on what should – and should not – be a priority; the duality of mandates as both a general expression of political will and specific authorities that direct the Secretariat to engage in work that consumes resources; and the need of donor States to link their contributions to work that their governments – and their taxpayers – have agreed to support.

As in other bodies, this issue has led to time-consuming and generally fruitless debates in many sessions of the Commission, and so many attempts at compromise language in resolutions that the various successive texts such as "... subject to the availability of extrabudgetary resources ..." added to each resolution eventually became to be known as "the financial or budgetary mantra". The issue also dominated 2007 intersessional discussions of a proposed medium-term strategy for UNODC and was one factor in the decision of the 17th (2008) session to establish an open-ended intergovernmental working group to discuss and prepare recommendations on how to ensure political ownership by the Member States and to improve the governance structure and financial situation of the UNODC.[134] This process offers some hope of developing more consistent and coherent strategies as between the Crime Commission, the Commission on Narcotic Drugs and the Conferences of Parties to the Palermo and Merida Conventions, but it seems unlikely to do much to address the underlying problems. Similarly, both of the functions of established mandates can be improved to some degree by efforts to generate consolidated versions and/or propose the extinction of old or obsolete mandates, in the sense that they would become clearer as an articulation of the will of the Member States, and that mandates which have been exhausted or superseded could be extinguished, but the fundamental question of how to deal with valid but unfunded mandates would still remain.

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[133] The 2008 Report of the Joint Investigation Unit (J.I.U.) notes that as of 2006, 364 UNODC mandates were outstanding. See JIU/REP/2010/10 paragraphs 23-38. While the majority of mandates requiring some form of reporting had been met, 33% were not fully implemented, most commonly due to a lack of resources. A 2006 Report of the Secretary General recommended the consolidation of mandates and established a centralised registry of mandates to facilitate this. See A/60/733, paragraphs 9-15 and 123 and http://www.un.org/mandatereview/index.html. The J.I.U. Report also surveyed those who work in UNODC and its regional offices and found that a majority of the people who work there felt that the mandates were useful whether implemented or not.

[134] E/RES/2007/12, Annex, and E/2008/30, Decision 17/2 [E/CN.15/2008/L.5].

3. Imbalance between resources earmarked for specific projects and resources for general-purpose, core and programme-support functions

The allocation of funds for specific projects by donors presents a different problem for the Secretariat itself. As the levels of earmarked, special purpose and project funding have increased, resources available to fund the core management functions of the Office and other work not specifically linked to funded mandates have not kept pace. This affects the operation and capacity of Commission itself directly and indirectly, and also affects whether and how the mandates that it creates are carried out. The direct effects can be seen in the lack of resources available to prepare, edit, translate and disseminate the input documents on which the Commission's deliberations are based and its report, which contains the texts it adopts and a summary of the deliberations whereby agreement was reached on those texts. Perhaps the most obvious direct effect, however, is the fact that the duration of annual sessions has been reduced from eight working days to five during a period in which the range of substantive issues before the Commission has expanded significantly. Indirect effects include the fact that, while the workloads of the Commission Secretariat staff have expanded, the size of the staff (which supports both the Crime Commission and Commission on Narcotic Drugs) and administrative and other resources available to it have not.

A further, highly corrosive, effect is the reduction of substantive capacity and expertise within the Secretariat itself. The over-dependence of the Office on Drugs and Crime on project-specific funding means that staff positions for crime prevention experts tend to be short-term and to change substantive focus as donor priorities shift. This is inconsistent with the sort of expertise needed to perform many of the Office's substantive functions, which require a unique combination of substantive crime prevention and criminal justice expertise, diplomatic skills, language skills and expertise in tasks such as running major intergovernmental meetings, writing U.N. reports, and generally transferring knowledge from source to destination across geographic, cultural, legal, linguistic, and other gaps in the course of developing and delivering technical assistance. Staff are usually recruited based on specific skills such as specialised law or criminology experience or facility in U.N. or other high-demand languages, and the remaining elements of the essential skill-set can only be acquired on the job. In most cases it takes many years to develop a fully-functional mid-level staff member. The lack of certainty with respect to posts is both a dis-incentive for promising candidates to join UNODC, and an incentive for them to leave for other more secure employment when opportunities present themselves. Biennial budgetary submissions are calculated in dollars, not posts, but an assessment carried out by the 2010 Joint Investigation Unit review shows that almost all field staff (in 2009, all but two of 1942 posts) and over three-quarters of headquarters (Vienna) posts are extrabudgetary ones (159 of 668 posts or 24%), and that the ratio continues to

shift away from the regular budget. Overall, from 2005 to 2009, the percentage of RB posts fell from 16.5% to only 6.1%.[135] Lacking the time and job security needed to develop these skills and expertise, UNODC has tended to function more as a technical assistance broker in many subject areas, organising meetings and projects which rely on experts provided by donors to deliver the actual assistance to recipients.

Two major factors have contributed to the funding imbalance. First, the U.N. regular budget, which is funded by the dues assessed against States as a condition of membership under the *U.N. Charter*, which is intended to fund most core activities, has not been increased in proportion to the demands and expectations of the Member States in respect of what the Secretariat is expected to produce. Second, the additional resources contributed by Member States on a voluntary basis, known as "extrabudgetary resources", must be used for whatever purpose, if any, is specified by the donor State, and the tendency of donor States to "earmark" funds for specific purposes has increased, reducing the pool of funds which can be used for general purposes such as core Secretariat and management functions.

(i) Limits on the U.N. Regular Budget

As noted in the previous section, the Member States which contribute the majority of the U.N.'s extrabudgetary resources have at various times sought to impose constraints on administration and management and set strategic priorities, to ensure that the resources are used effectively. Unable to do accomplish this politically, they have instead imposed de facto limits by earmarking their contributions, which means that the contributed resources can only be used for purposes connected to the mandate for which they are earmarked, and severely limited the growth of the U.N. regular budget in what is sometimes described as a "zero nominal growth" policy.

The regular budget has not been completely frozen, but increases allocated to UNODC – notably funding increases to cover the cost of additional posts when UNODC became responsible for the Palermo and Merida Conventions – have been allocated only as a direct response to the allocation of new and substantial work-loads. In absolute terms, the regular budget allocation for crime and drugs has gone from slightly less than $20M for the biennium 1994-95, the first for which there was a separate crime allocation, to just under $40M for the most recent biennium, 2010-11. Prior to that, the portion of the resources for social development and humanitarian affairs allocated to the newly-restructured Crime Programme was about $1.7 million per year, not including conference services costs, levels described as "modest in the extreme" compared to the allocations for narcotic drugs and other U.N. work.[136] This was allocated among three sub-programmes: collaborative action against transnational crime, crime prevention planning and criminal justice

[135] See JIU/REP/2010/10, Part B, "UNODC Workforce", paragraphs 102-110.

[136] Clark, 1994, chapter 1, pp. 15-18.

management, and crime prevention and criminal justice standards and norms. The 2010-11 budget included all of the crime and drug programmes, the two Commissions, and the INCB, which existed in 1992, but in addition also included the terrorism-prevention programme and support of the Conferences of States Parties to the Palermo and Merida Conventions. Various official and private sources estimate the inflation of the U.S. dollar, in which U.N. budgets are calculated, at about 37% from 1992-2010, so the actual increase based on 1992 values, is slightly over $5M, or about 26%, up to the 2010-11 biennium.[137] In December 2011, this was increased another 4.9% for the 2012-13 biennium.[138]

Figures for voluntary contributions over the entire period are not available, but the earliest available levels of voluntary contributions to the Crime Prevention and Criminal Justice Fund appear to have been less than $1M annually in the early 1990s.[139] For the biennium 1996-97 this had risen to $3.1M, and for 2000-01 it was about $7.6M. Contributions then began to rise more steeply, due in part to efforts at resource mobilisation and in part to significant additional contributions earmarked for the negotiation of the Palermo Convention (1999-2000), the ensuing pre-ratification technical assistance project, and the newly-expanded terrorism-prevention programme.[140] More recently, figures tracking

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[137] Prior to the 1994-95 biennium there were ad-hoc allocations for the crime programme: see A/RES/46/152, 47/91 and 48/103 and A/46/6, section 21 (1991, Programme Budget for 1992-93). In the 1994-95 biennium, the allocation was $15.04M for drug control and $4.6M for crime prevention and criminal justice, including the INCB and the respective Commissions (A/RES/50/205, parts 13 (crime) and 14 (drugs)). The ad hoc allocation for crime in 1992-93 was $0.97M for the Commission itself and $3.13M for the Crime Programme (A/46/6/Rev.1/Add.1(SUPP), section 21). Terrorism prevention was created and further resources were added in support of the Palermo and Merida Conventions between 2001-04. For the most recent biennium, 2010-11, the total Regular Budget allocation for all of "International drug control, crime and terrorism prevention and criminal justice" was $39.191M (A/RES/65/260, section 16). U.S. dollar values are difficult to estimate, but public and commercial sources generally agree that between 1992-2010 the value of the U.S. dollar measured against other currencies and the U.S. Consumer Price Index decreased by about 37-38%, such that $1000 in 1992 would be the equivalent of about $1600 in 2010 dollars. This means that in absolute terms, the total $19.6M allocated in 1992 would have become about $31.6M had the same Regular Budget levels been maintained against inflationary decreases in value over the years, and that only about $7.6M, or 19.4% of the 2010 allocation, or an average of about 2% per year, represents an actual increase.

[138] See below and First report on the proposed programme budget for the biennium 2012-2013, A/66/7, Section 16, pp. 136-49 and Tables 4 and 9 and A/RES/66/637, Section 16, (A/66/637, Draft Resolution III).

[139] Prof. Clark reported an estimated total of $561,000 in 1993-93, of which all but $20,000 was a single contribution from Italy to fund the Rome-based U.N. Crime Research Institute (UNICRI). See Clark, 1994, chapter 1, p.18.

[140] See: E/CN.15/1998/10, Annex; E/CN.15/2002/3 (chart, paragraph 28); E/CN.15/2005/18, Table 2, and for a description of the Crime Prevention and Criminal Justice Fund and its operation from 1992 onward, E/CN.15/2005/18, Part VI. The last document indicates that total contributions from 1992-2004 were slightly less than $40M. Contributions in 2002-03 were about $7.5M per year ($14.77M for the biennium), and of this, in 2003 alone, $1.49M (not

contributions show a total of $81.3M in 2003, peaking at $246.9M in 2008, and declining slightly to $240-250M since then.[141] Estimates provided to ACABQ and the General Assembly for the 2012-13 biennium were $476.7 million, or about $238 million per year. [142] This suggests voluntary contribution levels have increased by about 400% since the Commission was established, from about $50-60M in the early 1990's, to the 2008 peak of $247M, and then declining to the present levels of $235-40M.

Since the two programmes were merged in August of 2003, it is no longer possible to distinguish between resources contributed for work on drug control versus crime prevention and criminal justice, but if it were possible, the proportional increase in voluntary contributions for the crime programme for the period 1992-2012 would be far greater. Not only were the crime figures extremely low in the first years of the crime programme, when the regular budget levels were set, but the vast majority of the increases in contributions have been in crime-related areas such as transnational organised crime (including sub-topics such as trafficking in persons), terrorism and corruption.[143] As the political focus of the Member States has broadened beyond the specific topic of trafficking in narcotic drugs to a wider focus on other forms of transnational crime seen as problematic at the level of requiring international consideration and action, the allocation of resources to "crime" as opposed to "drugs" has reflected this. At the same time, the increasing sophistication of criminal offenders and groups, and of experts in the Secretariat and the Member States, has also led to a merger of the subject matter and the work to the point where the two are becoming indistinguishable.

Thus, while the overall budget, staffing levels and workload have increased four-fold between 1992-2010, the portion of the work, and the number of posts, funded from the regular budget, have increased only by about one-quarter. In areas of UNODC that are primarily crime-oriented, the asymmetry is much greater than that. The majority of work by UNDCP, CICP, and since 2003 by the merged UNODC, has always been funded by contributions, but the proportion has changed substantially. When the Crime Programme and Commission were first established in the early 1990s, it started with a regular budget allocation of about $4.6M and voluntary contributions of about $1M,

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including several contributions-in-kind) was contributed to the terrorism prevention programme (E/CN.15/2004/14, Table 2, and E/CN.15/2003/9, Part VI).

[141] Chart: "Funding Trends", UNODC Co-financing and Partnerships Section, 2011, http://www.unodc.org/unodc/en/donors/index.html?ref=menuside .

[142] First report on the proposed programme budget for the biennium 2012-2013, A/66/7, pp. 136-49 at p. 136 (summary Table).

[143] Two areas which illustrate the difficulty in arbitrarily distinguishing "crime" and "drug" projects are money-laundering (found in both Conventions) and terrorism. Two terrorism-prevention posts existed in the Crime Programme prior to 2001, but the subsequently-expanded Terrorism Prevention Branch has been active in a number of regions (e.g. Latin America and South Asia) where organised crime, the production of narcotic drugs such as opium and cocaine and the activities of terrorist organisations are indistinguishable.

making RB resources about 83% of the total, although the balance quickly shifted in the mid-1990s. The budget of the Drug Control Programme was about four times larger and had the opposite proportions, estimated at about 20% RB to 80% XB resources. By 2000, the Crime Programme ratios had completely reversed and the proportion of RB resources has continued to plummet since. In 2000, the portion of the overall crime budget funded by RB resources had fallen to about 15%. The Crime and Drug Programmes merged in 2003 for purposes of RB and other general purpose resources, although the two trust funds used to direct special purpose resources remained separate.[144] This makes subsequent comparisons imprecise, but by 2007, the portion of the consolidated budget funded by RB resources had fallen to12%, and according to estimates provided at the 2011 session of the Commission, had fallen to a mere 7% by that year.[145] The most recent estimates show a projected level of extrabudgetary resources of $476.7 million, with a regular budget allocation increased by 4.9%, from $39.2 million (2010-11) to $41.1 million (2012-13), a new ratio of 8.6%. Based on the decline of extrabudgetary resources the percentage would have been 8.2% without the 2012-13 increase.[146]

(ii) Donor "earmarking" of contributions

As noted above, RB resources and resources contributed by donors with no conditions are considered "general purpose funds" which must still be accounted for but can be spent on any purpose for which they are needed within the general programme to which they were contributed. The vast majority of contributed resources, however, are "earmarked", in the sense that donors attach specific conditions on the purposes for which they may be spent. The General Assembly has established a mandatory charge of 13% of such resources, which are deducted from each contribution for use as programme support costs. These may be used to cover the programme support costs associated with the donated resources themselves, so that these costs will not place an added demand on core functions funded by the regular budget. They may be used for purposes directly or indirectly linked to the contributed resources (e.g. various financial management tasks, staff recruitment, project or

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[144] The fact that UNODC has the two funds requires parallel accounting and audit structures and is another target for possible reform. The 2010 Report of the Joint Investigation Unit also recommended a merger of the two trust funds for this purpose. See: JIU/REP/2010/10, now A/66/315, Recommendation #3 and discussion at Part III.B, pp. 14-16. Apart from administrative changes, the main challenge would be maintaining donor confidence, but the risk of funds contributed for work on drugs being used for work on crime and vice versa would appear to be low, given the degree of earmarking and oversight imposed by the major donors and the fact that an increasing volume of the work itself falls into areas which are, if not merged, then certainly open to synergies in project development and implementation.

[145] E/RES/2007/12, Annex, paragraph 4(a) (2007 ratio). For the most recent proposed consolidated budget see: E/CN.7/2011/11, E/CN.15/2011/11, which is one document cited for both the Drug (E/CN.7) and Crime (E/CN.15) Commissions.

[146] See: First report on the proposed programme budget for the biennium 2012-2013, A/66/7, pp. 136-49 at p. 136 (summary Table).

programme management tasks and programme coordination tasks), but not for other purposes.

