

WHAT IS THE ROLE OF THE PUBLIC IN CRIME PREVENTION AND CRIMINAL JUSTICE? THE DEBATE IN THE UNITED NATIONS

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I. SCOPE OF THE PAPER

Those who work in the criminal justice system, and those who have studied it, take it for granted that the public has a key role in crime prevention and criminal justice. It is the public (the broader community) that is the source of the values, morality and priorities that form the basis for the criminal law and the criminal justice system. It is members of the public (the victims themselves, or witnesses and other third parties) who provide most of the initial reports of suspected offences, and it is the victims and the witnesses who can provide critical information regarding the identity and guilt of the suspect that can be used in criminal procedure. It is from the public that the criminal justice system receives the outreach and manpower necessary to supplement the official criminal justice system through voluntary and, depending on the system, semi-official programmes, such as victim support organizations, mediation projects, community policing projects and volunteer probation officer projects.

Criminological research has demonstrated the central importance of informal social control in preventing crime, in restraining individuals from embarking on a criminal career or from committing crime on impulse, and in supporting offenders in desisting from crime and becoming reintegrated into society. There has also been a rich tradition of research on the relations between the public and the criminal justice system, as shown for example by the extensive research that has been carried out on public confidence in the police, and public attitudes towards punishment.

For these reasons, practitioners and researchers alike know that the formal criminal justice system on its own cannot “protect” the public from crime. They know that the operation of the criminal justice system depends on the public, and on the relationship between the public and the criminal justice agencies.

In this light, it may seem peculiar that a debate is underway in the United Nations that seems to challenge these self-evident assumptions of the role of the public. The idea of “cooperation with non-governmental organizations” a phrase long used in United Nations dialogue, has been challenged, and even seem to be disappearing from resolutions and other texts that are drafted on the basis of consensus.

Debates in the United Nations often revolve around the choice of words, and in the meeting rooms where UN decisions are crafted, these words may take on meanings that are not immediately apparent to persons who are not familiar with how the UN works. In this paper, I trace how the idea of partnership between government authorities and the general public in crime prevention and criminal justice has evolved in the United Nations, what factors have contributed to this evolution, and what implications this has for the work of the United Nations crime prevention and criminal justice programme.

I have personally been quite active in this debate, and it is for this reason that I welcomed UNAFEI's invitation to address the topic. I shall do so in three steps. The first step is largely historical: a brief review of the development of the role of non-governmental organizations (NGOs) in the United Nations in general, and in the UN Crime Programme in particular. The second step is largely philosophical: a description of a key shift in how some governments have approached the prevention and control of crime.

My third step is semantic. I shall look at how shifts in the attitude within the UN towards NGOs, and shifts in how governments have approached the prevention and control of crime, have affected the language of the

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United Nations, and I raise the question of whether this means a change in United Nations policy towards public participation.

In my view, the historical and the philosophical analyses are both necessary if we are to understand why some national delegations are concerned about references to non-governmental organizations, and even to public participation in crime prevention and criminal justice. By understanding these concerns, it should be easier to find common ground – whether in formulating a Congress Declaration in 2020, or in deciding what we, as the United Nations, can do to promote a better criminal justice system.

A few words about terminology. When dealing with the role of the public in crime prevention and criminal justice in the context of the United Nations crime prevention and criminal justice programme, one possible source of confusion is the concepts being used.

The term “non-governmental organization” has a specific legal meaning in the UN. It is an entity that has a recognized legal structure and purpose, and its representatives can act on its behalf (locally, nationally and internationally). Non-governmental organizations can apply for consultative status with the Economic and Social Council, and a large number have done so.

The term “civil society” is used within the UN with greater inconsistency than the term “non-governmental organization”. Most dictionaries define civil society as the aggregate of groups or organizations that work alongside government and the private sector to promote shared interests. Thus, civil society consists not only of non-governmental organizations but also of various other more or less organized structures. However, quite often in UN texts the term “civil society” appears to be used as a synonym for “the community” or “the public”.

The term “the community”, in turn, seems to be used in UN texts as a general concept to refer to the public at large, to persons who are not (necessarily) acting in an organized manner.

Finally, the term “the public” is used to refer to the mass of people in society in their role as citizens, and thus as a counterpoint for example to persons acting in the capacity of civil servants or as representatives of other stakeholders (such as the private sector).

While these distinctions may help in bringing conceptual clarity, the drafters of the UN texts have been anything but consistent, a subject that I shall return to later on.

II. THE EVOLUTION OF THE ROLE OF NGOS IN THE UNITED NATIONS

Even though the United Nations is an intergovernmental organization (an organization that is constituted by national governments), it has since its establishment recognized the importance of partnership with civil society. When the UN was founded in 1945, non-governmental organizations succeeded in lobbying for a provision in the Charter that grants NGOs consultative status with the Economic and Social Council.¹ Article 71 of the UN Charter states:

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

Article 71 makes a distinction between international NGOs and national NGOs. An “international non-governmental organization” is an organisation that functions in more than one country, but is not founded on an international treaty.² A “national NGO” is one that is based in one country. A national NGO can be granted consultative status only if it is not a member of an international NGO, or it has “special experience” to offer to ECOSOC. As required by the wording of Article 71, furthermore, the views of the host member state of a national NGO are to be obtained when deciding whether or not to grant a national NGO consultative status.

¹ See Willets (2000), p. 191.

ECOSOC's preference has been for international NGOs, and up to the 1990s, very few national NGOs were granted consultative status.³ Since the mid-1990s, however, national NGOs have been encouraged to apply for consultative status.⁴

According to the ordinary meaning of the word, when you "consult" with someone on a matter, you discuss this matter with that person or organization in order to obtain their advice or opinion. It would therefore seem to be enough to fulfil the requirements of Article 71 to simply send a letter to an organization that has consultative status with ECOSOC, asking it to submit its opinion in writing, which could then be distributed to the governments attending ECOSOC sessions. However, from the very first days of the work of the United Nations, the distinction between arrangements for consultation, and participation without vote in the deliberations of ECOSOC "has been blurred in practice: NGOs have obtained some participation rights that go beyond consultation, whereas governments have usually prevented NGOs from gaining the same rights as observers".⁵

The visible participation of NGOs in ECOSOC has of course been noted by governments, and has been a source of criticism by individual governments. *Which* NGOs participate, and *how* they participate, have been a long-standing subject for debate. Willets provides a historical record of the political tensions involved in accrediting NGOs, as well of the evolution of the NGOs right of participation. He notes, for example, how the Cold War led the two blocs to putting forward their own proxies for consultative status with ECOSOC, and seeking to prevent proxy NGOs put forward by the other side from gaining such status. He also notes how votes were forced on whether or not to grant consultative status to some human rights groups and Jewish and Catholic groups on the grounds that they were "politically motivated", and that the initial practice of allowing NGOs to submit items for the agenda of sessions of ECOSOC was soon discontinued.⁶

Willets also notes that although the Charter does not grant NGOs a similar consultative status with other UN bodies, NGOs "have encroached substantially on the General Assembly; and they are starting to appear on the fringes of the Security Council"; the earliest signs of this were during the early 1960s in the Special Committee on Decolonization, the Special Committee Against Apartheid, and the Committee on Palestinian Rights.⁷ In view of the issues that were debated at these Special Committees, it is understandable that also entities other than recognized governments had a political interest in being heard.

