

The 131st International Training Course
(29 August - 7 October 2005)

1.Main Theme of the Course

The Use and Application of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power¹- Twenty Years after Its Adoption

2.Rationale

Considerable attention has deservedly been paid to ensuring due process and establishing fundamental rights for suspects and defendants. In contrast, under modern criminal justice systems, victims of crime were “forgotten persons” until the middle of the twentieth century. Despite the fact that they were most adversely affected by crime, little attention was paid to their protection, support, rights, interests and legal status in the criminal justice system. However, a common understanding regarding the necessity of promoting the protection and the support of victims of crime has developed. This development, which mainly took place in Western countries after the 1960s, can be divided into three stages. The first stage was the establishment of a system of monetary support for the victim (1960s). The second stage was the strengthening of immediate and direct support for the victim (1970s). After the second stage there was a realization that the victim in the criminal justice process had very few rights and the actual process sometimes victimized them a second time and this led to the third stage. The third stage has brought about the enactment of statutes for the improvement of the legal status of the victim and the establishment of the rights of the victim (from the 1980s).

It was not until the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (hereinafter referred to as “the Congress”) in 1980 that the United Nations really focused on the issue of the protection of victims, when the Congress discussed this issue under the agenda item “Crime and the abuse of power: offences and offenders beyond the reach of law”. Five years later, “The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of

¹ General Assembly Resolution 40/34, 29 November 1985

Power” (hereinafter referred to as “the Declaration”) was adopted at the Seventh Congress held in Milan, Italy in August and September 1985, and subsequently by the United Nations General Assembly on 29 November 1985. The Declaration is the most fundamental instrument adopted by the United Nations in relation to the improvement of the treatment of victims in the crime prevention and criminal justice field. The Declaration is divided into two parts, namely Part A: Victims of Crime and Part B: Victims of Abuse of Power. In summary, based on the philosophy that victims of crime should be treated with compassion and respect for their dignity, Part A recommends the following measures to be taken on behalf of victims of crime at the international, regional and national levels: that victims of crime are entitled to access to the mechanism of justice and fair treatment; that fair restitution to victims by offenders responsible for their behavior should be realized, where appropriate; that States should endeavour to provide financial compensation to victims, when compensation is not fully available from offenders; and that victims should receive the necessary material and psychological and social assistance. Part B proposes that states should consider incorporating into their national law norms prescribing abuses of power and providing remedies to victims of such abuses.

However, despite the adoption of the Declaration there was little evidence that adequate measures for the improvement of the treatment of victims, including changes to their legal systems, were taken by Member States. In consideration of the above, the United Nations Economic and Social Council recommended that Member States take the necessary steps to give effect to the provisions contained in the Declaration in its resolution 1989/57 of 24 May 1989, and recognized the need for continuous efforts to do so and to adapt the Declaration to meet the full range of needs and the circumstances of different countries in the preamble of its resolution 1990/22 of 24 May 1990. Moreover, the United Nations Commission on Crime Prevention and Criminal Justice, at its fifth session, adopted a resolution to develop a manual or manuals on the use and application of the Declaration, which was subsequently adopted as ECOSOC resolution 1996/14 of 23 July 1996. In response to that resolution, the Expert Group Meeting on Victims of Crime and Abuse of Power was established, and it developed “The Handbook on Justice for Victims on the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”² (hereinafter referred to as “the

² “The Handbook on Justice for Victims on the Use and Application of Declaration of Basic

Handbook”) and “The Guide for Policy Makers on the Implementation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”³ (hereinafter referred to as “the Guide”). The Guide points out a big discrepancy between the implementation and the philosophy of the Declaration by stating in its introduction “There is probably no jurisdiction where the treatment of victims of crime and abuse of power is fully in accordance with the Declaration”. In addition, the Vienna Declaration on Crime and Justice in 2000 also declared that “... we establish 2002 as a target date for States to review their relevant practices, to develop further victim support services and awareness campaigns on the rights of victims and to consider the establishment of funds for victims, in addition to developing and implementing witness protection policies.”⁴ Thus, twenty years since its adoption, its time for Member States to take necessary measures in accordance with the Declaration.

Giving due consideration to the above mentioned rationale, UNAFEI, as a regional institute of the United Nations Crime Prevention and Criminal Justice Program Network, will explore in this Course various issues that relate to victims of crime and abuse of power, mainly in accordance with the Declaration.

In regard to victims of crime, the restorative justice approach has been frequently discussed in recent years. “Basic Principles on the Use of Restorative Justice Programs in Criminal Matters”⁵, which is also a United Nations instrument, should be referred to, when the restorative justice approach is discussed as a related issue to victims of crime in this Course, although the restorative justice approach is not the focal point of this Course.

In regard to victims of abuse of power the Declaration states “ ‘Victims’ (of abuse of power) means persons, who have suffered ...substantial impairment ..., through acts or omissions that do not yet constitute violations of national criminal

Principles of Justice for Victims of Crime and Abuse of Power” United Nations Office for Drug Control and Crime Prevention, Centre for International Crime Prevention, New York, 1999. It can be obtained at the following web site. <http://www.uncjin.org/Standards/standards.html>

³ “The Guide for Policy Makers on the Implementation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.” United Nations Office for Drug Control and Crime Prevention, Centre for International Crime Prevention, New York, 1999. It can be obtained at the above web site.

⁴ “Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century.” General Assembly Resolution A/55/593. 17 January 2001: Para 27

⁵ Economic and Social Council Resolution 2000/14 U.N. Doc, E/2000/INF/2/Add.2

laws but of internationally recognized norms relating to human rights". However, the term victims of abuse of power, is such a broad and ambiguous concept that sometimes it is argued that this concept includes, for example, abuse of power between states or between races, and even economic exploitation of employees and consumers by large enterprises. However, in this Course, we will concentrate on abuse of power in the criminal justice process, including even when such abuse constitutes a violation of national criminal laws. For example, we will deal with issues related to acts or omissions, including torture or inhumane treatment, by officials of criminal justice agencies, such as the police, prosecutors, judges, and correctional officers, which violate the fundamental human rights of suspects, defendants, offenders, etc.