Only RB funds specifically so allocated in the Programme Budget or those funds available through general purpose contributions and PSC earnings can be used for core programme management, institutional capacity-building and support functions such as senior management, specialized knowledge and expertise development in emerging substantive areas, basic infrastructure for field operations, information technologies or Secretariat support of the Commission itself. As a result of limits on growth of the regular budget, it has not kept pace with the expansion in mandates, staff and workloads in UNODC. In the past, these shortfalls have been somewhat made up by resorting to general purpose voluntary contributions, but these also have become less prevalent.[147]

Several possible reasons contribute to the reluctance of donors to contribute general-purpose funds. One major reason cited both by the Secretariat and Member States is the degree of confidence in Secretariat management and transparency. Donor confidence and contributions declined sharply during the final years of tenure for Pino Arlacchi as Executive Director,[148] and the need to restore donor confidence and contributions was cited as a top priority of his successor, Antonio Maria Costa, when he assumed the post in 2002. More recently, the 2008 establishment of the intergovernmental joint working group on financial and governance issues, the establishment and enhancement of results-based management philosophies and practices within the Office, and general increases in transparency and coherent management of the separate crime and drug trust-funds (through which all voluntary contributions flow) have all been cited as essential to increasing donor confidence, and with it both overall contributions and the willingness of donors to contribute General Purpose funds.[149]

Questions of UNODC transparency and donor confidence aside, the trend in many donor governments towards results based management and similar practices has probably contributed to the decline in General Purpose contributions more directly. Results-based management structures tend to prefer projects which can be set out in fairly concrete terms, with clear objectives and clear criteria for results assessment, and which will produce tangible results within the accounting time-frames (usually annual) used by donors. This means that, all other factors being equal, some types of project

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[147] Generally totalling about $15M, they declined to $11M in 2009 but have rebounded back, probably in response to pleas by the secretariat. See, for example the Report of Executive Director Costa highlighting the problem, presented to both Commissions in 2008, E/CN.7/2008/11 and E/CN.15/2008/15.

[148] See "U.N. Drug Chief, Under Attack, Says He's Cast as the Outsider", *New York Times*, 9 February 2001.

[149] See U.N. Joint Investigation Unit, "Review of Management and Administration in the U.N. Office on Drugs and Crime", 2010, JIU/REP/2010/10, now A/66/315.

will be more attractive to donors and others less so, and that the sorts of ongoing activity which involve strategic planning, specialized knowledge- and expertise-build up in thematic areas, the support of other activities, and core management not linked to specific projects will be the least attractive of all.

The practice of "earmarking" has also created a form of donor competition, in which high profile issues such as terrorism-prevention have attracted donor attention, while less attractive, subject matter has been under-funded, and core management and Secretariat functions, because of their general nature, are rarely earmarked at all. While not exactly congruent, the domestic political priorities of donors tend to cluster around specific priority areas – which priorities are not always shared by recipients – and work in those areas expands while less-attractive areas go un-funded. Contributions from private sector sources were not reviewed, but are likely to follow a similar pattern, in the sense that companies or charitable sources will generally support work in specific areas or projects of interest to them. Work expands in proportion to contributions rather than demand, because the Secretariat cannot transfer resources to areas or activities for which they were not earmarked without donor consent. There has also been a tendency in the Secretariat to select and formulate projects to meet these criteria, even if the resulting projects might be less-than-optimal in delivery terms.[150] General work on money laundering was presented (not incorrectly) to donors as the development of necessary infrastructure to suppress the financing of terrorism, for example.

Overall, the picture is one of a consolidated crime and drug programme which, compared with many other areas of the United Nations, is seen as a major political priority for the Member States and one which delivers good value for the resources contributed by donors, but also one in which the asymmetry between the funds available for donor priority areas, other substantive work (often in recipient priority areas), and the general purpose funds needed for core management, strategic planning, Commission Secretariat and other support functions has created substantial problems. Efforts have been made to address these problems by enhancing donor confidence and increasing general purpose contributions, but the marginal success of these has led to several recent proposals to link earmarked and general purpose resources, in the sense that a fixed portion of any contribution would automatically be allocated for general purpose uses. Whether this finds both political and the necessary donor consensus remains to be seen. A better, but less attainable, option would be to restore the function of the U.N. regular budget to its intended purpose of supporting core functions and allow overall increases with the stipulation that they be directed at programmes such as the crime and drug programmes. [151] In

[150] See U.N. Joint Investigation Unit, "Review of Management and Administration in the U.N. Office on Drugs and Crime", 2010, JIU/REP/2010/10, paragraphs 51-56.

[151] Both were recommended both by the Report of the Executive Director in 2008 and of the Joint Investigation Unit in 2010. See E/CN.7/2008/11 and E/CN.15/2008/15, at paragraphs 19-20 and JIU/REP/2010/10, paragraphs 43-48, and A/66/315 Part III.

its essence, the policy of zero nominal growth in the U.N. Regular Budget amounts to holding some of the valuable work of the Secretariat hostage to the legitimate desire of major donors to reduce waste and hold the entire organization accountable. While the objectives may be valid, the experience suggests results that are equally damaging to donors, recipients and the organization itself.[152]

[152] As this book was finalised in late 2011 and early 2012, some progress was finally being made on this issue. Following the 2010 J.I.U. Report, the General Assembly requested the Secretary General to submit additional proposals for the 2012-13 Programme Budget to enable the Office on Drugs and Crime to carry out its mandates (A/RES/64/243, paragraphs 83-85), and in August 2011, the General Assembly Advisory Committee on Administrative and Budget Questions (ACABQ) recommended a 4.9% Regular Budget increase, adding 8 new professional level posts. See: First report on the proposed programme budget for the biennium 2012-2013, A/66/7, Section 16, pp. 136-49 and Tables 4 and 9. This proposal was accepted by the General Assembly at its December 2011 session (A/RES/66/637, Section 16, A/66/637, Draft Resolution III).

POSSIBLE REFORMS

The Commission has a number of different functions, many of them overlapping or interdependent. Some are causally related, in the sense that reforms in one area will generally be expected to produce consequential changes in others. The biggest example of this is the cost/benefit/duration relationship. While some reforms may produce marginal improvements in terms of cost-efficient processes or results, in general, reducing delegation costs by reducing the duration of sessions, and reducing Secretariat costs by limiting the production of documents and other supports limits the value of the Commission itself. Shorter sessions reduce Secretariat and delegation costs, but they also reduce the volume of issues that can be considered and the quality of the deliberations and resulting consensus on what to do about crime. Similarly, while document translation and production is a major cost, limiting documentation severely limits the use of what the Commission produces. To some degree, reforms intended to enhance the overall value and cost-effectiveness of the body may have to pick and choose among priorities, and at the end of any reform process, the Member States will still be faced with the fact that as a major multilateral body that functions in six languages, the Commission cannot be starved of time and resources and still be expected to deliver value in terms of quality results. As Members of the international community, we get what we pay for, and the less we invest in resources, the less we will realise in the dividends of crime prevention and criminal justice.

It is also essential that, in assessing the value of the outputs of the Commission, we adopt a common metric for the assessment, bearing in mind that the Commission is a common ground on which different groups perform different functions, and that functions seen as unnecessary or inefficient to one group are often seen as valuable and necessary to another. A better perspective is that the various functions are in reality interdependent, generating not only results in specific areas, but much greater value in the over-arching function of linking the various areas together. To be accurate and fair, any assessment metric has to follow the same geometry: it has to be based on not only an appreciation of the various functions and an appropriate balance among them, but also greater linking of each function to all of the others, and upon better communications and understanding among those who perform the functions.

Reforms or changes which might address or respond to some of the foregoing goals and challenges could include the following.

1. Clearer relationships between substantive expert functions and diplomatic functions

As the historical record demonstrates, there has been a steady shift away from independent substantive expertise towards an increasingly governmental perspective on the part of experts in criminology, law, human rights and other

disciplines, and away from expertise in all of those areas in favour of diplomatic participants who have procedural expertise in representing their governments, but not in crime prevention and criminal justice matters. This has been a dominant theme in the history of the Commission and will be a recurring issue in many of the reforms I believe would be needed to increase the utility of the Commission in actually preventing crime and strengthening criminal justice in and among the Member States. Fundamentally, striking the right balance between social science and diplomacy requires the political will in the various delegations and their governments to treat the Commission as a policy-development body as opposed to a mere channel of communications, or worse, as an international political platform for national positions on crime. That will requires, in turn, the recognition that Member States have much to learn from one another about crime and responses to it, that the Commission has much greater value if dynamic and interactive exchanges among substantive experts are permitted and encouraged, and the willingness to take the inevitable political risks that the results of research and objective professional assessment and reporting may not always support national political positions.

At the level of global discussions in the Commission, the legal/criminological, political/diplomatic processes are closely linked, but there is a need for some degree of separation and sequencing. At the diplomatic level the Member States oversee the operations and expenditures of the Secretariat, set priorities, decide which projects or processes to mandate, and then decide what to do with the results. The legal and criminological stages of the process are (or should be) essentially objective and scientific in nature. These develop the information products that political policy-makers need at the national and international levels to make informed decisions about how Member States and the international community should respond to crime. Member States are under no obligation to develop domestic policies based on the results or implement any recommendations, but the political pressures that can result generate incentives to interfere with the scientific elements of the process by means such as defining questions or limiting the scope of the work in an attempt to reach, or to avoid, particular results. The development of viable policy options and the efficient use of resources to obtain the most reliable results depend on some degree of independence or separation between the diplomatic and criminological functions. There is a need for mutual respect and good communications, but also for safeguards to ensure that functions such as research and policy analysis are not subject to undue diplomatic influence so that the criminological results on which political decisions must be made are valid to begin with.

2. Greater involvement of substance experts, including independent experts

The Committee which existed prior to the Commission was primarily a substantive body and composed of substantive experts, who whose separation

and independence of the Member States gradually diminished as the size of the Committee increased and its mandates evolved.[153] In the words of Prof. Clark, "... As an expert committee designed to play a substantial role in a highly political area, its existence was always somewhat quixotic",[154] and the desire to move to a body with greater governmental representation to give the body and its work greater attention and support, and its recommendations more political influence, was a major reason for both the evolution of the Committee prior to 1992 and the structure and mandates set out for the Commission when it was established. Prof. Clark, writing after the second session of the new Commission in 1994, went on to discuss the different roles played by crime prevention and criminal justice experts who represented governments and independent experts, argued in support of the need for political and expert inputs into the work, drawing in part on arguments made with respect to other U.N. expert bodies, and closed with the observation that the first two sessions were well attended by government experts and that the future use of independent experts "remains to be seen".

This reflects the optimistic call in the convening mandate for Member States to include governmental delegates who would be experts on crime with policy responsibility in the field, but even this expert element has not always been reflected. Mandate references to "civil society" and other formulations that would lead to the engagement and direct participation of independent experts has generally been resisted by some delegations, as has the participation of non-governmental experts on discussion panels and other such bodies. As a result, any reliance on independent, non-governmental experts has been largely confined to their engagement as employees or contractors by the Secretariat, although growing calls for more effective cooperation with the private sector and the highly technical nature and strong non-governmental aspects of subject areas such as cybercrime have led to a very slight and recent reversal of the general trend.[155] The Commission itself has become a completely "intergovernmental" body, and as a general rule, subordinate bodies and processes established by the Commission itself (as opposed to technical advisory bodies set up by the Secretariat) have been exclusively intergovernmental in nature.

The Commission itself was intended to maintain a significant element of substantive expertise through the inclusion of legal and policy crime experts on national delegations, but has gradually become more diplomatic than

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[153] A/RES/415 (V) of 1 December 1950, Annex; E/RES/1086 B, of 30 July 1965; E/RES/1584 (L), of 21 May 1971 and E/RES/1979/30 of 9 May 1979. See also Clark, 1994, pp. 19-20.

[154] Clark, 1994, chapt.1, p.4.

[155] See Commission Resolution 19/1, "Strengthening public-private partnerships to counter crime in all its forms and manifestations", *Report of the Commission at its 19th Session*, E/2010/30, Chapt. I, Part D. See also E/RES/2004/26, 2007/20 and 2009/22, which call for cooperation with the private sector and/or the engagement of outside experts in work on economic fraud and identity-related crime, and A/RES/65/230, which calls for the ongoing study of cybercrime, including responses to it by the private sector.

substantive. Meetings which are composed of diplomats are appropriate fora for considering matters such as the management of the Secretariat and raising and expenditure of resources, but meetings composed of professional diplomats who are not crime experts poses a serious problem for some of the policy functions the Commission was intended to fulfil. Properly instructed, diplomats can effectively represent national political interests and serve as a conduit for the reciprocal transmission of crime-related information, but they cannot develop new knowledge or policy insights based on such exchanges in the same way that meetings composed of substantive experts can. Recent sessions of the Commission and some of its subordinate expert processes have included varying combinations of Vienna-based diplomats and substance experts from the Secretariat or sent from the participating Member States, and in some cases the diplomatic element has proven an impediment to any sort of meaningful interactive deliberations at a substantive expert level.

The trend towards greater diplomatic engagement can be seen in part as a reflection of the increasing importance with which Member States regard crime issues, but it is also due in part to the much more practical problem of resource constraints. Maintaining diplomatic participation has not been a problem because most Member States maintain a resident diplomatic presence in Vienna or cover proceedings from a nearby country.[156] The participation of crime experts is expensive in terms of travel and other costs and diverts the experts from their work at home, all of which are more problematic for developing countries and may result in their under-representation. This, in turn, has led to a tendency of Member States to rely on resident diplomats instead. In one sense, this is a form of economic "free riding" in the sense that the value these States derive from the proceedings is largely generated by other States which have gone to the trouble and cost of preparing and sending substantive crime experts who have the knowledge and background to understand complex crime problems and sufficient authority to negotiate effective responses to them.

Such "free riding" is useful for developing countries, who can use their diplomats to assess emerging issues and priorities as the basis for committing scarce expert resources and identifying the need to develop new expertise, but it should not be acceptable for developed countries, who have an obligation to ensure that both the Commission and its subordinate bodies include both sufficient substantive expertise and regional or other diversity to ensure valid results. To a substantial degree addressing these problems comes down to the commitment of adequate financial and expert resources, and the recognition by each Member State that while the implementation of crime prevention and criminal justice policy at the domestic and international level is a political matter, the gathering and assessment of evidence and the development of such policy requires scientific, legal and technical expertise.

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[156] Representation varies, but at present about 135 of the 193 Member States, as well as Palestine and the Vatican have embassies or consular missions in Vienna.

Some ways expert participation could be expanded include the following, applied to both the Commission plenary and its various subordinate and ad-hoc processes, *mutatis mutandis*.

- Ensuring that meetings are of sufficient duration to permit appropriate discussion and that agendas, draft resolutions and other source texts are clearly identify the issues being raised and are available far enough in advance to permit Member States to choose appropriate experts and instructions for the session.[157]
- Greater use of subordinate bodies such as technical expert groups to examine subject matter and generate substantive information and recommendations for consideration by political representatives at the Commission itself.[158]
- Ensuring that developing countries are able to send experts and represent their interests effectively generally requires the commitment of resources, and in subject areas where there is a long-term or open-ended process, it may even require support for the development of the necessary expertise. This expertise would not only help to achieve globally-viable outcomes from Commission proceedings, but also would help ensure that the necessary expertise was present in every Member State to actually implement those outcomes.
- Reconsidering and renewing the commitment to the use of "... a limited number of qualified and experienced experts, either as individual consultants or in working groups ..." [159] in preparing for and following up the work of the Commission, and expanding this role to allow for the participation of experts who are not members of a national delegation in the Commission itself. This has already been tried on occasion and has proven effective as a means of bringing in non-Secretariat experts to brief sessions or subordinate proceedings and in support of panel discussions of specific topics. In preparation for the 19th Session, the Commission decided in 2009 that "... independent experts, such as private sector representatives and academics" could be invited to participate in the thematic discussion (dealing with illicit trafficking in cultural property) of the following year.[160] Thematic discussions have often been plagued by difficulty in assembling expert panels which reflect regional representation while at the same time covering the range of substance and expert opinion on the thematic topic at hand, and by the fact that panellists are invited too late to permit coordination with other panellists. The focus

[157] See Recommendation 7, below.

[158] See Recommendation 2.2, below.

