

# FOUR TRANSITIONS IN THE UNITED NATIONS CRIME PROGRAMME

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*Over the course of seventy years, the United Nations Crime Prevention and Criminal Justice Programme (the “UN Crime Programme”) has undergone three major transitions. The first was a transition from a forum for intellectual debate among primarily Western European and North American criminologists and practitioners, to a truly global programme (1950s – 1960s). The second was a transition from an expert-driven programme to a government-driven programme (the 1990s). The third was a transition from a soft law programme to a programme based also on hard law treaties (the 2000s).*

*Each of these transitions has, in different ways, changed and strengthened the UN Crime Programme, but each has entailed its own costs. This paper briefly describes the transitions, as well as their accompanying costs and benefits. It also suggests that a fourth transition is underway, one that is framed by the 2030 UN Sustainable Development Agenda.*

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## 1. THE FIRST TRANSITION: FROM A REGIONALLY RESTRICTED PENOLOGICAL DEBATE TO A GLOBAL PROGRAMME

The United Nations Crime Programme has its roots in the work of its predecessor, the League of Nations, as well as the International Penal and Penitentiary Commission (IPPC). The academics and practitioners involved in the work of both the League of Nations and the IPPC often knew one another personally and shared many basic assumptions about the causes of crime and the treatment of offenders.

When the United Nations was established, the general view was that, in respect of crime and criminal justice, it should continue where the League of Nations and IPPC had left off. The first programme approved by the Economic and Social Committee (ECOSOC) identified nine subjects, all related to juvenile delinquency, correctional treatment, and criminal statistics.<sup>1</sup> The first member states of the United Nations were mainly Western European and North American, and the nine subjects reflected their criminological and penological preoccupations at that time. What were markedly absent from the list was crime prevention, the general operation of the criminal justice system (other than corrections), organized crime and transnational crime.

Membership in the UN began to expand during the 1950s and the 1960s, when an increasing number of developing countries joined. One result was that the scope of discussion in the UN Crime Programme widened from the traditional focus on juvenile delinquency and corrections, to other types of crimes and criminal justice concerns. Already the second UN Crime Congress, in 1960, had as one of its main topics the prevention of crime that results from social change and economic development in less developed countries. As of the beginning of the 1970s, transnational and organized crime began to make more frequent appearances on the agenda, in the form of such issues as corruption, trafficking in cultural property, and terrorism.<sup>2</sup>

The original ad hoc committee established by ECOSOC in 1949 to advise it on crime issues consisted of seven experts. Reflecting UN membership at the time, these first experts were predominantly Western European and North American criminologists and criminal justice practitioners. In 1965, the ad hoc Committee became a permanent body, the United Nations Committee on Crime Prevention and Control (later to be replaced by the United Nations

Commission on Crime Prevention and Criminal Justice), and the membership was increased to ten, then to 15 in 1971, and to 27 in 1979. Also in 1979, the seats were distributed geographically, ensuring regional balance.<sup>3</sup> Thus, the composition of the policy-making body began to reflect the global nature of the United Nations Crime Programme.

The globalization of the UN Crime Programme could also be seen in the themes that were taken up for discussion. The agenda items at the first two Congresses, in 1955 and 1960, focused almost exclusively on the traditional topics of juvenile delinquency and correctional treatment. However, the priorities of representatives of newly independent countries were no longer necessarily the same as those of the original group of “like-minded countries”. Many representatives of developing countries emphasized the links between post-colonialism, underdevelopment and crime. Along these same lines, and inspired by the vision of a “New International Economic Order”, some delegations worked on developing a “New International-National Criminal Justice Order”.<sup>4</sup> Although this did not result in any significant reordering of the UN Crime Programme, the group of developing countries, known as “G-77 + China”, remains an influential bloc, and some of its members have consistently raised issues related to the North – South divide.

## 2. THE SECOND TRANSITION: FROM AN EXPERT-DRIVEN PROGRAMME TO A STATE-DRIVEN PROGRAMME

During the first decades of UN work on crime prevention and criminal justice, the focus was on the collection and exchange of information, research, and the development of international standards and norms (“soft law”). When representatives of developing countries began to join in the UN discussions, in general they recognized the value of work on soft law. However, they repeatedly pointed out that work is needed also on implementing these decisions. Legislation and policies were often outdated, the structure of the criminal justice system was inadequate, many practitioners lacked training, and above all the financial resources for implementation were often lacking. In response, the UN Secretariat became more involved in technical assistance activities, assisted by the growing network of UN-affiliated institutes.

Towards the end of the 1980s, some countries began to argue that

<sup>1</sup> International Review of Criminal Policy (1952), vol. 1, p. 12.

<sup>2</sup> Lopez-Rey, Manuel (1985), A Guide to United Nations Criminal Policy, Cambridge Studies in Criminology LIV, Gower, pp. 16-17.