The UNODC, on its website, provides more examples of NGO involvement in UN bodies other than ECOSOC:

The UN General Assembly has on many occasions invited NGOs to participate in the work of its committees and some NGO leaders have been invited to address plenary sessions. NGOs have been active in the First Committee on disarmament issues, in the Third Committee on human rights matters, and in the GA High Level Dialogue on Financing for Development (FfD) for the follow-up to the Monterrey Conference. NGOs are also very active in a number of commissions, including the Commission on Sustainable Development, the Commission on Social Development, and the Commission on the Status of Women. The constructive and vital NGO role in the creation and support for the International Criminal Court is evident to all.⁸

Beyond the General Assembly, the Security Council and ECOSOC, much work of the United Nations is conducted for example in conferences. Also here, Willets has traced a long-term strengthening of the role of NGOs. In his view, NGO participation at conferences and, more importantly, in decision-making at

² See ECOSOC resolution 288 (X) of 27 February 1950. Jolanta Redo (2012) estimates that there are some 3,500 international IGOs working with the United Nations; Redo (2012b), p. 125.

If an international NGO is based on an international treaty, then it would be referred to as an 'intergovernmental organization'. Examples are the United Nations itself, the World Trade Organization, the Association of Southeast Asian Nations, and the World Bank.

³ Willets (1996), p. 2.

⁴ Willets (2000), p. 192.

⁵ Ibid, pp. 191-192.

⁶ Willets (1996), pp. 5-10.

⁷ Ibid, pp. 196-199.

⁸ <https://www.unodc.org/unodc/en/ngos/DCN0-NGOs-and-civil-society.html>

conferences has increased in that “[a]ccess to decisionmaking has changed from a limited role in the main plenary bodies to significant influence in the committees, to NGO representatives quite often taking part in the small working groups where the more difficult questions are thrashed out. In some fields, such as human rights, population planning, and sustainable development, NGOs have changed from being peripheral advisers of secondary status in the diplomatic system to being high-status participants at the center of policymaking”.⁹ (Subsequent to the appearance of Willets’ article, the number of special conferences organized by the United Nations has decreased, to be replaced at least in part by special sessions of the General Assembly. At the General Assembly, NGOs have a considerably lower profile than they do at UN conferences.)

Examining the status of NGOs overall, Willets, writing in 2000, came to the conclusion that, following Article 71 of the UN Charter and three major reviews, NGO participation in ECOSOC has become part of customary international law.¹⁰

When the UN was formed, it was an established norm that the subjects of international law were states. In diplomatic practice and in academic analysis, it used to be taken for granted that international relations consisted solely of the relations between states. Now such a position cannot be argued. ... the only accurate way to describe what has happened is to recognize that [international] NGOs have become a third category of subjects in international law, alongside of states and intergovernmental organizations.¹¹

NGO participation thus appears to have become part of customary international law. Willets also stresses that the influence of NGO arises from three factors: NGO access to documents, NGO access to the buildings in which sessions are held (thus giving them access to the delegates when these are not in closed meetings), and the legitimacy that consultative status gives NGOs.¹²

Willets was writing in the year 2000, soon after a review of the consultative status of NGOs at ECOSOC. Resolution 1296 of 1968 was replaced by resolution 1996/31 adopted in 1996, which, among other things, made it easier for national NGOs to become accredited. The UN Non-Governmental Liaison Service is of the view that

UN-NGOs relationships changed profoundly in the 1990’s, both quantitatively and qualitatively. The involvement of NGOs in the UN-organized world conferences, in particular, marked a turning point. Tony Hill talks about a “second generation” of UN-NGOs relations. This generation “is marked by the much larger scale of the NGO presence across the UN system, the more diverse institutional character of the organizations involved, now including national, regional and international NGOs, networks, coalitions and alliances, and the greater diversity of the issues that NGOs seek to address at the UN. Above all, the second generation of UN-NGOs relations are essentially political and reflect the motivation of NGOs to engage with the UN as part of the institutional architecture of global governance”.¹³

The need to strengthen cooperation between the United Nations and NGOs has been underlined in various documents since the beginning of this century, in particular in the Millennium Declaration of September 2000, but also in the 2005 World Summit Outcome Document (para 172–174).

In 2004, Secretary-General Kofi Annan set up a panel of experts which was asked to formulate recommendations to strengthen UN — civil society interactions. This resulted in the “Cardoso Report” (A/58/817). Following the “Cardoso Report”, the Secretary-General issued a set of proposals to bring greater

⁹ Willets (2000), pp. 193–194. He cites as examples the Earth Summit in Rio de Janeiro (1992), the World Social Summit in Copenhagen (1995), and the Beijing Conference on Women (1995). NGOs accredited to these conferences could take part in the work of the respective commissions. At Habitat II in Istanbul (1996), NGOs constituted Committee II, an integral part of the official proceedings.

¹⁰ Willets (2000), p. 205.

¹¹ Ibid. Willets is more cautious about the status of national NGOs in the work of ECOSOC, since up to the mid-1990s relatively few national NGOs participated.

¹² Willets (1996), p. 10.

¹³ UN – Non-Governmental Liaison Service website, available at <https://www.un-ngls.org/index.php/11-engage-with-the-un>

coherence and consistency to UN-NGO relations. Those include simplifying the accreditation process, increasing financial support for the participation of southern NGOs, improving country-level engagement of UN representatives with NGOs and opening further the General Assembly to NGOs. Since the Cardoso Report, some concrete developments have taken place. For example, the General Assembly has started to hold informal hearings. A Trust Fund has also been established to support UN country teams work with civil society.