[159] A/RES/46/152, Annex, paras.24 (government experts) and 27-28 (independent experts).

[160] Report of the Commission at its 18th Session, E/2009/30, Commission Decision 18/2 "Guidelines for the thematic discussions of the Commission on Crime Prevention and Criminal Justice", paragraph (c).

of thematic discussions should be on the substantive topic at hand and the effects of regional representation, if any, will vary from topic to topic, depending on the global dynamic of the topic concerned and the global distribution of experts on it, and better expert coverage could be provided by the assembly of panels based on substantive expertise and not other factors.

2.1 The use of Special Rapporteurs or Special Representatives

One suggestion that has been advanced on several occasions is the appointment of Special Rapporteurs by the Commission or the appointment of Special Representatives by Secretary General on the advice of the Commission.

Properly mandated, such officials could investigate or research any specific crime issue and report back to the Commission, but their substantive and political viability is difficult to assess or predict because they have been used very unevenly – and in some areas controversially – in the U.N. in the past. They could offer an economical and valuable new option for gathering information, developing global, regional or national assessments or recommendations that was mid-way between the political deliberations of the Commission and the substantive work of the Secretariat. There is no single pattern or practice governing mandates from other U.N. entities, apart from the legal, budgetary and political requirements for any delegated authority. Mandates can be tailored to suit the requirements of the work at hand and the wishes of the Member States. In practice, they must be sufficiently specific to give clear direction to the Special Rapporteur and ensure that the work remains within the scope authorised by the Member States, but beyond this both the duration and substantive scope can vary from mandate to mandate. Mandates can focus on specific subject matter over a long period of time, although where an open-ended function is desired this is usually subject to periodic renewal to allow oversight of the work and periodic adjustments as needed. They could focus on ongoing work on a general subject area such as organized crime or on a specific task, such as examining a specific emerging form of crime to assess the factual situation, the scope of activities of other bodies, if any, and the views of Member States as to how to respond to it.

Equipped with sufficient autonomy, resources and expertise, a Special Rapporteur could also prove a more cost-effective means of gathering and assessing information than some of the present practices, providing global or regional assessments that were more extensive and reliable, and at the same time less costly and burdensome on the Member States than the global questionnaires presently used for most research and assessment purposes. To some extent, such research and assessment must be global and consider both common global elements and elements that are different from place to place. An independent Special Rapporteur would gradually develop a valid global picture, but at the same time be in a position to exercise a degree of professional judgment to focus research efforts differently from place to place and over time, reducing the demands on Member States to respond to questions

that were not important or relevant to them, and focusing efforts on the aspects of the problem most in need of attention. A key issue in developing global assessments of crime has always been the challenge of obtaining data that were valid from a regional and global perspective. The more affluent and developed States tend to be over-represented, having better information resources and more capacity to respond to requests for information, issues relating to crime matters do not always coincide with U.N. structural and other parameters such as the composition of the regional groups on expert bodies, and many of these issues present very differently from one substantive area to another. In some circumstances, the use of expert Special Rapporteurs could also address another significant obstacle to obtaining accurate information from many developing countries, the lack of centralised data and expertise, by travelling to a State and simply visiting and interviewing the relevant officials and other sources of information at the local level. This would be a matter of some sensitivity for some countries, but given assurances that the basis of the work was independent and of a technical and not a political nature, such a methodology has the potential to inject badly-needed professional expertise and human resources into research and assessment processes and to bridge some critical gaps between knowledge at the local level and global deliberations in the Commission.

A number of issues would have to be resolved before the Commission would agree to mandate and use Special Rapporteurs. The most critical of these is finding a balance between accountability and varying degrees of independence and separation from the Commission, the Member States and the Secretariat. Other factors, such as cost or cost-effectiveness and providing institutional and logistical support also arise, but these are soluble if the fundamental political questions can be resolved, and to some degree the development of appropriate mandates may permit institutional solutions that could be as cost-effective as the *status quo*, if not more so. A Special Rapporteur mandated to conduct the sort of complaint- and accountability-driven assessments common in the Human Rights Council (below) requires fully-independent institutional support, for example, whereas one charged with largely technical factual research and analysis would not. There would be a need for support in terms of document translation and production, but these are the same as for any process which is mandated by and reports back to the Commission. There could be increased costs for travel and related expenses where this is needed, but these would be mitigated to some degree by the fact that modern technologies allow much more to be done using telecommunications. To the extent that travel was needed to gather information from developing countries first-hand, it would be justified by the information obtained and the greater depth of input from such States into the analysis and reports. To some extent this function could also bring added value as a form of assessment, when it was possible to develop and deliver technical assistance as a result.

In terms of both costs and political significance, independence could be seen as a liability by the Member States, especially in the context of the monitoring and accountability or political functions of Special Rapporteurs to the human

rights bodies, but in the context of the more technical mandates needed for work on crime, it would also be an asset. An independent expert would be in a position to develop high-value evidence and analysis more cheaply and effectively than some Commission-driven processes, and while an independent expert may not always tell the Member States what they want to hear, the same independence that made this possible would also ensure that the Commission and the Member States were not bound to accept any recommendations that resulted from his or her work. In general, this could provide a means of getting a clear assessment of the facts and issues associated with a particular crime problem, while at the same time not being bound by the results. It would be for the Commission itself to decide what to do at a political level, while at the same time increasing the extent to which the ultimate decisions on each issue were evidence-based.

The key issue of reaching a satisfactory balance between structural and functional independence and oversight of the work by the Commission is complicated by the fact that two very different approaches have been taken to this in other U.N. bodies, but at the same time the "special" nature of the mandates and wide range of precedents would leave the Commission more or less completely free to strike whatever it decides would be the right balance, and to do so differently in each case depending both on the factual scenario and political sensitivities. Some mandates could be very specific and technical, with others more open and potentially controversial, and given the fact that Commission decisions are consensus-based, very controversial subject matter would likely be reserved to the Commission itself or to other processes such as the convening of open-ended intergovernmental expert groups. In some cases, the independence of a Special Rapporteur might prove a useful means of transferring subject-matter over which there is disagreement in the Commission out to an independent fact-finding process to gather evidence in the hope that it would eventually find consensus on that basis.

The vast majority of Special Rapporteurs have been mandated either by the International Law Commission on legal and technical issues or by the Commission on Human Right and the replacement Committee on Human Rights. Special Rapporteurs are appointed and mandated by a resolution or decision of a political body, and report back to the body which appointed them. Special Representatives are appointed and mandated by the Secretary General, usually on the advice of one of the political bodies, and perform a wider range of functions, including general responsibilities to function as *de facto* ambassadors.[161] All are considered members or experts of the United Nations,

[161] The web site for the Committee on Human Rights lists a total of 44 mandates for Special Rapporteurs, 35 of them with thematic mandates and 9 with responsibilities for specific Member States. The International Law Commission lists a total of 50 mandates, all on thematic issues, between 1949-2011, although many of those listed have been completed and are no longer open. There are presently 97 SRSG positions (not all occupied), 25 with thematic mandates and 72 with geographical mandates. See: http://www2.ohchr.org/english/bodies/chr/special/index.htm, http://untreaty.un.org/ilc/guide/annex3.htm and http://www.un.org/en/peacekeeping/sites/srsg/table.htm.

and when acting within the scope of their missions or mandates, enjoy immunities as such.[162] All of the mandates considered here arose from one of the two Commissions, but there does not seem to be any reason why another political body, such as a body composed of States Parties to a treaty could not establish such a position within the scope of its authority if it chose to do so. In both cases, the probable reason for appointment by the Commissions is that it allows for a broader mandate. The Special Rapporteur on Torture, for example, can look at situations that arise in Member States which are not Party to the Convention against Torture and routinely does exhort such States to ratify or accede to it.[163]

In the case of the ILC a further reason is the fact that many Special Rapporteurs have been appointed to look at areas where there is no applicable instrument with mandates that include both the general feasibility of elaborating one and considering what it might usefully contain. Special Rapporteurs could be financed either from the U.N. regular budget or through extrabudgetary resources, but the practice appears to be the former, presumably because a key *raison d'être* is some degree of independence from the mandating body and contingent funding would compromise this – it would seem inconsistent to appoint an independent Rapporteur on the one hand, but then make his or her work contingent on the contribution of the necessary resources on the other. In both Commissions, mandates have tended to extend for relatively long periods. At least two former Special Rapporteurs have highlighted a lack of both investigative resources and reporting capacity (limited length of reports) as significant constraints on their work.[164]

This book will generally focus on Special Rapporteurs as opposed to Special Representatives on the assumption that Member States are more likely to accept and support a process that they create and oversee directly than one in which the official concerned is appointed by and reports to the Secretary General, but the latter process could be a viable option in some scenarios. One possibility could be work which is better carried out on a multidisciplinary basis, including both crime and other aspects, as the Secretary General is not

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[162] See: International Court of Justice, Advisory Opinion on the Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, (1999) I.C.J. Reports, p.62 (29 April, 1999), available on-line at: http://www.icj-cij.org/docket/index.php?p1=3&p2=1&k=9&case=100&code=numa&p3=4. See also Bekker, 1999 and Wickremasinghe, 2000.

[163] See, for example the work of the Special Rapporteur on Torture, which was originally mandated by the Human Rights Commission (Commission Resolution 1985/33) and since renewed every three years by the Committee (Committee Resolution 8/8 of 18 June 2008). The mandate uses the language of the Convention against Torture, but beyond this only directs the SR to cooperate with the Committee against Torture. The various Reports refer to issues outside the scope of the Convention and regularly urge Member States which have not done so to ratify or accede to it. The work is mandated by the Committee, but transmitted to the General Assembly as part of one of the annual resolutions dealing with torture. See the most recent report (2010) A/66/208 and A/RES/65/205, paragraphs 30-33.

[164] Amor, 1998, at p. 946-47 and Tomaševski, 2005, at p. 210.

limited by the scope of the mandates of any of the specific functional bodies such as the Crime Commission. Special Representatives have been used to bring together the security, crime human rights and other aspects raised by the problem of terrorism, for example. Special Representatives are appointed and funded by the Secretary General and may serve as *de facto* representatives in the same sense as the ambassadors of Member States, or may be mandated to deal with specific subject-matter which could include crime prevention and criminal justice work. Apart from this, the same essential parameters would apply to the mandates of Special Representatives as to Special Rapporteurs.

The substantive scope of what a Special Rapporteur may investigate and how differs from one mandate to another, but in general, the human rights Rapporteurs have performed an investigative and fact-finding function with a view to considering general concerns, specific situations, cases or scenarios, and the evolution of both over time. In the case of rights not precisely defined, particularly the economic and cultural rights (the right to education), functions have included not only promoting the right, but also working to define, clarify or circumscribe it. One described her primary function as "... the essence of human rights work: exposing and opposing abuses."[165] A number of human rights Special Rapporteurs have been mandated to look at human rights issues in general for specific Member State, place or situation, and some have been mandated to look at issues (e.g. the independence of judges and lawyers) which are not "human rights" *per se*, but are seen as linked to them by the mandating body. They are a receptacle for complaints or concerns, but they may also initiate investigations or research and reports on their own initiative, and they may seek out or consider sources of information other than the Member States themselves, such as academic experts or non-governmental organizations. Where an investigation arises from a complaint, the allegations or issues are raised with the Member State(s) concerned, and their responses would usually be reflected in the report. The practice appears to be that most Special Rapporteurs make a general report reviewing the entire subject matter (e.g., freedom of religion or independence of lawyers and judges) or in the case of a geographical mandate, all human rights issues of concern in the Member State or region concerned, but they may also produce specific *ad hoc* reports, and often produce interim or progress reports on ongoing issues. Reports are made in writing and become official documents of the U.N., but Special Rapporteurs also appear before the mandating Commission to present, explain and respond to questions.

In general, the key function of most Special Rapporteurs in the human rights field appears to be one of making enquiries that would in most cases not be mandated if the Member State(s) concerned could prevent this, and of generating political pressure to take positive measures to give effect to human rights or end abuses of such rights by publishing and disseminating information that will raise awareness and focus attention on both problems of a general

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[165] Tomaševski, 2005, at p. 212.

nature and on specific cases or alleged abuses of rights. Significantly, this includes communicating with interests other than the mandating body and concerned Member State(s) and the Secretary General and International Court of Justice have in the past asserted/upheld the immunities of a Special Rapporteur from civil proceedings in respect of comments made to the mass – media based on the assertion that media communications was a function commonly-expected of Special Rapporteurs.[166] In the human rights field, at least one Special Rapporteur has suggested that his substantive mandates were usually applied very broadly and that a major limit on what he could examine was a lack of resources, limiting the work to the examination of only a limited number of cases based on the importance of the issues.

Special Rapporteurs have also played a major role in the International Law Commission, but also a very different role from their counterparts in the human rights field. They may have specific or general mandates, but the primary functions are to focus on law and policy as opposed to facts, and the work consists more of researching what the law is, gathering the views of Member States on what it should be, and then formulating proposals or options for change. Special Rapporteurs form one of three (with the Member States themselves and the Secretariat) basic sources of information and analysis for the work of the Commission. The selection and appointment of a Special Rapporteur is commonly done along with early planning when the Commission decides to take up a particular subject. Once appointed, Special Rapporteurs generally conduct an examination of the subject matter by whatever means they deem most effective, with sources of information including the use of questionnaires and other means of obtaining information and opinions from the Member States, as well as consultations with other independent experts, intergovernmental organizations and the Secretariat itself. Reports are expected to contain factual information and substantive analysis, but may also be of a more general or explanatory nature, and in the case of interim or progress reports, may draw the attention of the Commission to issues related to but outside the mandates. In processes where the intention or eventual outcome is the development of an international legal instrument, a Special Rapporteur may be asked to produce draft or model articles and explanatory notes, or to advise a drafting committee or similar body charged with producing such provisions. Special Rapporteurs regularly report to, attend and advise the International Law Commission itself and have been called upon to appear before the General Assembly or its Sixth (Legal Affairs) Committee when appropriate.[167]

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[166] See: International Court of Justice, Advisory Opinion on the Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, (1999) I.C.J. Reports, p. 62. (29 April 1999) and Bekker,1999.

[167] See: International Law Commission, 1979, Report of the Working Group on the Review of the Multilateral Treaty-Making Process, A/CN.4/325 of 23 July 1979, paragraphs 35-49 (functions and practices regarding use of Special Rapporteurs) and 98 (appearance of Special Rapporteur in the General Assembly), http://untreaty.un.org/ilc/documentation/english/a_cn4_325.pdf.

While the ILC proceedings may be more legal and less factual than those of the human rights bodies, they are not without controversy. The Commission itself is intended to be an independent expert body and not an intergovernmental body of delegates, although its members are selected by the Member States. This may accord its Special Rapporteurs an additional degree of autonomy, but ultimately the dilemma is the question of having sufficient independence to obtain a result which is valid in legal and policy terms, while at the same time not being overly-distant from the political views of the Member States to the point that what is proposed will be unacceptable or unable to find consensus. This same issue has arisen in the International Law Commission, where it has been described by the editors of the *American Journal of International Law* thus:[168]

> "... The Commission, some argued, must therefore choose between the desirable and the possible since the proposals submitted, even if desirable, would be rejected by many states ... The problem may be seen to stem from the duality of the Commission's role. The Commission was conceived as a body of experts of "recognized competence in international law." Under its statute they serve in their personal capacity, not as government representatives ...
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> As independent experts, their main task is to prepare reports and drafts that (in Sir Hersch Lauterpacht's words) are "accurate *de lege lata* and desirable *de lege ferenda."* This has been generally recognized as a task appropriate for an expert body. The basic objective, however, is not "scientific"; it is to contribute to positive international law. Therefore, the Commission's task envisages eventual governmental acceptance whether in the form of treaty or general international law. The ILC statute and related procedures provide for governmental comment during the preparatory work and for consideration of Commission drafts each year in the U.N. General Assembly. It is also highly relevant that the Commission members are nominated by their respective governments and that as a rule they are sensitive to the attitudes of their own governments.
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> Does the ultimate goal of acceptance by governments require that the Commission turn down the present proposals for dispute settlement because some important governments are not likely to accept a treaty that includes them? It would be strange for an international body of elected independent experts to assume that its collective product, based on long study and debate, will not be taken seriously by governments and considered on its merits. To quote Lauterpacht once more, governments "must be credited with the capacity for being influenced by the intrinsic merits of drafts as finally elaborated [by the ILC]. Experience has shown

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[168] Schachter, 1994 at pp. 475-76 (1994). For the internal quotes, see Hersch Lauterpacht, *Codification and Development of International Law,* 49 *American Journal of International Law* . pp. 16, 35 (1955).

that governments are often less 'realistic' than pessimism or lassitude makes them out to be."