<sup>3</sup> Lopez-Rey, p. 15 and p. 44, note 5; and Clark, Roger (1994), The United Nations Crime Prevention and Criminal Justice Program. Formulation of Standards and Efforts at Their Implementation, University of Pennsylvania Press, pp. 19-20.

<sup>4</sup> Lopez-Rey, p. 8 and pp. 93-95 and Redo, Slawomir (2012), Blue Criminology: The power of United Nations ideas to counter crime globally - A monographic study, Helsinki: HEUNI Report series no. 72, p. 68. More generally, in his study of the development of the UN Crime Programme, Redo has emphasized the symbiotic relationship between criminology and the approach that the United Nations has taken to crime prevention and criminal justice.



the growth of transnational and organized crime, including terrorism, trafficking in persons, and money laundering, required a more action-oriented UN Crime Programme, one that was not being provided by the expert-driven Committee, which was devoting most of its time to soft-law resolutions. This criticism became stronger in the wake of the 1990 UN Crime Congress, which considered and adopted forty-six resolutions, among which were 13 new draft standards and norms for adoption by the General Assembly. Some governmental representatives argued that many of the draft standards and norms had been prepared without sufficient government input. Since many draft resolutions had not been submitted until at the Congress itself, there was insufficient time to study them. Others argued that soft law instruments were an ineffective response to the growing problems of crime and criminal justice, and that the UN Crime Programme should be more action and less words on paper.

At the time of the 1990 UN Crime Congress, discussions were in fact already underway on restructuring the UN Crime Programme. This was accomplished by a General Assembly resolution at the end of 1991, adopted on the recommendations of a Ministerial Conference held in Versailles.<sup>5</sup> The most notable and ultimately far-reaching change was that the expert-driven Crime Committee was replaced by a government-driven Commission on Crime Prevention and Criminal Justice.

The experts on the Crime Committee had served in their personal capacity. The sessions, and the Crime Congresses, were attended also by many other academics and practitioners. Although experts in crime prevention and criminal justice represent a broad range of backgrounds and approaches, as a group they tend to see crime as a social issue. At the time the Crime Commission was established, in turn, there was growing world-wide concern with transnational organized crime and terrorism. Consequently, many policy-makers tended to see crime as a national security issue. A consequence of the shift from an expert-driven to a government-driven UN Crime Programme has been an increased focus on criminalization, police powers and the operation of the criminal justice system, and less time devoted for example to prevention, juvenile delinquency, restorative justice and victim issues.

### 3. THE THIRD TRANSITION: FROM A SOFT LAW PROGRAMME TO A PROGRAMME BASED ALSO ON HARD LAW ELEMENTS

While the UN Committee on Crime Prevention and Control was producing soft law, the UN drug programme (the Commission on Narcotic Drugs and the International Narcotics Control Board)

continued the work on hard law begun under the League of Nations. In 1988, the United Nations adopted the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This 1988 Drug Convention consolidated and brought transnational hard law up to date in respect of the definition of drug-related crime. It also included, for the first time in a multilateral treaty, provisions on international law enforcement cooperation, mutual legal assistance and extradition.

The 1988 Drug Convention became a template for those who wanted a more vigorous and effective UN Crime Programme. Following a ministerial conference held in Naples in 1994, the General Assembly set up an ad hoc Committee to elaborate a convention on transnational organized crime.<sup>6</sup> The result, the United Nations Convention on Transnational Organized Crime (UNTOC), with separate protocols on trafficking in persons, the smuggling of migrants, and trafficking in firearms, was opened for signature in 2000. This was soon followed by the UN Convention against Corruption (UNCAC), which was opened for signature in 2003.

Each of the UN crime conventions set up a Conference of the States Parties, which oversees implementation and discusses issues related to the substance of each convention. However, also the UN Crime Commission and the UN Crime Congresses began to devote more time to transnational and organized crime issues. During the 1990s, the number of draft resolutions discussed at the Crime Commission that dealt with transnational and organized crime was about equal to the number dealing with more traditional “domestic” issues. Starting with the year 2000, when UNTOC was opened for signature, draft resolutions dealing with transnational and organized crime have outnumbered resolutions dealing with domestic issues by a factor of two to one. Thus, the Commission has devoted an increasing part of its work to transnational and organized crime.

As for the UN Crime Congresses, it can be said that transnational and organized crime have dominated the agenda of all the Congresses since the beginning of the millennium: the Eleventh Congress (2005) examined transnational organized crime, terrorism, corruption, and economic and financial crime; the Twelfth Congress (2010) dealt with the smuggling of migrants and trafficking in persons, money laundering, cybercrime, and international instruments on terrorism; and the Thirteenth Congress (2015) dealt with the smuggling of migrants and trafficking in persons, and new and emerging forms of transnational crime.