III. THE EVOLUTION OF THE ROLE OF NGOS IN THE UN CRIME PROGRAMME

In the UN Crime Programme, NGO involvement can be traced back to the very first years of the United Nations.¹⁴ The UN Crime Commission operates, and its forerunner the UN Crime Committee operated, under ECOSOC rules of procedure.¹⁵ Consequently, NGOs have participated in, and have been very active in, the various sessions of the UN Crime Committee and the UN Crime Commission.

Indeed, during the first years of the UN Crime Programme, it is difficult to discern where the borderline should be drawn between UN activity and NGO activity. This was due to the fact that the UN Committee (which was replaced by the government-dominated UN Crime Commission in 1992) consisted of a small group of experts appointed by the UN Secretary-General in their personal capacity. The advisory group of experts appointed in 1948 consisted of six persons, of whom one (Stanford Bates, of the United States) was the President and a second (Thorsten Sellin, also of the United States) the soon-to-be elected Secretary-General, respectively, of the International Penal and Penitentiary Commission (IPPC).¹⁶ This dominance of IPPC figures was largely due to the transfer being prepared of the IPPC international conferences to become the responsibility of the United Nations, in the form of the quinquennial UN Crime Congress, yet another direct connection between NGOs and UN activity.

A review of the experts appointed as UN Crime Committee members up to the end of its run in 1992 shows that academic experts continued to be well represented, and generally these academic experts were also leading members of international NGOs active in crime prevention and criminal justice.

Four international NGOs in particular should be mentioned in this connection. The International Penal and Penitentiary Foundation, the International Association of Penal Law, the International Society of Criminology and the International Society for Social Defence (known collectively within the UN Crime Programme as the "Big Four") are international NGOs that bring together academics and practitioners with a particular interest in crime prevention and criminal justice.¹⁷ Although the four have somewhat different profiles of membership and orientation, for many years there was very close networking especially among the members of the board of directors of these four organizations, the membership of the UN Crime Committee (and to a lesser degree the UN Crime Commission) and the UN Secretariat. For a period roughly from the late 1970s to the end of the 1980s, there was even an effort to align the main themes of the international conferences of the respective "Big Four" with the theme of the UN Crime Congresses, and to avoid conflicts in the scheduling of these major events. Furthermore, from 1963 to the mid-1990s, the "Big Four" held joint conferences that specifically focused on one of the main topics of the following UN Crime Congress.¹⁸

In addition to the "Big Four", of course, there are many NGOs that are involved in crime prevention and criminal justice. The International Scientific and Professional Advisory Council (ISPAC) was established in 1968 to serve as a structure for networking among these NGOs, as well as academic institutions interested in the work of the UN Crime Programme.¹⁹ For many years, ISPAC hosted annual coordination meetings of the

¹⁴ See for example Clark (1994), p. 92 and *passim*. Linke (1983) provides an overview of NGO involvement in the UN Crime Programme after the responsible Secretariat unit was transferred from New York to Vienna in 1976.

¹⁵ Rules of Procedure of the Functional Commissions of the Economic and Social Council, available at <http://www.ohchr.org/Documents/HRBodies/CHR/RoP.pdf>

Rule 75 provides for the right of NGOs to designate representatives to attend, as observers, public meetings of the commission and its subsidiary organs. Rule 76 provides for consultation with NGOs, including the right to be heard by the Commission.

¹⁶ Clifford (1979).

¹⁷ The volume edited by Bassiouni (1995) contains chapters dealing with the activities of each of these four NGOs and their contribution to the UN Crime Programme.

¹⁸ Rostad (1985), pp. 87–88.

¹⁹ Clark (1994), pp. 92–94.

UN Crime Programme Network of Institutes.

More broadly, alliances of NGOs with consultative and associated status have been established in both New York (1972) and Vienna (1983).²⁰

The role of NGOs has been particularly strong at the UN Crime Congresses, from the first such Congress held in 1955. As already noted, these Congresses continue a tradition established by the International Penal and Penitentiary Commission almost 150 years ago. Not only NGOs but (in distinction from the tradition of most other UN conferences) even individual experts may take part in the UN Crime Congresses.²¹ Furthermore, up to the Fifth United Nations Congress in 1975, non-governmental organizations (and experts attending in a personal capacity) had the right to vote at UN Crime Congresses “for consultative purposes”.²²

An expanding part of the UN Congresses, in addition, has been the so-called ancillary meetings, which are generally organized by NGOs.²³

The role of NGOs is also quite discernible in the drafting of the UN standards and norms on crime prevention and criminal justice, beginning with the first, the Standard Minimum Rules on the Treatment of Prisoners (SMRs), adopted in 1955. The SMRs had, indeed, been drafted under the auspices of the IPPC.²⁴ Especially during the time of the UN Crime Committee, other standards and norms were generally drafted by outside experts, who often worked together with various NGOs and academic institutions that were active in respect of the subject matter of the draft.

Thus, the conclusion can be drawn that within the UN Crime Programme, there has traditionally been less of the political tensions over NGO participation that Willets has found in ECOSOC, the General Assembly and the Security Council.

The stress in the previous paragraph, however, should be on the word “*traditionally*”. The attitude that some national delegations have taken towards NGO participation in the work of the UN Crime Programme has changed significantly over the past few years.

The first signs of tension arose in connection with the restructuring of the UN Crime Programme, and in particular the replacement of the UN Crime Committee (consisting of experts serving in their personal capacity) with the UN Crime Commission (consisting of 40 Member States elected by ECOSOC). Among the arguments put forward for the transfer to a government-dominated UN Crime Programme was that the expert-driven UN Crime Committee had engaged in excessive drafting of soft-law (standards and norms, generally with NGO support), and the national governments had not had sufficient input.²⁵

There was also a debate during the first sessions of the UN Crime Commission as to whether or not to recognize the body of standards and norms that had been produced under the UN Crime Committee, or whether these could be treated with “benign neglect”, largely on the grounds that they had not been drafted with sufficient input from national governments. In the event, the Commission submitted to ECOSOC a draft resolution on the standards and norms that reaffirmed the important contribution that the use and application of this soft law make to criminal justice systems.²⁶

²⁰ Redo (2012b), p. 126.

²¹ Redo (2012a), p. 113 and Lopez-Rey (1983), pp. 112-114. Lopez-Rey, who was a key figure in the development of the UN Crime Programme, emphasizes in particular that one of the main features of the discussions in the UN in the preparation of the first UN Crime Congress in 1955 was ‘to bring in as much as possible the cooperation of international agencies and non-governmental organizations’ (ibid., at p. 114). At p. 115, Lopez-Rey notes that already this first UN Crime Congress was attended by 43 NGOs and 230 individual professionals. These two groups accounted for over half of the total attendance.