The appointment of Special Rapporteurs would no doubt raise some serious political concerns among many of the Member States in consequence of the primary reason for establishing such a function in the first place: to permit expert-based research, fact-finding, analysis and recommendations with a sufficient degree of independence from the individual and collective political will of the Member States. Such a function clearly has substantial value in ensuring that analysis was scientific and evidence-based, but this same fact – and the fact that it would be so perceived by both the Member States and non-governmental interests would be the source of significant public and political pressure. That it would press Member States and the Commission in the general direction of good crime prevention and criminal justice policy is beyond doubt, but whether Member States would be willing to provide the necessary mandates, financial and other support, and whether they would be willing to accept the results at the end of the process is another matter.

2.2 More use of delegated expert groups and similar bodies

The primary forum for most substantive expert participation in the Commission is not the Commission itself, but the many subordinate groups it mandates to study specific subject matter. The use of such groups and scope of the work that they do could be increased, and the work could be better resourced. Resources are needed for travel of some experts to ensure representative groups, as well as for Secretariat support and for the production of documents. Document costs include both documents for use in the meetings and the production of reports sent to the Commission. They may also include the translation of other documents used in the work, such as research questionnaires. Documents are essential, both for review of the work by the Commission and for use by the Member States and others in everything from academic research to the development and delivery of technical assistance. The actual costs of subordinate bodies vary from a few thousands to several millions of dollars, depending on the size of the group, how many meetings it has, the number of languages interpreted in meetings, and documentation quantities.[169]

The rules that govern bodies convened by and subordinate to the functional commissions of the ECOSOC were drafted in the 1950s, and were intended to deal with all of the Commissions on the same basis. Different practices have developed in the different Commissions and subordinate bodies and the rules no longer reflect the needs of Crime Commission or the ways in which

[169] A "meeting" is a half-day of three hours. A recent estimate for a further session of a major open-ended intergovernmental expert group (on cybercrime) for six meetings over three days was about $137,000, including documents before the meeting, production of a report (16 pages), interpretation in the six official languages and other costs. See: E/CN.15/2011/CRP.7, annex XIII paragraph 3.

subordinate bodies are actually run. There is need for a review of the different types of subordinate body used by the Commission and the development of appropriate rules for each. That said, the wide range of subordinate bodies of substantive and diplomatic experts argues for a range of options and some discretion in applying them, both on the part of the Commission and on the part of the delegated bodies and their Chairmen.

Obtaining substance expertise from developing countries is especially problematic. These Member States often lack not only the resources to send experts to Vienna, but also the existence of the sorts of experts and substantive information that would be needed to determine and effectively represent their interests. In subordinate bodies dealing with new and emerging crime issues such as identity-related crime, deliberations consist of consideration of technical subject-matter issues among the experts from developed countries, while attendees from developing countries, if present at all, tend to focus on their perceptions of crime and crime trends and on the needs of their States for technical assistance. In these cases part of the process is to actually develop expertise that has not previously existed.

3. Clearer understanding of the roles of the quinquennial Crime Congresses and their relationships to the Commission

The 1991 convening resolution establishes Congresses as part of the Crime Programme and provides some guidance as to how they should be conducted,[170] but there is substantial overlap, in both prescription and practice, between the functions of Congresses and the Commission. The Congresses themselves are much older, the first having been held in Geneva in 1955,[171] and their present nature and functions have become uncertain in some respects because the earlier ones included substantive and political deliberations and resolutions that have been made functions of the Commission since it was established. Congresses are convened by the General Assembly and report back to it, but while full reports are still generated, they are produced as Conference reports and only the political declaration of each Congress is actually transmitted back to the General Assembly itself. The practice is that this is now done not by the Congress itself but annexed to a resolution presented in the Crime Commission by the Host Member State and transmitted to the General Assembly *via* the Economic and Social Council.[172]

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[170] A/RES/46/152 Annex, paragraph 29.

[171] For a history of the Congresses see: Lòpez-Rey, 1978 and Clark, 1994, chapter 3 at pp. 73-80. The Report of the 1955 Geneva Congress is A/CONF/6/1, January 1, 1956. The Congress reports are available at http://www.asc41.com/UN_congress/undocs.htm

[172] A/RES/56/119, paragraph 2, subparagraphs (h) and (i) call for a single declaration from each Congress, followed by individual resolutions by the Commission. This only extends to calls for action, which leaves open the possibility of unified plans of action or similar

Periodic efforts have been made to clarify the roles of the Congresses and establish a clearer and more efficient process for the elaboration of an agenda and preparation of supporting documents, experts and panels for workshops and similar preparations and for some form of clear practice regarding how Congresses should be followed up. The Commission called upon the Secretariat to develop a comprehensive Action Plan following up the declaration of the 2000 (Vienna) Congress,[173] but this proved so cumbersome the question was re-visited again after the 2005 (Bangkok) Congress, in the form of an open-ended intergovernmental expert meeting to consider the preparation, conduct and follow up of Congresses in general.[174] That process called for a consistent five-year preparatory cycle and recommended that rather than attempting comprehensive follow-up strategies, it should be left to the Member States themselves to effectively set priorities and call for specific actions by the Member States and/or Secretariat on an issue-by-issue basis by the usual practice of introducing and negotiating resolutions in the Commission.

There are several reasons why the preparation, organization and follow up of the Congresses has been uneven in recent years. In practical terms, the fact that they take place at such long intervals means that most rotational diplomats only participate in one, and even within the Secretariat, every cycle sees a significant staff turnover, which makes the accumulation of institutional memory and the establishment of useful practices more difficult. Similar problems arise from the fact that each one is hosted by a different Member State, and it is this State's diplomats who usually take on a substantial part of the work in both logistical matters and some political matters, such as chairing processes for the development of a draft Declaration in the months before the

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documents of the type used to follow up the 2000 Vienna Congress, but this now seems unlikely following the decisions taken after the 2005 Bangkok Congress (following note).

[173] In 2000-2001 the Commission called for plans of action to implement the Congress Declaration at its 9th session, held immediately following the 10th Congress in May 2000 (A/RES/55/60, paragraph 3). Drafts were circulated to Member States and discussed briefly at intersessional meetings and considered at the 10th session in May 2001, but required an extended 10th session the following September to finalise the full texts (E/2001/30/Rev.1, Part II, and A/RES/56/261). I was responsible for drafting much of the text of the 2001 Action Plans. They were for the most part well-received, and some became the basis for a range of other follow-up work, but it proved difficult to engage Member States at the substantive level needed to finalise the content between sessions of the Commission, and the sheer size of the texts made it impossible for delegations to negotiate the details paragraph-by-paragraph at the 2001 session of the Commission. One of the more difficult segments to negotiate, the plan of action against terrorism, was adopted with the rest of the package by the extended session of the Commission on Friday 7 September, 2001 and became a significant element of the U.N.'s response to the terrorist attacks on the United States that took place the following week. See *Report of the Commission on Crime Prevention and Criminal Justice at its Tenth Session*, E/2001/30/Rev.1, Draft Resolution II (later A/RES/56/261), Annex, Part VII.

[174] See: Report of the Intergovernmental Group of Experts on Lessons Learnt from United Nations Congresses on Crime Prevention and Criminal Justice, Bangkok, 15-18 August 2006, E/CN.15/2006/7.

Congress. One reason for the slow follow-up of Congresses is that issues of both process and substance remain open and sometimes become linked. The fact that there are no clear rules or practices for the preparation or follow up of Congresses means that Member States are always tempted to choose or press for procedural practices that may bring immediate tactical advantages on some substantive issue but set unfortunate precedents at worst, and at best may have little value in the search for a stable and useful process for the management of Congresses and the development of a relationship between Congresses and the Commission that make the best use of political commitment and resources of the two as a combined package. A recent example of this was the result of deliberations on cybercrime at the 2010 (Salvador) Congress, after which Member States wanting fast action on the subject wanted the text negotiated in the Congress treated as a mandate and/or transmitted directly to the General Assembly, while other Member States, preferring the existing practice and more deliberations, wanted the text reconsidered at the subsequent Commission session, and then on the basis of this, transmitted to the General Assembly *via* the ECOSOC in the usual way.

Another factor is that, as above, some political functions originally performed by the Congresses have now been allocated to the Commission by its convening mandate and subsequent amendments. Congresses are much larger than sessions of the Commission, and usually attended by more senior officials, but they do not address the General Assembly directly, and actual legislative mandates that commit resources and direct the work of the Secretariat must still be introduced in and adopted by the Commission, as well as, in appropriate cases the ECOSOC and General Assembly. Some of this uncertainty was addressed by the 2006 Bangkok Congress follow up recommendations, but the remaining function of the Congresses and their relationship to the Commission is still in many respects an open question.

A further factor is the nature of the Congresses themselves. Their size and importance makes them attractive as a platform, and they are usually attended by senior political officials from a number of Member States, which means that a major element of the proceedings and outputs are over-arching, high-level pronouncements on crime matters that can have considerable political weight but are usually not very detailed or substantive. At the other extreme is the fact that the size and duration of the Congresses attract large numbers of technical experts on many different issues from the Member States, the Institutes of the Programme Network, and other sources. The effect is that the workshops and other specialised meetings are often the only occasions in which truly global expert discussions of some issues take place, and in which experts can make connections among related or overlapping substantive issues. This aspect of the Congresses has, if anything, increased in its importance as the same sort of expert function has declined in the Commission itself. The result is a package of different outputs, all of which have value, but which may not be very well interconnected in thematic terms. The Declaration is usually commenced well before the Congress and negotiated throughout, while high-level expert sessions, other plenary discussions, and a series of technical workshops all

proceed in parallel and for the most part, in isolation. The lack of connection between the high-level political elements and the technical ones may mean that the latter, which contain valuable information, are often not well-known beyond those who actually participated.

Taking into account the evolution of the Commission and Congresses and the 2001 reconsideration of the role, function, periodicity and duration of Congresses, a clearer and more focused relationship between them could be developed. This has been suggested many times before, and the obvious elements are still the same ones as were considered in Bangkok in 2006. These include: the role of the Commission in planning Congresses and setting agendas; the respective roles of the Commission and Congresses in setting short-term and long-term priorities, including the role Congresses might play in setting general priorities for the Commission every five years; the relationships between technical work carried out by and between Commission sessions and at the Congresses; and the role of the Commission in following up the declarations and other recommendations produced by the Congresses. But the results of the Bangkok meeting and others like it had little real impact on the planning, running and follow-up to the 2010 Congress, and appear to be having little impact on the preparations presently underway for the 2015 Congress. The reasons include many of the challenges set out above, but more fundamentally, the fact that there is no real consensus, or even understanding of what the Congresses actually accomplish or are capable of accomplishing. What, then, are the purposes Congresses actually serve, and what purposes should they serve?

A useful starting point might be to consider what distinguishes the Congresses from the Commission and other national, regional or global bodies and processes that consider crime matters as part of their work. Their most important attributes are their size, the diversity of participants they attract, and the popular, political and media attention they can generate. This clearly suggests that one key function of Congresses is to raise the policy and political profile of crime as a national and global challenge and to raise awareness of the work of the Commission and other bodies which respond to crime. A related, and in my view more important function is the role Congresses can play in coordination and integration. This springs from the large numbers and wide diversity of participants, and it includes integration of crime prevention, criminal justice, and interests of offenders, victims, law-enforcement, legislative and other interested constituencies not only with one another, but over time and with broader developments that influence crime and responses to crime or are or should be influenced by them.

Some useful functions of Crime Congresses that should in my view be considered include the following.

- As noted above, Congresses already play a role in raising the profile of crime and responses to crime, globally, within different Member States and regions, and within other expert, governance, academic or other constituencies for whom an understanding of the nature of

crime and the range and status of responses to crime are important. There are many ways that this role could be expanded and enhanced, and given that the major costs of bringing experts together are already being incurred, further efforts might bring much greater benefits are relatively modest costs. One possibility, related to the following paragraph, would be to include more non-crime experts and institutions in the proceedings with a view to making them more aware of the crime prevention and criminal justice landscape. Another could be a more coordinated and user-friendly approach to collecting and publishing the proceedings of Congresses, which could provide a valuable record of both substantive and political perspectives on crime issues.

- Given the ever-increasing links between the crime prevention and criminal justice agenda and global work on security, rule of law, social and economic development, human rights and other such matters, the Congresses could be used for a quinquennial assessment of the state of crime itself and responses to it in the broader global and institutional context. It seems likely that the twenty-first century will bring with it an increasing need for strategic coordination or integration of crime prevention and criminal justice work with efforts dealing with social and economic development; global, regional and national peace and security; international trade and commerce; environmental matters; population and migration matters and other such global issues and processes. The Congresses, in bringing together a large number of experts from a wide range of fields with high-level policymakers, would seem an ideal forum for considering such issues through a crime prevention and criminal justice lens, for building bridges and individual and institutional relationships and for generally educating others about the work of crime prevention and criminal justice experts and *vice versa*.
- One of the most fundamental problems posed by globalised crime is that the tradition of highly-individualised traditions and approaches to crime means that few senior officials understand either the different perspectives of other States and cultures or many of the fundamental interests that are shared globally and transcend such differences. The Congresses attract senior and political officials, who tend to appear and speak about policies and positions on crime on behalf of the governments they represent, but seldom interact with one another or participate in many of the more technical expert and policy discussions that are conducted in parallel. This suggests that a valuable opportunity is being lost to allow for senior officials to interact with one another in discussions that could provide political foundations for work on crime between the Congresses. Similarly, the potential for using the rich discussions at the technical expert level to raise the awareness of senior officials about new and emerging crime problems, global and regional trends and other such matters is not being realized.

- The preceding point is also true to some extent for technical experts. The size and profile of Congresses make them the only occasion on which very large numbers of the best experts in the world on issues ranging from cybercrime to crime prevention and the interests of victims of crime all meet at the same time and place. This has generated some of the most useful international deliberations on these issues, particularly since some of the opportunities for similar discussions at the annual sessions of the Crime Commission have been reduced since 2005. However, just as these proceedings are largely hidden from the senior officials who attend, they are also largely isolated each from all of the others. This suggests that a valuable opportunity to make connections between these various groups is also being, if not lost altogether, then at least under-utilized. One wonders, for example, what could be achieved by exposing to one another the deliberations or conclusions of groups of experts defined by specific thematic issues such as cybercrime or money-laundering to the deliberations or conclusions of groups based on other perspectives such as crime prevention or the interests of offenders, victims, law-enforcement or other constituent groups.
- High-level Congresses every five years can play a valuable role in assessing the evolution of crime and responses to crime over very long periods, and a review of their deliberations and conclusions might generate useful insights in the relationships between crime and other global developments from perspectives such as those of governance, communications, economics, population levels and movements or environmental changes. In researching this book, I did not delve extensively into the work or results of past Congresses, and like many participants, I have only been involved in four of them,[175] but the occasional glances back suggest that much could be learned from past perspectives on crime generated by political and strategic factors related to the "Cold War", the evolution of transportation, communications, economic and other systems and their effects on the values, beliefs, aspirations and movements of populations and other developments which may become apparent only over time-lines based on decades or centuries. This suggests that Congresses should provide an opportunity for all of us, from technical experts and front-line officials to Heads of State and Government to take stock of where we have been, where we are, and where we are heading in the future. It also suggests, in my view, that the Congresses, those who run them

[175] As a member of the Secretariat I prepared for, managed and reported on workshops on the Rule of Law and Cybercrime for the 2000 (Vienna) Congress, and subsequently drafted and amended the Plans of Action following up that Congress ("Plans of Action for the Implementation of the Vienna Declaration on Crime and Justice", A/RES/56/261, Annex). I participated as a Canadian delegate or expert in the 2005 and 2010 Congresses (but did not attend the latter in person), and at the time of writing, December 2011, I am engaged in preparations for the 2015 Congress.

and those who take part in them all share a high obligation to document and preserve not just the substantive evidence they considered, but the beliefs, aspirations and positions they expressed and why.