<sup>5</sup> General Assembly resolution 46/152 of 18 December 1991. A detailed presentation of the work of the Commission is provided in Ram, Christopher (2012), 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, Helsinki: HEUNI Report series no. 73.

The present author was one of the last to serve on the Committee, and was actively involved in drafting the plans for the transition from the Committee to the Commission.

<sup>6</sup> General Assembly resolutions 49/159 and 53/111.

A third change in the UN Crime Programme has been in who participates in the discussions in Vienna. As already noted, during the early years of the UN Crime Programme, through to the 1980s, the participants at meetings tended to be experts “from the capitals” knowledgeable in crime prevention and criminal justice. The UN Crime Committee met every other year for eight days, allowing time for interaction both in and outside of the meeting rooms. From 1955 to 1990, the UN Crime Congresses lasted for two weeks, and were a mix of debate, negotiations and social events. The tradition arose of seeking consensus on all resolutions and decisions. Calling for a vote on any issue was a measure used only in very rare situations.<sup>7</sup>

Since the 1990s, the profile of many of the participants has changed. Largely because of the entry into force of the two UN crime conventions, the number of meetings held in Vienna increased considerably. In addition to the biannual sessions of the two Conferences of the States Parties, these two bodies have set up several subsidiary working groups, which generally meet on an annual basis, for a period ranging from two to five days. The Commission, in turn, meets for its regular annual session, but also for an annual reconvened session as well as intersessional meetings.<sup>8</sup> In addition, various intergovernmental working groups hold meetings. The result is that the meeting calendar is full, with on the average one or more meeting every month. It is logistically and financially difficult for member states to send experts “from the capitals” to attend short meetings so often, and thus the participants tend to be diplomats based in Vienna.

#### 4. ASSESSMENT OF THE IMPACT OF THE THREE TRANSITIONS

The three transitions described above – a more globally representative UN Crime Programme, the increased influence that governments have on the work carried out in Vienna, and the growing importance of hard law UN crime conventions – have had several consequences. One has been the politicization of several issues in the discussions. A second has been the increased use of extrabudgetary funding, and increasingly severe financial problems. A third consequence has already been mentioned in passing: less discussions on general crime prevention and criminal justice, and a greater focus on transnational and organized crime.

*Politicization of issues.* Within the UN Crime Programme, diplomats, practitioners and academics all have an important role to play. Broadly speaking, academics can analyse developments in crime and the response to crime, practitioners can provide evi-

dence on what works (and what doesn't), while diplomats can formulate this on the international level into policy pronouncements.

The change in the main participants in the discussions in Vienna, from experts to diplomats, has inadvertently meant that what were once discussions of substantive policy have often become negotiations over the wording of draft resolutions. The earlier discussions within the framework of the UN Crime Programme on standards and norms had been consensus-oriented, and in general had not excited politicized passions. This could largely be attributed to the fact that the soft law resolutions were not binding, and therefore had no direct policy implications for individual states. Once the discussion shifted to transnational organized crime and to the two hard-law crime conventions, the situation changed. Certain aspects of transnational crime and of the response to transnational crime raise political sensitivities. Examples include the repatriation of the proceeds of crime, trafficking in cultural property, and cybercrime.

The politicization has also extended beyond substantive crime issues and into questions of process, most significantly in the form of a continuing and at times acrimonious debate over the role of civil society in the local, national and international response to crime.<sup>9</sup>

*Financial constraints.* During the first half century of the existence of the UN Crime Programme (roughly to the 1990s), most of the (extremely limited) activities of the Programme were financed through the regular UN budget. Today, the situation is quite the reverse: over 90 % of the UN Crime Programme budget comes from extrabudgetary sources. The two primary factors that have led to this are the rapid expansion of UN Crime Programme activities (most clearly visible in costs associated with the review of implementation of the UN Convention on Corruption), and a series of world-wide economic crises, which have led the major donor countries to reconsider their commitments.

The Secretariat has made commendable efforts to secure extrabudgetary funding, and has succeeded in significantly expanding its technical assistance activities around the world. However, this shift towards a high dependence on extrabudgetary funding has also had negative consequences: the constant necessity to spend considerable time on identifying sources of funding, uncertainty over the sustainability of various projects, competition within the UNODC over resources, and concerns that much of the work that is carried out will remain tied to the interests of the donors. As long as only 10 % of its activities is funded through the regular

<sup>7</sup> Exceptions did occur. Several resolutions at the Caracas Congress in 1980, and one resolution at the Havana Congress in 1990 were adopted by vote. Since 1990, there have been no votes at any of the UN Crime Congresses or at any of the sessions of the UN Crime Commission.