The rules of procedure for the most recent UN Crime Congress, in 2015, are available at https://www.unodc.org/documents/congress//Documentation/A-CONF.222-2-Rules_of_Procedure/ACONF222_2_e_V1500298.pdf

Rule 58 deals with observers from NGOs, and Rule 59 deals with individual experts and consultants.

²² Redo (2012a), p. 112.

²³ Clark (1994), pp. 78-79.

²⁴ Rostad (1985), p. 85.

²⁵ See for example Clark (1004), pp. 42-45 and 129-132.

²⁶ Draft resolution 1994/18. The author was a member of the delegation of Finland, and participated in this heated debate.

After that initial debate on the status of the standards and norms, many years passed without any perceptible tensions regarding NGO participation in the UN Crime Programme.

This situation changed significantly as a result of a disagreement that arose over the mechanism for the review of the implementation of the United Nations Convention against Corruption (UNCAC). The disagreement was originally over the participation of NGOs as observers in the Implementation Review Group and in other UNCAC subsidiary bodies set up by the Conference of the States Parties to UNCAC. The disagreement arose because the UNCAC review mechanism, for the first time with a UN treaty, incorporated peer review, in which experts from two countries assess the implementation of the treaty in the country under review. To some government representatives, this appeared to have elements of intervention in the domestic affairs of a sovereign state, something which is prohibited by article 2.4 of the UN Charter.

The issue of corruption in itself is sensitive, and is often used in internal political campaigns, quite commonly with those not in power claiming that those in power are corrupt and should be voted out of office. In addition, many Governments were concerned that reports of corruption in their country may have a negative impact for example on investment. Several international (and national) NGOs are active in anti-corruption. As part of their public advocacy for anti-corruption reforms, they often report on studies and individual cases of corruption. The annual “corruption perception index” reports put out by Transparency International have, in particular, been a source of criticism.²⁷

The debate was a quite heated one, and continues to this day.²⁸ It has so far produced a tenuous compromise, on the basis of which NGOs may not participate in the meetings of the Implementation Review Group (IRG) or of the other working groups set up by the Conference of States Parties. A “briefing” is organized for the NGOs in connection with the annual meetings of the IRG. The Conference of States Parties has called for a continuous dialogue on this issue. At numerous UNCAC meetings, some States Parties supporting a more visible role for NGOs in the mechanism have returned to this issue and the need for a continuous dialogue (whether or not the issue is featured on the agenda of the meeting), while those opposing a more visible role for NGOs have responded by referring to the decisions already taken at sessions of the Conference of the States Parties in Doha in 2009 and in Marrakesh in 2011, which in their view decisively shut NGOs out of the mechanism on the international level.

On the national level, on the other hand, the vast majority of States Parties to UNCAC appear to be seeking to involve NGOs in the review of implementation of UNCAC, and in general in the strengthening of anti-corruption on the national and local level.²⁹

From the debate over the review mechanism for UNCAC, this disagreement over NGO involvement on the international level has spread to other issues and can be seen in different ways. Negotiations on the adoption of a review mechanism for the United Nations Convention against Transnational Organized Crime (UNTOC) have also struggled with the extent to which such a review mechanism would involve NGOs. More generally, some States have raised concerns about the activities of at least some non-governmental organizations on the local or national level in crime prevention and criminal justice, quite apart from the implementation of UNCAC (or UNTOC).

Governments critical of NGOs have, among other points of criticism, questioned the appropriateness or qualifications of NGOs on the international level, including their perceived “relevance”, representativeness, professionalism and accountability.³⁰ Some governments have also expressed concerns that in particular NGOs funded from abroad may be promoting a “political agenda” that is contrary to the dominant values of

²⁷ <https://www.transparency.org/research/cpi/overview>

²⁸ An extensive analysis of this disagreement, and a proposal for resolving it, is presented in CAC/COSP/2015/CRP.3 (2015), Civil Society Engagement in the Implementation of the United Nations Convention against Corruption, prepared by the present author.

²⁹ In this respect, there has been a marked shift, with the overwhelming majority of countries under review arranging for ‘on-site’ visits, during which the representatives of the reviewing countries can consult with a broad range of national stakeholders, civil society representatives included.

³⁰ These statements are not reflected in the official reports of the respective sessions of the IRG, but have been recorded in the notes made by the author of this paper, who has attended all of the relevant sessions of the IRG, including the briefings.

the country, or that are openly hostile to the Government in power.³¹ In this respect, there are clear differences between political systems, and between public officials, in attitudes towards the role of NGOs as advocates and as political actors. For some, such political activity is part and parcel of the freedom of association and the freedom of speech, guaranteed by international human rights standards. Others, however, are of the view that some, if not many, NGOs act on the basis of insufficient information and use improper channels.

Overall, therefore, diverging views have been expressed within the framework of the United Nations crime prevention and criminal justice programme on the value of non-governmental activity on the local and national level. According to one view, such non-governmental activity should be encouraged as widely as possible. According to a second view, such non-governmental activity should be supervised in order to ensure that the NGOs in question do not have malevolent intentions, or serve as a channel for importing foreign (and undesirable) social and cultural values.

The first view could be described as a bottom-up, community-based approach. Local communities have a wide range of concerns, and crime is one such concern. In both a literal and a figurative sense, the mobilization of the public extends the reach of the criminal justice apparatus, in a way that not only enhances the effectiveness of criminal justice, but also fosters the trust of the public in the operation of the criminal justice system. One manifestation of this approach is community policing, which is based on the view that the police and the public are jointly responsible for responding to crime and improving the quality of life on the community level. Community policing programmes generally seek to encourage public initiative, recognizing that while the goals of individual civil society groups need not necessarily be in full alignment with police goals, the work of these groups supplements the work of the police.