- With respect to the following up of Congresses, some of the functions described above are too general and sweeping to suggest any particular follow-up process. To the extent that the Congresses constitute an opportunity to consider the state of crime and of responses to crime, merely documenting the proceedings and ensuring that the information is disseminated to those who can make the best use of it and that it is preserved for the future is probably all of the follow-up that is needed. This also suggests a fairly *ad hoc* approach in many specific areas. As one of the authors of the Plans of Action intended as the follow-up mechanism for the 2000 Crime Congress, I believe that this option delivered more value than many Member States realise, and I frequently encounter references to the Plans in several of the specific subject areas they addressed. Such a comprehensive approach is clearly burdensome, but also useful in that it considered subject areas that would not otherwise have received such attention, and that it generated a greater degree of coordination between the specific actions proposed in different subject-areas. That said, the alternative approach recommended by the 2006 Bangkok expert meeting, in which concerned Member States would follow up on Congress discussions with specific resolutions seems to be the preferred approach, and is probably the most useful option. Apart from the implicit element of priority-setting, it allows Congress outputs which are primarily intended as political and awareness-raising efforts to remain in the political Declaration sent to the General Assembly, while directing outputs which have practical, operational and budgetary implications back to the Commission, which has the expertise and institutional memory needed to ensure that the general political expressions of the Congresses can be translated into operational language and measures.

4. Reduce the repetitive or redundant consideration of the same issues

4.1. Reduce substantive redundancy and "forum shopping" among the Crime Commission, CND, the Conferences of States Parties, and other bodies

One of the most valuable functions of the Commission is its broad mandate to entertain any topic that any Member State labels as a "crime" issue, but this also results in redundancy when the same issues are raised in more than one body. The subject matter of cultural heritage property, for example, has been considered in the same year by UNESCO, the Crime Commission and the Conference of States Parties to the *Palermo Convention*, all in the context of efforts to prevent and suppress illicit trafficking in such property. To some

extent this may be inevitable, given the different but overlapping mandates of each body, but it also stems to a large degree from the fact that Member States who are not satisfied with results achieved or action taken by one body have a tendency to re-open the same issues elsewhere in the hope of achieving a better outcome. Some issues are seen by Member States collectively as being primarily crime issues, but for other issues it can be difficult to build consensus on whether the primary forum should be the Crime Commission or another body.

At the political level, one option of reducing the duplication of effort might be to propose that the General Assembly allocate primary jurisdiction or designate one body as the primary forum. At the Secretariat level, the basic functions of UNODC include providing other elements of the U.N. with expertise on crime prevention, criminalisation, law enforcement and international cooperation, and this seems preferable to the establishment of parallel mandates. Ultimately, however, as sovereign States, the Member States are free to raise any issue they consider to be a "crime" matter or to have crime-prevention and criminal justice aspects in the Commission, and the exercise of this prerogative has value, in the sense that it serves to raise and identify many issues for which crime is one of multiple aspects or elements. Without this function, international law and policy development tends to encompass a wide variety of approaches to criminalisation and related matters developed more or less at random. This in turn erodes the effectiveness of international cooperation in criminal matters and human rights protections. The only effective way to respond to the concerns that lead Member States to raise the same issues in multiple *fora* is to provide the possibility of a full consideration of the issues in whichever forum is deemed to be the most convenient or effective one, and this in turn requires the application of multidisciplinary expert resources and financial resources in that forum once it is selected.

4.2. Reduce redundant review of issues over time

As noted, the Commission serves as both a political body where the views of Member States are articulated in an effort to direct international attention on crime problems they regard as priorities, but it also serves as an oversight body, establishing mandates for the Secretariat and calls for action on the part of the Member States themselves. In most subject areas, an oversight cycle of two or three years is appropriate because it takes that long to obtain the necessary resources, data and consensus of the Member States on technical assistance materials, to develop and deliver projects, and then to report back to the Commission with the results. If interim progress reports are needed, they usually form only a short segment in a more general Secretariat report, and a similar place in the Commission's agenda. In some cases, this conflicts with the political desires of Member States to increase the political profile of specific issues by proposing resolutions dealing with them every year, thereby triggering an oversight and reporting cycle far more intensive than the Secretariat and the mandated work can sustain. While there may be occasional

exceptions, few mandated tasks can be completed in a single year, and the political positions of the Member States on an issue are unlikely to change sufficiently in such a short space of time to the point where a proposed resolution which does not succeed in one session is adopted at the next session.

The repeated re-introduction of subject-matter or proposals which are substantially the same year after year reflects the practice which has developed in the Human Rights Commission and Human Rights Council, in which annual resolutions are used as a means of maintaining support for specific human rights issues and pressure on Member States who do not subscribe to or follow them, and as a means of tracking the positions of various States in debates, sponsorship and voting from session to session over time. In the Crime Commission, however, it generates costs in terms of document production, diverts valuable time during sessions away from subject-matter which may actually require attention, and in areas where subject-matter specialists are needed, significantly increases participation costs for delegations. A rule or practice under which a resolution, once adopted with a two- or three- year reporting mandate precluded further resolutions on the same subject until the work was completed and reported back could greatly reduce repetitive deliberations and increase effectiveness. Such a practice would have to be carefully formulated, however, as there are circumstances in which a progress report on ongoing work may indicate that some adjustments to the original mandate are needed. From a cultural standpoint, this requires either a willingness on the part of Member States and their delegations to disassociate the fact that a resolution was adopted with the political profile of the substantive issues it raises, or alternatively a willingness to commit the resources needed for a much longer duration, to permit the same sort of negotiations that take place in the Human Rights Council.

5. Thematic focus, thematic discussions and the strategic planning of issues

More substantial progress might be made on issues if priorities were set strategically, progressing from one theme to another from session to session. This would require long-term planning of agendas supported by regional and inter-regional consultations and the willingness of Commission Members to set agendas and keep to them from session to session. One way of achieving this might be a three-year cycle in which each session considers and adopts the thematic topic for the next session, as well as follow up from the previous session, in addition to the thematic topic for the present session. The greater rigidity of thematic elements of the agenda raises the possibility that other priorities may emerge or issues arise that were not planned, and one option for dealing with such issues might be including on the agenda a specific item under which any Member State could raise any issue and propose that it be taken up in the future. This is actually one area where the practice of setting annual agendas has developed in a positive direction, in the sense that setting aside two three-hour meetings in each session for the discussion of a pre-

determined thematic topic allows for such advance planning and preparation, but recent sessions have led to a pattern in which intersessional meetings cannot resolve the details of what will be discussed until it is too late for experts to prepare and in which they are selected based on regional representation rather than substantive expertise.

A longer planning cycle might address some of these problems. The selection of multiple experts from each region would also, if there was sufficient time, allow for the development of a programme which met the requirements of coherent and organized discussion of the subject-matter both in substantive and regional terms. One possibility might be the setting up of two sequential panels, one examining various aspects of the substantive topic itself and the other outlining the different regional perspectives on it. A key requirement of the Commission is also that it must be able to consider not only well-planned and prepared thematic issues, but also that it be sufficiently flexible to consider relatively new and emerging issues for which a similar degree of planning will not usually be possible. One way to do this might be to create a specific agenda item under which the floor was open to interventions and documents raising new and emerging issues or any issues a Member State chose to address. Providing a set time for this might also reduce the tendency of Member States to intervene in discussions where the subject matter may be less appropriate. Member States wishing to raise new issues would not need to provide advance notification, but would have some incentive to do so, in the sense that this would allow other States to consider the issue in advance, to include experts or provide instructions, and to intervene on it if they chose.

6. Better use of existing resources: more use of the Institutes of the Programme Network

The Programme Network Institutes have historically played a substantial role in organizing expert meetings and marshalling both governmental and independent expert resources, especially in the Crime Congresses. This function had extended to the organization of side-meetings and expert briefings on specific issues and on the work of the Institutes themselves during annual sessions of the Commission, but this has been all but eliminated by the reduction in the duration of Commission sessions. Increasingly, there is no space for such meetings, and as a result of the reduction in time, national delegates are too busy to attend the few that are still held, and this is even more true for delegates from Member States who cannot afford to send large delegations. The Institutes comprise an extremely cost-effective means of obtaining a more extensive and diverse range of expert input into the proceedings of the Commission itself, as well as a wide range of subordinate and informal processes that serve to collect, filter and transmit information into those proceedings via the Secretariat, documentary reports and various national delegations. This book is an example of this function. They have also served as a useful means whereby Member States can direct resources into various Commission and UNODC processes and projects. As with other independent

sources, they also provide sufficient distance from governments and delegations to allow for diversity of expertise and policy perspectives while reducing the political risks and concerns for the Member States, who are free to disregard evidence, views, conclusions or recommendations with which they disagree.

7. Increase capacity by increasing the duration of annual sessions

The 2005 reduction from eight working days to only five has clearly reduced the costs to delegations to some degree, and is popular with many developing countries as a result, but it has also drastically reduced the capacity of the Commission to consider substantive subject-matter and has reduced the quality of its deliberations and outputs. Perhaps the greatest concern, however, is that it has stripped the Commission of much of its actual and potential value to the Member States, a development that could lead to a downward spiral in which, as the value of its work decreases, it attracts constantly-diminishing financial and intellectual resources and Member States gradually turn their attention more in the direction of unilateralism and of subject-specific bodies that lack the global, strategic and multidisciplinary dimensions that the Commission is capable of delivering.

The lack of time has discouraged many substance experts from attending, and made it necessary for delegations to send generalists as opposed to specialists, in order to represent their interests in parallel discussion of several (in some sessions as many as 15) different draft resolutions at the same time. It has marginalised the personnel and work of the Programme Network Institutes, because delegates are now too busy negotiating resolutions to participate in the meetings they organise to explore new topics and engage non-governmental sources. It has also aggravated long-standing problems of document translation by reducing the time available to translate negotiated texts in-session before they are adopted at the end. Perhaps the greatest loss of value, however, has been the less-quantifiable loss of opportunities for informal discussions among experts who assemble only once each year.

The present policy is to fix the duration of sessions in proportion to the agenda, but this is impossible on a year-to-year basis because of the long lead times needed to plan sessions, and the fact that any delegation which opposes a longer duration for any reason, whether the cost of participation or tactical considerations related to some specific agenda proposal, can block consensus on a decision to extend the duration. The expansion of subject matter before the Commission in recent sessions has made it clear that, at least as a general rule, sessions of only five working days are not sufficient. The appropriate response is to restore the eight day sessions originally mandated by ECOSOC in 1993, and to periodically review the duration to assess whether it should be increased further depending on demand.

8. Budgetary reform options

At present, the work of the Commission and the UNODC are funded by two essentially-independent processes and some form of linkage is needed. The regular budget (RB) process has created something in the nature of a zero-sum game in which RB resources for UNODC can only be increased if cuts are made somewhere else, and both Member States and Secretariat insiders have become very adept at protecting vested interests. One possible solution might be to link the RB allocation of various elements of the Secretariat to levels of extrabudgetary (XB) funding, effectively establishing an appropriate ratio of RB to XB resources, and then automatically increasing the RB levels needed to manage XB – funded activities in proportion to increases in those activities themselves. Another approach might be to undertake a comprehensive review of all posts within UNODC, designate all but project-specific and temporary or term-limited posts as RB posts and then re-adjust the Programme Budget accordingly, which would significantly increase the regular budget allocation and change the ratio of XB to RB – funded posts. In effect, if the Member States individually regard the problems of crime, drugs, corruption and terrorism as being of sufficient importance to warrant contributing additional funds to the programmes, then they should be collectively prepared to support parallel RB increases to maintain the infrastructure that carries out the work they mandate. Other reforms that have been proposed elsewhere involve greater integration of the crime and drug programmes, up to and including proposals to merge the two trust funds and the two Commissions. While those might achieve some modest efficiency increases, the intention behind most is to enhance transparency and oversight, not to increase resources overall, and the fact that many Member States treat these four issues differently, including in the calculation and evaluation of aid donations, might increase complexity rather than decreasing it.

9. Establish criteria and a practice governing the choice of body to which resolutions of the Commission should be addressed

Another effect of the discrepancy between the political and technical functions of the Commission and the resolutions it adopts is that Member States often seek to address resolutions to the General Assembly in search of political profile for the issues addressed, when the technical mandates created by the resolutions do not require approval by the General Assembly. Conversely, resolutions which did require this approval for legal or technical reasons have on occasion been blocked either by Member States seeking to reduce political profile or in an attempt to reduce document volumes and agenda demands in the proceedings of ECOSOC and the General Assembly. Efficiencies could be accomplished with little loss of substantive value if Member States were to find consensus on what sorts of subject matter require the attention of ECOSOC and the General Assembly and then apply them to limit the unnecessary onward

referral of resolutions. Based on past practice, criteria for reference to the ECOSOC or General Assembly could include the following.

- ***Whether the subject matter concerns other United Nations entities or is addressed to such entities.*** Most of the ongoing discussion of U.N. reforms includes the need for greater horizontality, and ensuring that subject-matter which raises issues within the mandates of more than one body is brought to the attention of any and all appropriate bodies. This is particularly important with subject matter such as human rights and crime prevention and criminal justice, which are cross-cutting and frequently raise such issues. In some cases delegations may propose resolutions which actually address other bodies, calling for coordinated action. In such cases, it may be necessary to transmit some resolutions to the ECOSOC or General Assembly to ensure that they are transmitted to or formally brought to the attention of all appropriate bodies. An additional element of such resolutions could be content calling on the General Assembly to designate a focal point or forum for consideration of an issue and then set out the respective roles of other political bodies and elements of the Secretariat. A common challenge in building consensus in such cases will be deciding whether an issue should be dealt with thematically, in mandates addressing criminal and non-criminal aspects together (e.g. protection of the environment), or whether it is sufficiently serious to be treated as a predominantly crime prevention and criminal justice issue (e.g., trafficking in persons).
- ***Where the authority or mandate sought is outside of the authority of the Commission or requires consideration by the U.N. membership as a whole.*** While it is logical that the Commission itself should direct work specifically within the area of crime prevention and criminal justice, some crime-related mandates require higher authority and a broader consensus among the Member States of the U.N. as a whole. The most significant recent examples include A/RES/53/111 and A/RES/56/260, which mandated and convened the open-ended intergovernmental Ad Hoc Committees of the General Assembly, which negotiated the 2000 and 2003 Conventions. Those involved subject matter developed in the Commission, but called for the establishment of a negotiation process open to all Member States in order to produce global legal instruments. Such negotiations had to be conducted by the General Assembly, and it was therefore necessary for them also to be conducted under a mandate established by it.
- ***Where the issues raised or action requested affected the mandate or functioning of the Commission itself.*** Arguably, such proposals represent a special case of the previous category, as the basic subject-matter mandate of the Commission was established by the ECOSOC at the direction of the General Assembly, and under the ECOSOC Rules of Procedure amendments, exceptions or modifications of those

Rules as they apply to the Commission can only be adopted by the ECOSOC itself. This is also logical, since such changes can affect the interests of the U.N. Member States as a whole (and in some cases other functional Commissions) and not just those which happen to be Members of the Commission at the time any changes or modifications might be proposed. Some of the need for the referral of resolutions and decisions to the ECOSOC might be alleviated by the development of Rules specific to the Crime Commission and the delegation of authority to amend them to the Commission itself. The Rules were originally developed by the first sessions of the ECOSOC on the assumption that a number of similar functional Commissions similar to the Human Rights Commission would be established, but the reality has been more episodic and a range of different practices appears to have evolved in each commission in accordance with its needs. This has caused problems on occasion when delegates experienced in the practices of one body seek to apply them in another. After 20 years of experience, it may be time to consider modernising the rules for the Commission and its subordinate bodies, and to do so in collaboration with the ECOSOC, but at the level of the Commission itself.