<sup>8</sup> Reconvened meetings are formally continuations of the annual meetings. Intersessional meetings are primarily for the preparation of the next sessions, and for updates on progress achieved.

<sup>9</sup> See for example the conference room paper submitted by Finland to the UNCAC Conference of State Parties in 2015, Civil Society engagement in the implementation of the UN Convention against Corruption, CAC/COSP/2015/CRP.3



UN budget, the UN Crime Programme leads a tenuous existence.

It is unlikely that these financial constraints will ease anytime soon. The UNODC is constantly being asked by member states to take on even more tasks. One contentious issue is the funding of the proposed mechanism for the review of the implementation of the UN Convention against Transnational Organized Crime.

*Focus on organized and transnational crime, efficiency and punitive measures.* The adoption of the two UN crime conventions has provided welcome tools for the international community to respond to serious threats.<sup>10</sup> As global conventions, they have considerably expanded the geographical scope of cooperation; they provide common definitions of certain key offences, and they require (or, in some cases, at least encourage) states parties to criminalize these acts; and they have standardized and contributed to the development of procedural forms of cooperation.

At the same time, however, the increased attention given to the improvement of international law enforcement and judicial cooperation appears to have resulted in less attention being paid to prevention, to community-based and restorative measures, and to strengthening the position of the victim of crime.

## 5. ARE WE UNDERGOING A FOURTH TRANSITION?

In September 2015, the United Nations Summit adopted the 2030 Agenda for Sustainable Development. The Agenda emphasizes the links between the different goals, among them crime prevention and criminal justice as part of Goal 16.

The 2030 Agenda could contribute to a fourth transition, towards a truly global UN Crime Programme that pays increasing attention to how crime prevention and criminal justice can contribute to sustainable development around the world, in developing and developed countries alike. Such a UN Crime Programme would be framed by the link between Goal 16 and other Goals such as gender equality, the sustainability of communities, and poverty reduction. It would continue to deal with pressing questions related to transnational and organized crime, but would also deal with the prevention of and response to “ordinary” crime. It would continue to identify best practices in international law enforcement and judicial cooperation, but would also seek to identify best practices in the strengthening of access to justice, restorative justice, victim support and community-based sanctions.

The ground work for this has already been laid by the UN Crime Programme. The extensive body of international standards and norms provides a framework for the national and international response to crime, and in so doing serves to strengthen respect for human rights and the rule of law in the criminal justice system.

There are encouraging signs that this fourth transition is already underway. One example is that there has been a slight resurgence in the number of “experts from the capitals” attending some of the UN Crime Programme meetings, working alongside the diplomats on such practical issues as prosecutorial and judicial cooperation, or the response to cybercrime. Another example is the growing capacity of the UNODC (albeit subject to the availability of extrabudgetary funding) to provide technical assistance to member states. A third example is the expanding work of the UN Programme Network of Institutes in providing member states with technical assistance in research, training and policy development in crime prevention and criminal justice.

Such a fourth transition can build on the strengths of all three previous transitions.<sup>11</sup> The intellectual debate from the early years can be revitalized in order to bring in research and best practices from around the world, channelled for example through the UNODC and the Programme Network of Institutes so that it is reflected in the discussions at the UN Crime Commission, the Crime Congresses and other meetings.<sup>12</sup>

The government-driven discussions can in this way benefit from the input of experts, who can identify what best practices can be adapted to the different circumstances around the world so that they meet not only the general needs of member states, but also the ground-level needs of practitioners and local communities, of victims and of offenders.

The soft law and the hard law elements of the UN Crime Programme reinforce one another in strengthening local, national and international crime prevention and criminal justice, and in this way contribute to the ongoing work on the review of the implementation of the 2030 Agenda. This review of implementation will presumably figure prominently in the discussions at the next United Nations Crime Congress, to be hosted by Japan in 2020.

The UN Crime Programme has evolved to meet very real needs. A fourth transition may well increase its ability to serve the international community.

<sup>10</sup> For more on the UN crime conventions, see Joutsen, Matti (2011), *The Impact of United Nations Crime Conventions on International Cooperation*, in Cindy Smith, Sheldon X. Shang and Rosemary Barberet (eds.), *Routledge Handbook of International Criminology*, Routledge, pp. 112-124.

<sup>11</sup> In his assessment of the work of the UN Crime Commission, Ram has laid out several suggestions for how the work of the Commission (and, indirectly, of the UN Crime Programme itself) can be strengthened. See esp. pp. 98 ff.

<sup>12</sup> In recent years, there has been a marked increase in the number of “side events” at sessions of the UN Crime Commission, featuring expert discussions on a broad range of issues. These have benefitted from the growing participation of experts, and may in turn attract more experts to future sessions, in the same way as the “ancillary meetings” contribute to wide participation at UN Crime Congresses.

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