The second view could be described as a top-down approach, which seeks to ensure that civil society activity is in compliance with national law. The concerns expressed, as noted, at times refer to the potential that non-governmental organizations may have as channels for bringing unwanted foreign social and cultural values into a country. As noted in the report on the 2015 United Nations Crime Congress, in the course of the workshop on public participation in crime prevention and criminal justice,

A number of speakers noted that the engagement of civil society organizations should take place within the appropriate regulatory framework, in line with national legislation and in coordination with relevant oversight bodies, for example crime prevention councils, while also ensuring that organizations had the skills and knowledge for their functions. One speaker noted that any civil society activities should be framed and moderated by Governments, that non-local non-governmental organizations (NGOs) could propagate ideas or value systems that were foreign to some countries, and that those NGOs should respect the economic, cultural, social and religious values of societies. Some speakers referred to the need to build trust and transparency in that regard.³²

As expressed by one speaker at the UN Crime Congress in 2015, the role of civil society is important if the groups are local and are based in the country, and if this role occurs in a certain context. Such groups understand the culture, are subject to regulation and are moderated by the government. The speaker observed that the groups should be transparent, and should respect the social and cultural values of the country in question; in the view of the speaker, this is of particular importance in developing countries.

It should be emphasized that this second view does not question the potential utility of the work of civil society groups. The focus is on ensuring that such groups function in accordance with law – and by extension that they should be under the control of the government.

The key difference between the two views presumably has much to do with the degree of control, intended to ensure the lawfulness of the activity of civil society groups. To what extent, for example, can members of the public exercise their right of association and freedom of speech? To what extent are they

³¹ See for example para. 15 of the Report on Workshop 4 of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, Doha, 12–19 April 2015 (A/CONF.222/L.4/Add.1).

³² Report on Workshop 4 of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, Doha, 12–19 April 2015 (A/CONF.222/L.4/Add.1), para. 15.

required to file for approval of activities such as “Neighbourhood Watch” or restorative justice projects? To what extent can such civil society groups (or in general, members of the public) obtain information on the conduct of the police, on corporate activity and on public procurement contracts, in order to detect possible crime and corruption?

On this point, the common ground will presumably revolve around the right of civil society groups to act in a lawful manner to assist the authorities in crime prevention and criminal justice, and around the right of sovereign States to determine what laws and regulations apply to such groups. Given the wide differences between States in legal and administrative systems, as well as in economic, political and social development, there cannot be a “one-size-fits-all” model. Noting the principle of non-intervention in domestic affairs, it should be clear that for example the UN Crime Commission cannot determine the specific extent to which States may regulate civil society groups, as long as the right of association and the freedom of speech, as provided in recognized international instruments, are respected.

IV. THE SECURITIZATION OF THE DEBATE ON CRIME PREVENTION AND CRIMINAL JUSTICE: FROM CRIME AS A SOCIETAL ISSUE TO CRIME AS A SECURITY ISSUE

The second step in my story has to do with a shift in how crime is viewed: from a societal issue to a security issue. How you view something, the framework that you use in your analysis, will influence what policy options you look for.

We have always been interested in knowing why people commit crime. Over the centuries, we have broadly speaking gone from a largely religious understanding of crime (“crime is a sin against God”) to a largely philosophical understanding (“crime shows a lack of honesty or empathy on the part of the criminal”).

At the end of the 1800s and the beginning of the 1900s, a more scientific and empirical approach emerged, in the form of criminology. The first criminologists, such as Cesare Lombroso, took a decidedly biological or medical approach, and sought to diagnose what genetic failure, disease or mental failure led a person to commit a crime.

These individual-oriented theories continue to attract considerable theoretical attention and research, but world-wide in criminology and criminal justice, they have largely been replaced by society-oriented theories.³³ Such theories latch on to different elements in an attempt to explain crime: anomie, capitalism, conflict in society, social disorganisation, differential association, subcultures, self-identification as an offender, and so on. What is common to all the major criminological theories today is that they see crime as the result of a complex interaction between an individual and the surrounding society.

While the individual-oriented theories sought to proceed from a diagnosis of a genetic, medical or psychological disorder to the identification of a suitable treatment and, in time, “cure” of the individual from his or her criminal tendencies, the society-oriented theories seek to suggest social (and, at times, political) solutions to crime: better child-raising, better education, early intervention, better community development, better social development, improved identification and correction of situations which may motivate a person to commit a crime, and so on.

Both the individual-oriented and the society-oriented theories have fed into the prevailing approaches around the world to the treatment of offenders. Over the years, many different correctional treatment programmes have been developed, and considerable thought has been given to how to improve the effectiveness of community-based corrections. Practitioners and researchers have been very active locally, nationally and internationally in exchanging information and experiences on what works and what (apparently) does not. They have contributed to the public debate on how to develop a rational, effective and human criminal justice system.

The basic outline of the democratic process of policy formulation is that the public elects its

³³ Individual-oriented theories continue to have relevance in helping to explain a predisposition to engage in socially disapproved behaviour, and in suggesting methods of treatment for specific types of offenders.

representatives to govern, policy proposals are developed in consultation with practitioners and academia, and the elected representatives engage in a debate on the respective merits of different policy options. This is of particular importance in respect of crime prevention and criminal justice, areas which are imbued by the fundamental values and principles of society, and where the policy choices that are made may involve the use of coercive force by the state against individuals suspected or convicted of blameworthy conduct.

A shift appears to have taken place in this respect nationally and internationally, parallel with the growing concern with organized crime and terrorism.

A currently fashionable term in social science is “securitization”. Broadly speaking, this refers to a process in which something (such as social disorder, drug use, an increase in uncontrolled migration) is identified as a “security threat”, which must be countered by extraordinary measures, perhaps even bypassing public debate and democratic procedures.³⁴ Researchers have identified signs of securitization in relation to discussions on such phenomenon as climate change and unemployment. One of the topics in which it is especially prevalent is crime control and criminal justice.

Within the UN Crime Programme, this securitization process is evident in three respects: the topics being discussed, the proposals made, and the language used. The process can also be traced quite directly to the restructuring of the UN Crime Programme at the beginning of the 1990s.

The shift from an expert-driven UN Crime Committee to a government-driven UN Crime Commission resulted in a growing emphasis on (transnational) organized crime and transnational criminal justice (international law enforcement and judicial cooperation, measures which, significantly, are the responsibility of the state), with a corresponding decrease in the attention devoted to so-called ordinary crime and the day-to-day working of the criminal justice system: various crime prevention approaches, community-based measures, restorative justice and improvement of the criminal justice system (which to a large extent can involve the community). This was accompanied by a shift of work from “soft law” instruments (such as standards and norms) to “hard law” instruments, in particular the UN Convention on Transnational Organized Crime and the UN Convention on Corruption.³⁵

The language used includes, unsurprisingly, increasing references to “security”. One of the first signs of this was in the title of a declaration adopted at the 1995 UN Crime Congress held in Cairo: the “United Nations Declaration on Crime and Public Security”.³⁶ References to security can also be found in the declaration adopted at the UN Crime Congress held in 2010, in the form of a recommendation for “stronger coordination between security and social policies, with a view to addressing some of the root causes of urban violence” (para 45). This same formulation was repeated in preambular paragraph 16 of General Assembly resolution A/RES/68/188 on the rule of law, crime prevention and criminal justice in the United Nations development agenda beyond 2015.