- ***Where there are implications for the United Nations Regular Budget.*** As noted, budgetary authority over the Crime Prevention and Criminal Justice Fund now vests in the Commission itself, but any proposal that would draw on RB resources has implications for the U.N. as a whole, and given the current inability to increase the overall budget, entails a loss by some other U.N. agency or programme. General Assembly resolutions are therefore needed for changes which have Programme Budget Implications, to ensure review by the Fifth Committee of the General Assembly and its subordinate body, the Advisory Committee on Administrative and Budget Questions (ACABQ).
- ***Where the ECOSOC or General Assembly has directed the Commission to report back.*** It is always open to the General Assembly itself, having become seized of specific subject-matter, to choose to remain so, and accordingly direct subordinate bodies to carry out certain courses of action and report back in due course. A number of examples of such resolutions can be found in the recent past. Resolutions dealing with the quinquennial Crime Congresses, which are convened by the General Assembly take this form.
- ***Subject matter or procedural elements affecting the UNODC as a whole.*** With the 2003 merger of the Secretariat and the establishment of the Conferences of States Parties, UNODC is now under the oversight of five separate bodies of Member States. Where subject matter significantly affects the mandates of more than one of these bodies, approval by the ECOSOC may in some circumstances be needed. That said, the Secretariats, and in many cases members of national delegations, are the same for the various bodies, and

coordination has gradually improved since the 2003 Secretariat merger and the establishment of new posts to support the two Conferences. The emerging practice is now to adopt coordinated or parallel resolutions in the two Commissions, which may make referral to the ECOSOC unnecessary, or where its approval is needed, the referral of single joint resolution. The open-ended intergovernmental working group on financial and budgetary questions ("Fin-Gov") was established by both Commissions and current practice is to hold coordinated extended sessions of the Crime Commission and CND each December to adopt a joint budget. Coordination with the two treaty Conferences has been more *ad hoc*, but overlapping subject-matter is commonly referred back and forth, thus far without major problems. This suggests that referral to ECOSOC, and in the case of some treaty issues, to the General Assembly, will only be needed on rare occasions where the different political bodies disagree.

- ***The creation of new treaties or the amendment or expansion of the existing treaties.*** This is clearly a matter for the General Assembly, but how such proposals should be considered and referred upward depends on the exact nature of the proposal in each case. The Conferences have the authority to consider and refer proposals that affect or depend on the existing instruments, such as amendments, and in the case of the *Palermo Convention*, proposals for further protocols, but not subject matter outside of this scope. This means that proposals to develop new international legal instruments dealing with crime should be first made in the Crime Commission. If it determines that an instrument is needed and that it falls outside of the scope of the existing treaties, it would refer the matter to the General Assembly *via* the ECOSOC in the same way as was done for the two previous Conventions in 1999 and 2001. If the Commission decided that the subject matter was within the scope of a Convention, and hence within the mandate of its Conference, it should then refer the matter there, on the basis that only the existing States Parties can decide whether an amendment or further Protocol was needed. Process aside, this may also be a substantive determination. In the case of the *Palermo Convention* and Conference, for example, it would require the assessment that the subject-matter predominantly involved the activities of "organized criminal groups" within the scope of the *Convention*. The possibility exists that one of the Conferences could decide unilaterally to negotiate amendments, but this seems unlikely in any major issue of substance, as the non-Party States might wish to propose or consider the option of a separate instrument to make it possible to ratify or accede to the proposed new instrument without joining the existing one. In default of consensus, any Member State can propose the elaboration of a new instrument directly in the General Assembly, but this seems unlikely to succeed if there is no expert assessment or building of consensus first at a lower level.

10. Greater focus on research

The past practice of the Commission has been to measure success based on legislative or quasi-legislative products, ranging from the standards and norms and the many ECOSOC and General Assembly resolutions produced over the years to the binding legal instruments of 2000 and 2003. This has tended to under-estimate the value of basic research to the Member States, who in turn have been reluctant to contribute resources both for general research capacity and for specific projects. The Commission and its Secretariat are in a unique position to gather and analyze data and disseminate results and recommendations to the Member States, particularly in the emerging areas of transnational crime, which are generally beyond the reach of nationally-based governmental and non-governmental researchers. As both crime and the interests it affects globalise, such research becomes increasingly essential to developing an accurate qualitative and quantitative evidence base at the global level.

As the precedent of trafficking in narcotic drugs demonstrates, it is impossible for any single Member State acting alone to accurately assess any of the expanding forms of transnational crime, and interconnectedness makes attempts to study and respond to the problem at the national level ineffective at best, and at worst, dangerous. Examining a global crime problem requires not only a consideration of how the problem manifests itself in each affected Member State and region, but also how these are connected, and how both crime and the possible responses to it affect other interests. Anti-crime efforts focused on one State may simply displace the problem to another State, for example, or may be effective in suppressing the crime problem, but cause unacceptable or disproportionate social, security, human rights or other effects. Before generating pressure or providing assistance to target a specific crime problem, it is prudent, to say the least, to gain a solid understanding of the context in which the problem arises and the potential consequences of various actions against it.

Crime research is sensitive in many States because it has the potential to contradict or undercut politically-based policies and positions, and this is equally true at the international level, making many delegations reluctant to support research mandates and resources in the Commission. Added to this is the problem that the value of such research is concealed and difficult to establish in advance, since there is often no policy justification until the research itself suggests a direction based on what is observed, and since some research is needed simply to provide a factual context against which specific crime problems and trends can be established geographically and/or over time. Further problems include the difficulty in getting an accurate assessment or data on crime in most developing countries, which are often the places for which it is most needed, and the need for the generation of data about social and other non-criminal factors to provide an analytical context.

The assembly and analysis of data by UNODC under mandates from the Commission has substantial potential to assist Member States in developing

forward-looking and mutually-coherent criminal justice policies, and to better integrate anti-crime efforts with those intended to address narcotic drugs and other social problems. Targeted research also has substantial potential in many developing countries where domestic research capacity is limited. Proposals to develop a World Crime Report similar to the annual report produced on narcotic drugs issues have not been supported by Member States, who saw a comprehensive assessment of all crime as overbroad, not an effective use of limited resources, and a potentially enormous demand on governments, which would have to be the primary sources of the information needed to produce such a report. Clearly this will be a major undertaking, but such an effort will ultimately have to be undertaken as the convergence of various crime issues and among crime, drugs and other issues makes the policy landscape more complex. This may still be some time off, but in the meantime there is both a need and some support for more focused research in accordance with the needs of the Commission from session to session. The establishment of data storage, analysis and retrieval systems would also help to make better use of the data which is obtained.

11. Information gathering and "questionnaire fatigue"

Member States frequently complain about the amount of work required to complete the research questionnaires disseminated by UNODC under Commission mandates, and have established a policy of requiring a formal mandate to provide the resources and authority to survey the Member States and generally limiting the number of such mandates it adopts. Given the extent of the information needed and the difficulty in gathering and reporting it in each Member State, there is probably no way to make any radical reforms without compromising the integrity and basic utility of the research. It may, however, be possible to reduce the workload by making it possible for Member States to respond electronically, and to make better use of the information provided by developing an integrated data-base so that actual responses are retained and not just the reports prepared based on those responses. Information gathered about the levels of economic crimes such as fraud might well prove relevant to future work on money-laundering for example. A software application has been developed as the primary tool for States Parties to the two Conventions to respond to the requests of the Conferences for information, and the expansion of this or the development of a similar tool for more general information-gathering could be considered. The consolidation of all information gathered into a single accessible resource would be a useful and substantial step forward, but would require political consensus, as some of the information provided pursuant to the Convention is regarded as confidential by the States Parties which provided it. Another possible means of reducing the demand on Member States, and especially those with limited information resources and response capacity, the use of Special Rapporteurs, is discussed above. While not necessarily appropriate for all issues, a short visit to a Member State by a Special Rapporteur with expertise on a particular issue and who could discuss it with appropriate officials and front-line enforcement,

judicial, prison or other officials could be a means of getting accurate and valuable information that could not otherwise be obtained at all, at a relatively low cost to the State in terms of effort and the diversion of personnel from their normal duties. Meeting with political and other high-level officials, a Special Rapporteur might also be able to articulate the State`s concerns, technical assistance needs and other critical interests far more effectively that questionnaires or other more generalised and less human information-gathering methods.

12. Limiting the scope of issues that can be dealt with intersessionally

As noted above, there is a need to ensure that the expert basis of the Commission is maintained. An essential element of substantive expertise is lost at the intersessional meetings, which due to their short (usually only three hours) duration are attended only by representatives from the permanent missions in Vienna. The Commission plenary should refrain from delegating substantive matters, such as the setting of future agendas, to the intersessional meetings. Similar concerns arise with respect to the recent practice of holding reconvened joint or serial sessions of the Commission and CND each December and of other proceedings which are conducted in Vienna under *ad hoc* or standing mandates, such as the Intergovernmental Working Group on Finance and Governance which has been meeting since 2007. These functions are essential to the coordination of the two Commissions and the financial and other oversight of the secretariat, but their nature and short duration effectively excludes the participation of crime experts, especially those from developing countries and from non-European countries due to the high proportional costs of travel to Vienna. For this reason their mandates should be strictly limited to management, oversight and similar functions, for which Member States are adequately represented by their resident diplomats. The Commission should not delegate to such bodies authority to consider substantive crime issues or to set substantive or thematic priorities, nor should it permit them to do so.

13. The advance submission and release of documents

Informed discussion of documents at the Commission requires that Member States have access to them far enough in advance to determine national positions on any issues raised and to identify appropriate experts to attend as delegates. There have been frequent complaints that documents generated by the Secretariat, including annotated agendas and reports of the Secretary General on technical issues have not been produced and disseminated far enough in advance. Reasons for this include a lack of resources for UNOV's document processing unit, which serves all of the major meetings held in Vienna, including those of the Commission, the Commission on Narcotic Drugs, the nuclear entities (CTBTO and IAEA) and a substantial portion of the work of the U.N. Commission on International Trade Law, UNCITRAL, late

completion of drafting by Secretariat staff, and in many cases, late submission of information such as responses to questionnaires by the Member States themselves. Under ECOSOC rules, there is no requirement to submit draft resolutions more than 24 hours in advance, and Commission delegations often do not submit these until immediately before, or even during, the sessions.[176] There is no power for Chairmen or the Bureau to rule such submissions out of order, but the development of a practice whereby such resolutions would be given only a preliminary discussion and then deferred until the next session could be established, if sufficient numbers of States so desired. Amendments to the Rules of Procedure to empower Chairmen to make such rulings, where appropriate, are possible, but would require the adoption of the necessary rules by the ECOSOC. Rule 27, paragraph 1 of the ECOSOC Rules of Procedure[177] provide that, unless otherwise specified, ECOSOC's own rules apply to subordinate bodies such as the Commission, and Rule 27, paragraph 2 provides that any further rules of procedure for subordinate bodies must be adopted by (but not applicable to) the ECOSOC itself.

14. The size of documents before the Commission

Proposals to reduce costs by limiting the size and amount of duplication in documentation before U.N. bodies have been before the United Nations for a decade or more.[178] Essentially the policy is to impose limits on texts prepared by the Secretariat, and guidelines suggesting limits on texts prepared by the Member States or intergovernmental processes. Drafting practices within the U.N. have tended towards extensive repetition of preceding texts in order to ensure that delegates considering a document are fully informed. This reflects the traditional paper-based U.N. document system and possibly also the high degree of rotation in the diplomatic services of Member States and national delegations. Member States also tend to attach symbolic importance to some content, which then becomes self-fulfilling: even where no longer particularly relevant or useful, the deletion of documents or specific content is seen as a political statement that it is no longer important or that its sponsors have somehow lost influence.

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[176] ECOSOC Rules of Procedure, E/5715/Rev.2, Rule 54. Until 2011, the practice was for the Commission to decide to close the submission of new proposals at the end of the first day's proceedings. That year, it adopted a decision calling for submission a month in advance to allow time for translation and dissemination prior to the convening of the Plenary. This is expected to speed up proceedings but may reduce flexibility, and whether future Chairmen are successful in ruling draft resolutions submitted late "out of order" remains to be seen. See E/2011/30, Draft Decision 20/1, "Report of the Commission on Crime Prevention and Criminal Justice on its twentieth session, provisional agenda for its twenty-first session and organization of work of its future sessions."

[177] E/5715/Rev.2, Rule 27.

[178] See A/RES/50/206C, A/RES/52/291 and subsequent resolutions, including A/RES/59/265, Part III, paragraph 4, as well as A/58/CRP.7. Implementing the policy with respect to UNODC and the Commission, see UNOV/DGB.15-ODC/EDB.15, of 6 November 2002.

While there is clearly significant potential to re-direct costs to more useful activities and produce a more limited and more focused information base for deliberations, serious concerns are raised by limits or reductions which affect the substantive content of documents, especially in the functional commissions and similar bodies which have the lead on considering substance. Placing substantive information before the Commission, including submissions by the Secretariat, individual delegations, expert consultants, delegated bodies such as expert groups, non-governmental and other sources, serves two essential purposes. It provides the majority of the information and evidence to support deliberations, and without which such deliberations would be sterile. It also serves to document the information itself, which is translated into all six official U.N. languages and recorded for later access in the U.N. Official Document System. This is a valuable, and perhaps under-utilized information resource both for policy-makers in governments and for analysts in academic and other non-governmental settings.

The intended policy establishes the mandatory limits and guidelines, and in the case of the limits, then applies a process of waivers to make exceptions where required. The process is not very transparent, however, and it is not clear how this discretion applies or what the criteria for actually making an exception to the limits are. While reform of U.N. documentation is beyond the scope of the present paper, it is clearly essential to the basic role of the functional commissions that they be the primary collecting point for substantive information. In the case of crime prevention and criminal justice, this includes research and other factual evidence, analytical materials, and policy or legal proposals, and many of these cannot be effectively and accurately presented within the otherwise-applicable limits.

It is submitted here that one key role of the Crime Commission is to receive and officially document such information, and then provide summaries, analysis and proposals to the superior bodies. If questioned later in the process, the factual basis of what the Commission produces should remain available on the official records of documents before its sessions. If the initial documentation is inadequate or defective, however, there can be no reliable historical factual basis for what comes later. This is not merely a question of documentary policy or cost-reduction, it goes to the fundamental validity of the work of the Commission. This suggests that either waivers should routinely be applied to new substantive information requested by the Commission, or that the Commission itself should consider this question when it mandates the gathering or analysis of factual evidence, and where appropriate, specify that the otherwise-applicable limits do not apply.

15. Can the volume of documentation be reduced?

Given the pressures generated by the high cost of translation and other document costs and the limited resources available, a clear, comprehensive and balanced discussion among the various constituent elements of the Commission itself and between the Vienna- and New-York based Secretariat

and diplomatic interests is needed. The functions of the Commission, and the constituencies to which the various documents are addressed are quite different, and this has fundamental implications with respect to the nature, functions and future of the Commission and the way Member States allocate both RB and XB resources to the global effort to prevent and combat crime. If the Commission is seen as a primarily-diplomatic body, many of its reporting outputs could be reduced, provided that the Member States are willing to document only the results of a process and whether consensus was achieved without also documenting details of the discussions and how the consensus was arrived at. From the standpoint of the Commission's legal and criminological functions, on the other hand, limits on the length and detail of texts reported represent a very real loss in value. When research on emerging issues is conducted, for example, the most common methodology is to send questionnaires to the Member States. These cost hundreds of thousands of dollars to develop and translate into languages, and require extensive time and resources both for the Member States themselves in gathering information and developing their responses, and for the Secretariat and oversight bodies that must assess the information gathered and report it back to the Commission. Detailed information about the issues under study is not only important to provide the evidence base for political decisions in the Commission about what to do next, it can also be important for Member States in deciding what should be done at the national level and developing approaches which are coherent with those of other States. In extended policy or political deliberations, reporting on the various arguments made and positions taken is also important to assist Member States in negotiating with one another, especially at the diplomatic level, where rotationality in foreign services makes personnel changes frequent.[179]

Assuming that this sort of research and evidence-based policymaking is seen as one of the core functions of the Commission, some means of supporting it with adequate documentation must be found. It may be that the procedural elements of reports can be reduced in length, but it is difficult to see how significant economies could be achieved with legal and criminological reporting, given that the single major cost involves editing into comprehensible language and translation from the source language into the other five official U.N. languages. In searching for a solution to this problem, venue also becomes a critical issue. The major budgetary and management decisions governing the allocation of documentation and conference services are taken in New York, where diplomatic interests are represented but substantive ones are not. The search for a solution should therefore take the form of a dialogue between diplomatic,

[179] This depends to some degree on the nature of the deliberations and an assessment of the costs and benefits of such reporting. In the negotiation of treaties such as the *Palermo* and *Merida Conventions*, detailed footnote annotations identifying the sponsors and views expressed on various provisions were used. In the more general reports to and from the Commission, the practice is to focus mostly on the issues raised and positions taken in more general terms without documenting which States have taken which positions unless a State specifically requests that its position be documented.

criminological and Secretariat interests from both places and it should to the extent possible ensure that New York-based delegations from the Member States represent both perspectives.

16. Better dissemination of Commission documents and other materials produced by the Secretariat

Most of the materials produced for the Commission, as well as its formal and informal outputs, contain information that, if appropriately disseminated to and used by Member States, would have substantial value. This is also true of other information gathered by the Secretariat and materials produced using that information. The advent of the Internet and the UNODC and Crime Commission websites have greatly increased the availability of these materials and information, but there is still a discontinuity between the intrinsic value of much of the information and the likelihood that Member States will actually access it and use it in dealing with domestic and transnational crime problems. This has both political and informational aspects. Politically, the perception that a report or resolution of the ECOSOC or General Assembly not only makes the sponsoring States seek to have such texts referred upward, it also makes it less likely that other States will take seriously and use the content of texts which are adopted only by the Commission. From an informational standpoint, many States are also more familiar with the documentation of the ECOSOC and General Assembly Secretariats, and may be less likely to locate and access information from the more specialised systems of UNODC and the Commission.

The political element can be effectively addressed only by a change in perceptions of the Commission and its relationships with the Council and Assembly. The informational aspect, however, is more easily addressed. Indeed, it is already being addressed, as the UNODC and Commission websites are easily accessible and often turn up automatically when the relevant subject matter is searched on-line. Ease of access is being steadily increased by the tendency for specific elements of the Secretariat (both within UNODC and other elements of the U.N.) to cluster documents and information thematically, assembling information on specific subject matter such as terrorism and corruption for example. Thus far this has tended to proceed in a fairly *ad hoc* manner, following the 2003 re-organization of UNODC, as specific units have assembled and posted the documents and information for which they were responsible. Organizing and structuring this process to cover all of the subject matter covered by UNODC in a comprehensive manner could bring substantial benefits, but information-management is an area which is not very attractive to donors. A system which clustered all of the information thematically and which gave ready access to all of the relevant documents, ranging from historical reports to the Commission, resolutions of the Commission and other subject-specific materials, as well as links to relevant portions of broader documents, such as reports of the Commission, Congresses and other bodies, would increase use of and reliance on the information. Over time, it might also

reassure delegations that subject-matter they consider important would receive appropriate attention at the level of the Commission and UNODC alone.

CONCLUSION

This examination of the Commission on Crime Prevention, tracing its origins through the successive Crime Committees from the founding of the U.N. itself to the 1989-91 process that led to the establishment of the Commission itself, and then the evolution and work of the Commission during its first two decades reveal fundamental and continuing differences among experts and Member States as to the nature of crime and the range of appropriate responses to it. Many of the underlying stresses that can be seen in the early Crime Congresses are still evident, albeit in different forms, today. The Soviet view that criminal justice and the rule of law were local matters and inappropriate for the global forum of the U.N. may have gradually faded with the globalisation of human rights standards and the demise of Communism and socialist legalism itself, but the fundamental tension between the need to deal with crime at the regional and global level as an international economic and security issue and the resistance of many domestic politicians and governments to intrusion on what they regard as purely domestic political issues is still very much a factor in sessions of the Commission.

The tension between substantive criminological expertise and diplomatic or political expertise and between approaches to crime prevention and control that are essentially political or essentially scientific also remains. The paradox encountered by those who founded the Commission remains unresolved in its proceedings has not been resolved: the development of viable responses to crime depends on the very sort of objective and independent scientific data-gathering and analysis that political interests resist. Any work in which the process is manipulated and the outcomes are pre-determined is by its nature unlikely to come up with realistic understandings of the problems of crime or responses which actually prevent and reduce it. At the same time, criminological answers require political consensus and support at both the national and international level to convert theory into practice, ensure that policies developed based on criminology are actually implemented in law and public administration, and increasingly, to ensure that what is done in one country is not undermined by the failure of others to act. Member States seeking to control the deliberations too closely by excluding independent substantive expertise eventually find them sterile and devoid of value, while those who advocate greater reliance on independent substantive experts still face the possibility that Member States will prevent this if they can, and ignore the results if they cannot.

The situation is not stable, however. The past two decades have seen a relentless trend towards the globalisation of the essential economic, social and political infrastructures which require protection from crime, accompanied by a corresponding globalisation of crime itself. These have created greater demand than ever before for coordinated global actions to prevent and suppress crime, greater potential benefits in security and prosperity if such actions can be developed and implemented, and greater risks if they are misconceived,

incomplete or badly-implemented. At the same time, the politicisation of criminal justice policy that has always existed at the domestic level has become steadily more evident and more problematic at the international level. The original evolution from a small ad hoc committee of academic experts in the 1950s and 1960s in the direction of experts which represent the political will of the Member States and not independent social science and legal perspectives, and towards the use of diplomatic personnel as a conduit for the views of the Member States as opposed to interactive debates among crime experts, has continued since the Commission was established.

While the calibre and size of the Secretariat and its oversight by the Commission have expanded, the capacity of the Commission to develop and disseminate new criminological information and analysis has deteriorated. The reduction of the duration of Commission sessions from 8 working days to 5 days in 2005 has reduced both the number of substantive experts who attend and the opportunities for them to meet and discuss substantive issues. Expert meetings organized and run by Institutes of the Programme Network have become rare, and when one is held, most delegates are too busy to attend and report on it. The expansion and globalisation of crime had resulted in steady increases in the documentation sent to and produced by the Commission in its first decade, but the current (2009-12) budgetary crisis has led to a drastic reduction in the capacity to produce documents, many of them of substantial value to Member States which require reliable data and analysis but lack the capacity to produce it for themselves or face transnational crime problems that require input from outside of their territorial capacities.

Underlying this is the fact that there is still no consensus on what the Commission is for, on what work should be done as a greater or lesser priority, on how it should be done or on who should do it. Sessions of the Commission have also become increasingly turbulent, in part, because it serves as a forum in which three different constituent groups – substance experts, diplomatic/political experts, and the Secretariat – interact. Each of these has different images of what the Commission is for and how it should work, and their assessments of its value and effectiveness are frequently tainted by the failure of each group to recognise the value delivered by the Commission and its proceedings to other groups. Allowing for factors such as the effects of globalisation and the resulting changes in crime and diplomatic practice and the gradual accumulation and dissemination of knowledge about the social, economic, political and psychological aspects of crime, the underlying debates about what the Commission should do and how are really not very different from those of the 1950s. Speaking in 1961 of the Second U.N. Crime Congress (London, 1960), one English criminologist observed:[180]

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[180] Hall-Williams, J.E. "Two International Congresses" (1961) 1 *British Journal of Criminology*, pp. 254-61 at 260-61. Prof. Williams goes on to suggest many of the same reforms that have been repeatedly raised over the years, notably more substantive presentations and small, focused discussions of specific issues by experts.

> ... The overall impression of the Congress was one of confusion of aims and dispersion of energies which could have been used to better effect. One cannot attend one of these vast international jamborees without wondering who is benefiting from the experience, and what contribution is being made in the debates (and outside) towards a deeper knowledge and understanding of the subject. Admirable as were the preliminary papers, excellent as were the rapporteurs, distinguished as were many of the participants, one felt a sense of dissatisfaction at the level of debate and the impossibility of getting anywhere through listening to them. Surely it is not beyond the wit of man to devise a scheme for an international convention where some really intelligent discussion could be assured to those who attend and by those who take part. Much of the time in London was occupied in dreary accounts by government delegates of the situation in their respective countries, and what was being achieved. Much of the rest of the time went in banal remarks and puerile arguments unworthy of such a distinguished gathering. Something must be done to avoid a repetition of this experience.

Those observations could equally have been made in respect of any of the more recent (2000 and 2005) Congresses I have attended, and many of them apply, *mutatis mutandis*, to every session of the Crime Commission. That there is no unifying theme, no consensus on strategic (or any) priorities, and endless tension between those who bring to the Commission diplomatic, political, social, human rights, security, criminological, legal, development or other perspectives, is not necessarily fatal to the work of the Commission or its value as an institution, a forum and a process, however. Just as crime is what it is, the same is true of the Commission and its participants, and its value lies as much in its inherent tensions and inconsistencies as in any of its various substantive or procedural outputs. Much could be improved, given the commitment of the necessary will and resources, but those who attack the Commission and other bodies like it because of what it does not produce in terms of deliverable substantive texts and decisions are in my view missing the point.

The Commission on Crime Prevention represents an investment, both in the present and the future, and given the intangible and long-term nature of the dividends it generates, something of a leap of faith. To participate with a sense of commitment as individuals requires faith in the value of our ideas, experience and expertise, and in our ability to communicate with and persuade others. It also requires an appreciation that the ideas of others have value to us as experts and to the Member States whose people we represent, and a fundamental sense of optimism that the ultimate value of the work of the Commission is greater than the sum of the ideas expressed, and that this value can be realized and expressed in tangible forms. As with any international process, the investment in time, effort and resources can seem substantial and difficult to justify, because the dividends tend to be abstract and difficult to quantify and compare to those generated in domestic policy and governance environments. Seen on a global and long term scale, however, the investments are small, when compared either with the global economic and other costs of

crime, or with the far-less efficient scenarios in which responses to crime are based on the more *ad hoc* and reactive measures that result when each Member State reacts unilaterally based only on its perceptions of the facts and in its own national interests.

With bodies and processes such as the Commission, much of the value lies not in the destination but in the journey, and in their use as a sort of ongoing, open-ended negotiation. This is equally true, in my view, whether one participates as a diplomat or as a criminologist. The sessions provide diplomats with a regular, annual opportunity to monitor the political positions of various States on various issues, and given some degree of continuity of knowledge and the institutional memory provided by the Secretariat, to trace the evolution of positions and gradual consensus as it develops over time. From a criminological standpoint, the Commission should, and if properly mandated and equipped, will provide a similar forum for the development, exchange and evolution of scientific assessments of crime and evidence-based responses to it. That this is seen as much as a threat as an opportunity by the Member States is unfortunate and the resulting erosion of the criminological functions of the Commission is lamentable. To be effective, political and legislative responses to crime must ultimately be based on scientific evidence and analysis, and the globalisation of recent decades has made recognition of this harsh reality in the Crime Commission and other international *fora* more critical than ever before. The very essence of science, whether physical, natural or social, lies in asking open-ended questions to which the answers are not known and cannot be pre-determined, in the conjectural construction of theories, and in the gathering of factual evidence to test and revise them. This represents a threat or risk only to strategies which entail using misperceptions or the misunderstanding of crime for other purposes, not to the efforts of the Member States to understand crime, to prevent and reduce crime, and to deal with its perpetrators and victims. If an appropriate, non-threatening multilateral balance between social science and politics can be found, the greatest value of the Commission would be not only in tracing the evolution of crime, scientific evidence and understanding of it, and political positions on what should be done about it, but in bringing these diverse threads together.

More can be done, and future generations will in my view pay a price if it is not, but while the Commission may not be ideal from the perspective of any single constituent group, or any Member State or constituent group of Member States, it is my view that, when a holistic perspective is taken, the Commission meets a serious and growing need generated by the relentless process of globalisation. Moreover, it does so, on the whole, very effectively given the lack of resources and support with which it is expected to function. The Commission performs a great many specific tasks, and in examining these, many possible reforms and enhancements are possible, provided that the Member States are prepared to provide the necessary political support and resources to make them work. There are many unfulfilled needs, and these, too, could be addressed if the Member States are prepared to provide the necessary support.

This book has sought to examine these and to set out in as much detail as possible the challenges that exist and the options for addressing them. In the final analysis, however, the fundamental function of the Commission lies not in the specific resolutions, mandates and reports that it produces, but in the forum it provides for the exchange of political perspectives and substantive expertise and the development of consensus-based responses to crime which enjoy both substantive validity and political legitimacy. These are critical elements in the search for global values which support peace, security and prosperity from the largest Member States down to the smallest villages, of which we have great and ever-increasing need. In that context the Commission and other bodies like it must be seen not only in terms of the search for solutions to problems, but in terms of building the will and the capacity to search. The Commission itself lies at the tectonic boundary of substantive and political perspectives on crime and of the interests of developed and developing countries increasingly thrown together by globalised technological, social and economic structures. In such a place, we should not be surprised at the occasional earthquake, because in such places, mountains are built.

BIBLIOGRAPHY

Amor, A., "The mandate of the U.N. Special Rapporteur", Emory International Law Review v. 12 no. 2 (Spring 1998) pp. 945-50

Ashworth, A., Principles of Criminal Law, Oxford University Press, 5th ed. (2006)

Aust, A., Handbook of International Law, Cambridge University Press, London, 2005

Bassiouni, M.C., "International Criminal Justice in Historical Perspective: The Tension Between States' Interests and the Pursuit of International Criminal Justice", in Cassese, A., The Oxford Companion to International Criminal Justice, Oxford University Press, 2009, at pp. 131-142

Bekker, P.F., "Comment on Difference Relating to Immunity From Legal Process of a Special Rapporteur of the Commission on Human Rights, International Court of Justice, 29 April 1999", American Journal of International Law, Vol. 93, pp. 913-942 (1999)

Brownlie, I., Principles of Public International Law, 5th ed., Oxford University Press, 1998

Brugger, W. "The Treatment of Hate Speech in German Constitutional Law", (2002) 3 German Law Journal (online), available at: http://www.germanlawjournal.com/index.php?pageID=11&artID=212

Cassese, A., The Oxford Companion to International Criminal Justice, Oxford University Press, 2009

Cassese, A., "The Rationale for International Criminal Justice", in Cassese, A. (ed.), The Oxford Companion to International Criminal Justice, Oxford University Press, 2009, at pp. 123-1340

Clark, R.S. "Human Rights and the U.N. Committee on Crime Prevention and Control", Annals of the American Academy of Political and Social Science, Vol. 506, pp. 68-84, 1989

Clark, R.S., The United Nations Crime Prevention and Criminal Justice Program, Procedural Aspects of International Law Inst. (U. of Pennsylvania Press), 1994

Clifford, W., "The Committee on Crime Prevention and Control", International Review of Criminal Policy, Vol. 34, pp. 11-18 (1978)

Cohen, S. Folk Devils and Moral Panics, 3rd ed., Routledge, Oxford, 2002

Cooper, H.H.A., "International Criminal Policy: A United Nations Initiative", International Bar Journal, Vol.4, (1973), pp. 28-30

Council of Europe, Extraterritorial Criminal Jurisdiction, 1990 (1992) 3 Crim. Law Forum pp. 441-480

Cowell, D., Jones, T. & Young, J. (eds.) Policing the Riots, Junction, London, 1981

Decroos, M.J.L., "Criminal Jurisdiction over Transnational Speech Offences: From Unilateralism to the Application of Foreign Public Law by National Courts", 13 European Journal of Crime, Criminal Law and Criminal Justice, (2005), pp. 365-400

Finer, S.E., Bogdanor, V. and Rudden, B., Comparing Constitutions, Clarendon Press, 1995