In March 2011, soon after the UN Crime Congress in Salvador, the Secretary-General established a UN System Task Force on transnational organized crime and drug trafficking “in order to develop an effective and comprehensive approach to the challenge of transnational organized crime and drug trafficking as threats to security and stability”. The task force is co-chaired by DPA and UNODC.

Several ECOSOC resolutions during recent years have included references to security. A formulation that can be found in such resolutions is that transnational organized crime “represents a threat to health and safety, security, good governance and the sustainable development of States”.³⁷

Perhaps the most illustrative example of the extent of the shift is ECOSOC resolution 2014/21, which bears the seemingly “soft” title of “Strengthening social policies as a tool for crime prevention”. However, a

³⁴ The term is generally associated with what is known as the “Copenhagen School”. See for example Emmers (2003) and Stritzel (2012).

³⁵ Joutsen 2017.

³⁶ GA res 51/60, annex, 1996.

³⁷ See, for example, the first preambular paragraph of ECOSOC 2012/19, which is entitled Strengthening international cooperation in combating transnational organized crime in all its forms and manifestations.

reading of the text, and in particular of the preambular paragraphs, shows that the resolution is considerably more concerned with “security” policies than with “social” policies.

The emphasis on the link between crime and security has not been limited to the UN Crime Commission. On 19 December 2014, the Security Council adopted Resolution 2195 on terrorism and cross-border crime, including drug trafficking, as threats to international peace and security.³⁸

V. REFERENCES TO THE ROLE OF THE PUBLIC AT UN CRIME CONGRESSES: THE CURIOUS CASE OF THE DISAPPEARANCE OF REFERENCES TO NON-GOVERNMENTAL ORGANIZATIONS

The annex to this paper provides a review of references to public understanding, awareness and cooperation in the UN standards and norms. It notes that these standards and norms contain a great variety and number of such references, often in respect of the importance of raising public awareness of the issue in question, and in calling for better mobilization of community resources and public participation. Also the most recent standards and norms, and in particular the 2014 UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, contain many such references.

As for the UN Crime Congresses, the need for cooperation between the authorities and the public in crime prevention and criminal justice has been recognized from the outset, as shown for example by the discussions on juvenile delinquency at the first and second UN Crime Congresses in 1955 and 1960, and the discussions on social change and crime at the second and third Congress in 1960 and 1965. (Indeed, the theme of cooperation imbued essentially all of the topics at the third Congress, which had as its overall theme “Prevention of Criminality”, and as the substantive agenda items “Social change and criminality”, “Social forces and the prevention of criminality”, “Community preventive action”, “Measures to combat recidivism”, “Probation and other non-institutional measures”, and “Special preventive and treatment measures for young adults”.) Fifty years ago, at the 1970 UN Crime Congress in Kyoto, the topic was directly addressed under the theme, “Participation of the public in the prevention and control of crime and delinquency”.

Between 1955 and 1995, the UN Crime Congresses produced not only reports, but also a large number of resolutions. A very general comment would be that both the reports and the resolutions show that the participants at the Congresses were aware of the importance of cooperation between the authorities and the public, urged governments to promote this cooperation, and welcome the input of non-governmental organizations and civil society.

Reports, however, essentially reflect the various opinions expressed, and were not subject to extensive negotiation. Individual resolutions, in turn, generally dealt with very specific issues, such as the substance of a new standard and norm. The 1995 Crime Congress was the first to produce a more consolidated document that sought to express the views of the participating member states on the issues at hand.³⁹ This “omnibus resolution” focused narrowly on the four themes of the Congress, which dealt, essentially, with (1) technical assistance in promoting the rule of law, (2) action against transnational and organized crime, and the role of criminal law in the protection of the environment, (3) management of the criminal justice system, and (4) crime prevention.

NGOs and public participation did receive several mentions in this omnibus resolution. Para I(15) invited the Commission to call on, inter alia, all relevant NGOs to continue cooperating with the UN in training. Para III(7) called on member states to consider the adoption of the community policing approach, and to promote cooperation with local communities and the private sector in crime prevention. Para IV(1) invited member

³⁸ S/RES/2195 (2014), 19 December 2014.

³⁹ The 1995 Congress was the first to be held after the restructuring of the UN Crime Programme. In the negotiations on the restructuring, considerable criticism was directed at the large number of resolutions and instruments that emerged from the 1990 Congress - a grand total of 45. There was thus a strong push at the 1995 Congress to consolidate as many resolutions as possible into what the participants began to refer to as an ‘omnibus resolution’.

The push was not fully successful in 1995, as in addition to this one ‘omnibus resolution’ there were also several separate resolutions, although considerably fewer than five years earlier: eight.

states to have due regard to the role of, inter alia, the community in developing effective crime prevention measures, and para IV(13) urged member states to give attention to public awareness in crime prevention. Finally, para IV(17) recommended that member states establish where necessary local, regional and national bodies for crime prevention and criminal justice with the active participation of the community.

The 2000 Crime Congress was the first to adopt a single consolidated document, a Congress Declaration. This presumably makes it easier to see what issues the member states regard as current priorities, and how they see the connections between different issues.

Para 13 of the Vienna Congress Declaration states:

We emphasize that effective action for crime prevention and criminal justice requires the involvement, as partners and actors, of Governments, national, regional, interregional and international institutions, intergovernmental and non-governmental organizations and various segments of civil society, including the mass media and the private sector, as well as the recognition of their respective roles and contributions.

Two years after the 2000 Crime Congress, the Crime Commission formulated a Plan of Action for the Implementation of the Vienna Declaration. This contains a large number of references to cooperation between member states, intergovernmental and non-governmental organizations,⁴⁰ and to the importance of the authorities working together with civil society.⁴¹

At the next UN Crime Congress in 2005, the Bangkok Congress Declaration contained the following two paragraphs related to NGOs and civil society:

para 9: We recognize the role of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in contributing to the prevention of and the fight against crime and terrorism. We encourage the adoption of measures to strengthen this role within the rule of law.

para 34: We stress the need to consider measures to prevent the expansion of urban crime, including by improving international cooperation and capacity-building for law enforcement and the judiciary in that area and by promoting the involvement of local authorities and civil society.

The references to NGOs and civil society in the 2000 and 2005 Crime Declarations were thus quite concise and relatively clear: member states were agreed that non-governmental actors had an important role to play in crime prevention and criminal justice. In view of the subsequent and increasingly heated discussion within the UN Crime Programme on the role of NGOs and civil society, it is relevant to note that the Bangkok Declaration specified that the role of “individuals and groups outside the public sector” should be “within the rule of law”. The insertion of the phrase suggests that at least some delegations wanted assurance that actions taken by individuals and groups outside of the public sector to prevent and fight against crime and terrorism were not in themselves unlawful, for example that they did not involve vigilante justice.

A comparison of the 2000 and 2005 Declarations with the Salvador Congress Declaration of 2010 shows some clear shifts in language. The key paragraph on this topic in the Salvador Declaration is para 33:

We recognize that the development and adoption of crime prevention policies and their monitoring and evaluation are the responsibility of States. We believe that such efforts should be based on a participatory, collaborative and integrated approach that includes all relevant stakeholders, including those from civil society.

All three Congress Declarations (2000, 2005 and 2010) thus see crime prevention and criminal justice as a collaborative activity that also involves civil society. However, the member states at the 2010 Congress wanted to stress that crime prevention and criminal justice – and even its monitoring and evaluation – is the

⁴⁰ See paras 4(a), 11(d), 14(d), 26(f), 27(c) and 47(h).

⁴¹ See paras 7(b), 11(d), 14(d), 24, 26(b), 26(f), 27(b), 27(c), 38(f) and 47(h).

responsibility of governments, not of non-state entities, such as non-governmental organizations. This does raise some questions. Arguably also non-state actors (certainly, for example, academia and research institutes) should be free to monitor and evaluate crime and criminal justice in a country. What presumably is meant here is that it is ultimately the state which has the responsibility to draw conclusions from monitoring and evaluation (done in a participatory, collaborative and integrated approach that includes all relevant stakeholders), and amend and develop governmental, formal crime prevention policies accordingly.

The Salvador Congress Declaration also contained four other paragraphs with references to civil society and non-governmental organizations. Para 31 called upon civil society, including the media, to support efforts to protect youth from violent content in the media. Para 36 deals with cooperation with civil society and NGOs in following a victim-centred approach to the victims of trafficking in persons, and para 37 recommends that member states, inter alia, undertake awareness-raising campaigns, in cooperation with civil society and non-governmental organizations, on the topic of the smuggling of migrants.

Para 43 of the Salvador Declaration notes that member states “endeavour to take measures to promote wider education and awareness of the United Nations standards and norms in crime prevention and criminal justice to ensure a culture of respect for the rule of law. In this regard, we recognize the role of civil society and the media in cooperating with States in these efforts.”

Reference could also be made to para 34 of the Salvador Declaration, the paragraph that immediately follows the key paragraph on states having the ultimate responsibility in crime prevention policy formulation. This brings in, for the first time in a UN Crime Congress Declaration, the issue of cooperation between the state and the private sector. Para 34 recognizes “the importance of strengthening public-private partnerships in preventing and countering crime in all its forms and manifestations.”

The most recent UN Congress, in Doha in 2015, elevated the issue of public participation into the (lengthy) overall theme: “Integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation”. Comparing the Doha Declaration to the previous Congress Declarations, a number of points can be made regarding references to non-governmental organizations and civil society.

First, the introductory paragraph 1, which acknowledges the 60-year legacy of the UN Congresses, refers to them as “one of the largest and most diverse international forums for the exchange of views and experiences in research, law and policy and programme development between States, intergovernmental organizations and individual experts”. Proposals by several delegations to insert the usual reference to non-governmental organizations in this connection were rejected by a few delegations, and thus did not meet consensus.⁴²

Second, the Doha Declaration contains a large number of references to public participation and civil society, more than in the previous three Congress Declarations combined. These are to be found in the context of three lengthy paragraphs, 5 (which deals largely with crime prevention and criminal justice policy), 10 (which focuses on public participation) and 11 (which deals with technical assistance). However, one term is conspicuous in its absence: there is not a single reference anywhere in the text of non-governmental organizations. Again, several efforts were made to bring back this standard UN language, but again, a few delegations were able to block consensus.

In para 5, the member states “reaffirm our commitment and strong political will in support of effective, fair, humane and accountable criminal justice systems and the institutions comprising them, and encourage the effective participation and inclusion of all sectors of society”. Among its many subparagraphs, subpara (i) notes that the member states shall endeavour to “enhance equality for all persons before the law, including gender equality, for individuals belonging to minority groups and for indigenous people, through, inter alia, a comprehensive approach with other sectors of government, relevant members of civil society and the media.” Subpara (m) notes the intention of the member states “to work, as necessary, with regional, international and

⁴² This issue was not raised in the negotiation of the Salvador Declaration. However, it may be noted that the second preambular paragraph of the Bangkok Declaration refers to the Congresses as constituting ‘a major intergovernmental forum’, thus ignoring the traditional strong participation of non-governmental organizations at these Congresses.

civil society organizations to overcome the obstacles that may impede the delivery of social and legal assistance to victims of trafficking. Subpara (q), which deals with hate crime, notes that the member states shall consider providing specialized training to criminal justice professionals on responding to hate crimes, to help engage effectively with victim communities and to build public confidence and cooperation with criminal justice agencies”.

As noted, para 10 deals exclusively with the development and implementation of consultative and participatory processes in crime prevention and criminal justice in order to engage all members of society. The point is made once again that it is the state that is in charge: the member states “recognize our leading role and responsibility at all levels in developing and implementing crime prevention strategies and criminal justice policies at the national and subnational levels”. However, the member states also recognize the importance of taking measures “to ensure the contribution of civil society, the private sector and academia”.

The thirteen subparagraphs to para 10 forms a long “shopping list” of issues in respect of which, and ways in which, public participation should be encouraged. The following summarized points are particularly relevant to the issue of public participation:

(c) the promotion of a culture of lawfulness, and seeking the support of civil society in crime prevention, in order to address the social and economic root causes of crime;

(d) dealing with social conflict through mechanisms of community participation, including by raising public awareness, and increasing cooperation between the public, competent authorities and civil society;

(f) fostering public participation in the use of traditional and new information and communications technologies in crime prevention and criminal justice;

(g) enhancing public participation through the promotion of e-government systems in crime prevention and criminal justice, including the promotion of the use of new technologies to facilitate cooperation and partnerships between the police and the communities they serve;

(h) strengthening public-private partnerships in crime prevention and control; and

(k) consideration of partnering and supporting community initiatives and fostering the active participation of citizens in ensuring access to justice for all, and in crime prevention and the treatment of offenders.