Garland, D., "Of Crimes and Criminals: The Development of Criminology in Britain", Oxford Handbook of Criminology, 1st ed., 1994, Part I, pp. 17-68

Gilbert, G., "Crimes Sans Frontières: Jurisdictional Problems in English Law" (1992) 63 Br. Yearbook of Int´l. Law, pp. 414-442

Godson, R., and Williams, P., "Strengthening cooperation against transnational crime: a new security imperative" in Williams, P., and Vlassis, D. (eds.) Combating Transnational Crime, U.N. International Scientific and Professional Advisory Council (ISPAC), 2001, pp. 321-355

Hall-Williams, J.E. "Two International Congresses" (1961) 1 British Journal of Criminology, pp. 254-61

Harris, D. Cases and Materials on International Law, 4th ed. London, 1991

ICCLR-ICHRDD (International Centre for Criminal Law Reform, with the International Centre for Human Rights and Democratic Development): International Criminal Court: Manual for the Ratification and Implementation of the Rome Statute 3rd ed., 2008

International Court of Justice, Advisory Opinion on the Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, (1999) I.C.J. Reports, p.62. (29 April, 1999), available on-line at: http://www.icj-cij.org/docket/index.php?p1=3&p2=1&k=9&case=00&code=numa&p3=4

International Law Commission, 1979, Report of the Working Group on the Review of the Multilateral Treaty-Making Process, A/CN.4/325 of 23 July 1979

Krasno, J.E., The United Nations: Confronting Challenges in a Global Society, Rienner, London, 2004

Laurenti, J. "Financing the United Nations", in Krasno, 2004, chapter 9, pp. 271-310

Lauterpacht, H. Codification and Development of International Law, 49 American Journal of International Law (1955)

Lew, J.D.M., "The Extraterritorial Jurisdiction of English Courts" (1978) 27 International and Comparative Law Quarterly, pp. 168-214

Lòpez-Rey, M., "U.N. Activities in the Prevention of Crime and Treatment of Offenders", American Journal of Corrections (May-June, 1960)

Lòpez-Rey, M., "The Quinquennial U.N. Congresses on the Prevention of Crime and Treatment of Offenders", International Review of Criminal Policy, Vol. 34, pp. 3-10 (1978)

Lòpez-Rey, M., A Guide to United Nations Criminal Policy, Gower, U.S.A., 1985

Luck, E.C., "Reforming the United Nations: Lessons from a History in Progress", in Krasno, 2004, chapter 11, pp 359-97

Maguire, M., Morgan, R. and Reiner, R. (eds.) The Oxford Handbook of Criminology, Oxford University Press, 1st ed., 1994 and 4th ed., 2007

Mathews, J.T., "Redefining Security" (1989) Foreign Affairs Vol. 68(2), pp. 162-177

Müller, G.O.W. “Transnational Crime: Definitions and Concepts”, in Williams and Vlassis, 2001, pp. 13-21

Müller, I. Furchtbare Juristen: Die unbewältigte Vergangenheit unserer Justiz, Kindler, Munich, 1987, English translation (D.L. Schneider): Hitler's Justice: The Courts of the Third Reich, Tauris & Co., London, 1991

Rock, P. (ed.), A History of British Criminology , Clarendon Press, Oxford, 1988 (originally published as British Journal of Criminology, Vol. 28, No. 2, Spring 1988)

Schachter, O., (Editorial Comment) “Dispute Settlement and Countermeasures in the International Law Commission”, American Journal of International Law, Vol. 88, pp. 471-77 (1994)

Shaw, M.N., International Law, 4th ed., Cambridge University Press, 1997

Spector, B., and Wolf, A., “Negotiating Security: New Goals, Changed Process”, International Negotiation, Vol. 5, pp. 411-25 (2000)

Taylor, I., Walton, P. and Young, J., The New Criminology: For A Social Theory of Deviance, Routledge, 1973

Tolley, H.B., "Defining the Rule of Law" in The International Commission of Jurists: Global Advocates for Human Rights (University of Pennsylvania Press, U.S.A., 1994)

Tomaševski, K., “Has the Right to Education a Future within the United Nations? A Behind-the-Scenes Account by the Special Rapporteur on the Right to Education, 1998-2004.” Human Rights Law Review, Vol. 5 (2005) pp. 205-37

Tribe, L., Constitutional Choices Harvard U. Press, (1st ed., 1985)

U.N. Drug Control Programme (UNDCP) Commentary on the U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, E/CN.7/590, U.N. Publication Sales No. E.98.XI.5, 1998

Wickremasinghe, C., “Comment on Difference Relating to Immunity From Legal Process of a Special Rapporteur of the Commission on Human Rights”, 49 International and Comparative Law Quarterly pp. 724-30 (2000)

Williams, G., “Venue and Ambit of Criminal Law”, (1965) 81 L. Q. Rev. Part 1, pp. 276-88, Part 2, pp. 395-421, and Part 3, pp. 518-38.

Williams, P. “Organizing Transnational Crime: Networks, Markets and Hierarchies”, in Williams and Vlassis, 2001, pp. 57-87

Williams, P., and Vlassis, D. (eds.) Combating Transnational Crime, U.N. International Scientific and Professional Advisory Council (ISPAC), 2001

HEUNI Reports

72. Blue Criminology – The power of United Nations ideas to counter crime globally. A monographic study. Slawomir Redo. Helsinki 2012.

71. Men's experiences of violence in Finland 2009. Markku Heiskanen & Elina Ruuskanen. Helsinki 2011.

70. Trust in justice: Why it is important for criminal policy, and how it can be measured. Final report of the euro-Justis project. Mike Hough and Mai Sato (eds.). Helsinki 2011.

69. Organised crime, corruption and the movement of people across borders in the new enlarged EU: A case study of Estonia, Finland and the UK. Jon Spencer, Rose Broad, Kauko Aromaa et. al. Helsinki 2011. Web-publication.

68. Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia. Anniina Jokinen, Natalia Ollus and Kauko Aromaa (eds.). Helsinki 2011.

67. Ehdoilla millä hyvänsä. Työperäinen ihmiskauppa ja ulkomaalaisten työntekijöiden hyväksikäyttö Suomessa. Anniina Jokinen, Natalia Ollus ja Minna Viuhko. Helsinki 2011.

66. Tuhansien iskujen maa – Miesten kokema väkivalta Suomessa. Markku Heiskanen & Elina Ruuskanen. Helsinki 2010. Verkkojulkaisu/Web publication.

65. Survey of United Nations and other Best Practices in the Treatment of Prisoners in the Criminal Justice System: Proceeding of the workshop held at the Twelfth United Nations Congress on Crime Prevention and Criminal Justice Salvador, Brazil, 12-19 April 2010. Kauko Aromaa & Terhi Viljanen. Helsinki 2010.

64. International Statistics on Crime and Justice. Edited by S. Harrendorf, M. Heiskanen, S. Malby. Helsinki 2010.

63. Syyttäjiin ja tuomareihin kohdistunut epäasiallinen vaikuttaminen Suomessa 2007-2008. Mika Junninen & Kauko Aromaa. Helsinki 2010. English summary. Verkkojulkaisu/Web-publication.

62. Human Trafficking and Organised Crime. Trafficking for sexual exploitation and organised procuring in Finland. Minna Viuhko and Anniina Jokinen. Helsinki 2009.

61. Corruption on the Finnish - Russian border. Experiences and observations of Finnish and Russian civil servants and business persons on corruption on the border between Finland and Russia. Kauko Aromaa et al. Helsinki 2009.

60. Korruptio Suomen ja Venäjän rajalla. Suomalaisten viranomaisten näkemyksiä korruptiosta itärajalla. Minna Viuhko and Martti Lehti. Helsinki 2009.

59. JUSTIS Project Working Papers. Review of Need: Indicators of Public Confidence in Criminal Justice for Policy Assessment. Anniina Jokinen, Elina Ruuskanen et al. Helsinki 2009.

58. Suomalaisten vankiloiden turvallisuus. Mika Junninen Helsinki 2008. Joint publication with the Criminal Sanctions Agency Finland. English description only.

57. Hate Crime. Papers from the 2006 and 2007 Stockholm Criminology Symposiums Joanna Goodey and Kauko Aromaa (eds.). Helsinki 2008.

56. Victimisation Surveys in Comparative Perspective. Kauko Aromaa and Markku Heiskanen (eds.). Helsinki 2008.

55. Crime and Criminal Justice Systems in Europe and North America 1995-2004. Kauko Aromaa and Markku Heiskanen (eds.). Helsinki 2008.

54. Service Provision for Detainees with Problematic Drug and Alcohol Use in Police Detention. A Comparative Study of Selected Countries in the European Union. Morag MacDonald et al. Helsinki 2008.

53. For the Rule of Law: Criminal Justice Teaching and Training @cross the World. Kauko Aromaa and Slawomir Redo (eds.). Helsinki 2008. (Out of print)

52. Restorative Justice Theory and Practice: Addressing the Discrepancy. Theo Gavrielides. Helsinki 2007.

51. Violence Against Women in Finland (English summary) Minna Piispa, Markku Heiskanen, Juha Kääriäinen and Reino Sirén. Helsinki 2006.

50. International Key Issues in Crime Prevention and Criminal Justice - Papers in celebration of 25

years of HEUNI. Edited by Kauko Aromaa and Terhi Viljanen. Helsinki 2006.

49. Maximizing the Effectiveness of the Technical Assistance Provided in the Fields of Crime Prevention and Criminal Justice. Edited by Margaret Shaw and Yvon Dandurand. Helsinki 2006.

48. Penal Policy, Justice Reform and Social Exclusion: Plenary presentations held at the Fifth Annual Conference of the European Society of Criminology, Krakow, Poland 2005. Edited by Kauko Aromaa. Helsinki 2007.

47. Adventurers and Risk-Takers: Finnish professional criminals and their organisations in the 1990s cross-border criminality. Mika Junninen. Helsinki 2006.

46. Enhancing International Law Enforcement Co-operation, including Extradition Measures. Edited by Kauko Aromaa and Terhi Viljanen. Helsinki 2005.

45. A Study of the Health Care Provision, Existing Drug Services and Strategies Operating in Prisons in Ten Countries from Central and Eastern Europe. Morag MacDonald. Helsinki 2005.

44. Crime and Crime Control in an Integrating Europe. Plenary presentations held at the Third Annual Conference of the European Society of Criminology, Helsinki 2003. Edited by Kauko Aromaa and Sami Nevala. Helsinki 2004.

43. Self-Reported Juvenile Delinquency in England and Wales, the Netherlands and Spain. Rosemary Barberet, Benjamin Bowling, Josine Junger-Tas, Cristina Rechea-Alberola, John van Kesteren, Andrew Zuruwan. Helsinki 2004.

42. Organised crime, Trafficking, Drugs: Selected papers presented at the Annual Conference of the European Society of Criminology, Helsinki 2003. Edited by Sami Nevala and Kauko Aromaa. Helsinki 2004.

41. Further Developments in the Prison Systems of Central And Eastern Europe: Achievements, problems and objectives. Roy Walmsley. Helsinki 2003.

40. Crime and Criminal Justice Systems in Europe and North America 1995-1997. Kauko Aromaa, Seppo Leppä, Sami Nevala and Natalia Ollus, editors. Helsinki 2003.

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36. Women in the Criminal Justice System: International examples & national responses. Proceedings of the workshop held at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Vienna, Austria, 10-17 April 2000. Natalia Ollus and Sami Nevala, editors. Helsinki 2001.

35. 2001 directory computerised criminal justice information systems. Richard Scherpenzeel. The Hague/Helsinki 2000.

34. Five Issues in European Criminal Justice: Corruption, Women in the Criminal Justice System, Criminal Policy Indicators, Community Crime Prevention, and Computer Crime. Proceedings of the VI European Colloquium on Crime and Criminal Policy, Helsinki 10-12 December 1998. Matti Joutsen, editor. Helsinki 1999.

33. Profiles of Criminal Justice Systems in Europe and North America, 1990-1994. Kristiina Kangaspunta, Matti Joutsen, Natalia Ollus and Sami Nevala (eds). Helsinki 1999.

32. Crime and Criminal Justice in Europe and North America, 1990-1994. Kristiina Kangaspunta, Matti Joutsen and Natalia Ollus (eds). Helsinki 1998.

31. Organised Crime Around the World. Sabrina Adamoli, Andrea Di Nicola, Ernesto U. Savona and Paola Zoffi. Helsinki 1998.

30. Computerization in the Management of the Criminal Justice System. Edited by Richard Scherpenzeel, The Hague 1996 (published jointly with the Ministry of Justice of the Netherlands).

29. Prison Systems in Central and Eastern Europe. Roy Walmsley. Helsinki 1996.

28A. Strategii preduprezdenija prestupnosti v Evrope i Severnoj Amerike. Dzon Grehem i Trevor Bennett. Helsinki 1996.

28. Crime Prevention Strategies in Europe and North America. By John Graham and Trevor Bennett, London/Helsinki 1995 (published jointly with the Home Office).

27. Directory of Computerized Criminal Justice Information Systems 1995. Richard Scherpenzeel. The Hague/Helsinki 1995.

26. Profiles of Criminal Justice Systems in Europe and North America. Kristiina Kangaspunta (ed.). Helsinki 1995.

25. Crime and Criminal Justice in Europe and North America 1986-1990. Kristiina Kangaspunta (ed.), Helsinki 1995.

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19 A. Computarizacion de los Sistemas Informaticos en la Justicia Penal, I volumen. Editado por Richard Scherpenzeel. La Haya 1992.

19. Computerization of Criminal Justice Information Systems, vol. I. Edited by Richard Scherpenzeel, The Hague 1992 (published jointly with the Ministry of Justice of The Netherlands).

18. Crime Prevention Strategies in Europe and North America. John Graham. Helsinki 1990.

17. Criminal Justice Systems in Europe and North America. Edited by Ken Pease and Kristiina Hukkila. Helsinki 1990.

16. Changing Victim Policy: The United Nations Victim Declaration and Recent Developments in Europe. Report of the Ad Hoc Expert Meeting held in Helsinki, 16-17 November 1988. Helsinki 1989.

15. Alternatives to Custodial Sanctions. Proceedings of the European Seminar held in Helsinki, Finland, 26-28 September 1987. Helsinki 1988.

14. Non-Custodial Alternatives in Europe. Norman Bishop. Helsinki 1988 (second printing 1988).

13. HEUNI - The First Five Years. Helsinki 1988.

12. Computerization of Criminal Justice Information Systems: Realities, Methods, Prospects and Effects. Report of the European Seminar held in Popowo, Poland, 18-22 May 1987, Helsinki 1987 (published jointly with the Ministry of Justice of the Polish People's Republic) (second printing 1988).

11. The Role of the Victim of Crime in European Criminal Justice Systems. A Cross-National Study of the Role of the Victim. Matti Joutsen. Helsinki 1987.

10. Papers on Crime Policy 2. Contributions from HEUNI scholars. Helsinki 1986.

9. Non-Prosecution in Europe. Report of the European Seminar held in Helsinki, Finland, 22-24 March 1986, Helsinki 1986.

8. The Legal Scope of Non-Prosecution in Europe. Peter J.P. Tak. Helsinki 1986.

7. Papers on Crime Policy. Károly Bárd, Matti Joutsen and Aleksander Yakovlev. Helsinki 1986.

6. Course on United Nations Criminal Justice Policy. Report of the European course held in Helsinki, Finland, 25-29 March 1985. Helsinki 1985.

5. Criminal Justice Systems in Europe. Report of the 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 1985.

4. Selected Issues in Criminal Justice. Helsinki 1984.

3. Effective, Rational and Humane Criminal Justice. Report of the European Seminar held in Helsinki, Finland, 31 May - 3 June 1984. Helsinki 1984.

2. Towards a Victim Policy in Europe. Report of the Seminar held in Espoo, Finland, 31 October - 2 November 1983. Helsinki 1984.

1. The Feasibility of a European Information System on Trends in Crime and Criminal Justice Report of the Ad Hoc Meeting of Experts held in Helsinki, Finland, 9-10 May 1983. Helsinki 1983.