Para 11, which deals with technical assistance, calls on the UNODC, the network of institutes of the United Nations crime prevention and criminal justice programme, and all relevant United Nations entities and international and regional organizations, to continue to coordinate and cooperate with Member States to provide effective responses to the challenges faced at the national, regional and global levels, *as well as to strengthen the effectiveness of public participation in crime prevention and criminal justice*, including through the preparation of studies and the development and implementation of programmes (emphasis added here).

VI. PUBLIC PARTICIPATION IN THE AGE OF THE 2030 AGENDA

Have the disagreements referred to above in the UN Crime Programme regarding the role of non-governmental organizations, as well as the other developments such as securitization, affected how the UN Crime Programme works?

The easy answer to this is “yes”. The concept of non-governmental organizations appears to have all but disappeared from UN Crime Programme texts formulated by consensus.

There are three main reasons, however, why that would be a misrepresentation of the essence of the UN Crime Programme.

The first is linguistic. Although “non-governmental organizations” is a recognized legal concept in the UN, and non-governmental organizations continue to have a strong institutionalized role at the UN Crime Commission, at the UN Crime Congresses and in other work of the UN, it has become a politically charged term when referring to work being done by other than governmental actors. This is very evident from the rapid change that has taken place, in the space of only a few years, in what terminology is used at UN Congress Declarations.

The UNODC has already responded to this concern by simply replacing the word “non-governmental

organization” with a synonym, “civil society organization”. To quote from the UNODC website:⁴³

UNODC recognizes the need to promote strong partnerships with civil society organizations in dealing with the complex issues of drug abuse and crime which undermine the fabric of society. The active involvement of civil society, which includes NGOs, community groups, labour unions, indigenous groups, charitable organizations, faith-based organizations, professional associations and foundations is essential to help UNODC carry out its global mandates.

As the Charter recognizes, civil society organizations are important partners of the United Nations. Over the past sixty-five years they have developed a close relationship with the Organization, working in a variety of areas such as service delivery, policy development, analysis and advocacy. Today thousands of accredited Non-Governmental Organizations work with the UN worldwide, serving as important sources of public information about the UN and bringing fresh information and ideas from the field.

The second reason is that UN Crime Programme continues to produce reports, resolutions and UN Congress Declarations that acknowledge the central importance of public participation in crime prevention and criminal justice. Despite the securitization process referred to above, the member states do continue to deal with “soft” issues of public participation, even though relatively less time is spent on these.

The third reason is the most important one, the guiding effect of the 2030 Agenda, the Sustainable Development Goals. Although also these SDGs do not contain a single reference to non-governmental organizations, they do refer several times to civil society, and in one connection (para. 41) even to civil society organizations.

The 2015 UN Crime Congress in Doha contributed, on its part, to the incorporation of the rule of law, crime prevention and criminal justice issues into Goal 16 of the SDGs. It is this that now clearly provides the frame of reference for the UN Crime Programme.

In so doing, the SDGs challenges the UN Crime Programme to pay 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 intellectual debate from the early years of the UN Crime Programme 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.

The government-driven discussions in the UN Crime Commission 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 of local communities, of victims and of offenders.

Moreover, Goal 17.17 of the SDGs expressly states that the target is to “encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships”.

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

⁴³ <https://www.unodc.org/unodc/en/ngos/DCN0-NGOs-and-civil-society.html>

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.

Civil society will continue to have an important seat at that table.

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Annex I. References in UN standards and norms to NGOs and the role of the public

Up to the mid-1980s, the UN standards and norms on crime prevention and criminal justice contained almost no reference to civil society, to non-governmental organizations, or to partnership with the public. This could be explained largely by their subject, and in part also by who was involved in their drafting.⁴⁴ Two of the first six instruments dealt with capital punishment, and two with torture and other cruel, inhuman or degrading treatment.⁴⁵ The focus in all four was on strengthening human rights safeguards in the administration of justice. Presumably at the time that these were being drafted, the lawyers, physicians and criminal justice professionals involved in the process did not regard civil society as having any particular relevance in such matters.⁴⁶ As a result, there are no references to the public or to non-governmental organizations in these instruments.

To some extent, this conjecture could be applied also to the Code of Conduct for Law Enforcement Officials, adopted in 1979. The drafting was largely in the hands of law enforcement specialists, who focused on training and oversight. Again, there are no references to the public or to NGOs.

Of these six first standards and norms that had been adopted, the first, the Standard Minimum Rules on the Treatment of Prisoners, at least contains a passing mention of "the public". Rule 46(2) of the SMR provides that "The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used."^{47, 48}

During the 1980s, a marked change took place in the standards and norms in several respects. One change was in the number and scope of such instruments being adopted. Only six instruments had been drafted before 1985. In comparison, as many as 26 appeared during the ten years between 1985 and 1995, dealing with a wide variety of issues. (Since then, the pace has decreased.) A second change was that non-governmental organizations became even more actively involved in their drafting. A third change has to do with the substance of this paper: many of the new instruments made extensive references to civil society, non-governmental organizations, and participation of the public.

This third change can largely be attributed to the second: perhaps inevitably, the NGOs often wanted to insert references to their role in crime prevention and criminal justice.

A review of what references to NGOs, civil society and the community were inserted into the standards and norms, and what terms were used, shows considerable variety.

Of the three terms, "non-governmental organization" has been used most consistently, and generally (but not always) as a part of the standard formulation "Governments, intergovernmental and non-governmental

⁴⁴ For an excellent overview of the emergence of the UN standards and norms, see Clark 1994, esp. pp. 97 ff.

⁴⁵ General Assembly resolution on capital punishment (1971), the Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment (1975), Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment (1982), and Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (1984).

⁴⁶ However, it might be noted that para. 2 of the resolution by which the "Safeguards" instrument was adopted invited non-governmental organizations to conduct research on the use of the death penalty – a harbinger of one way in which the future standards and norms will envisage a role for NGOs.

⁴⁷ In addition, two rules offer a potential for non-governmental participation. Rule 61 deals with the role of "community agencies" in assisting correctional staff in the rehabilitation of prisoners, and rule 81, correspondingly, with the role of "services and agencies, governmental or otherwise" in assisting released prisoners.

⁴⁸ When the SMRs were updated in 2015, and became renamed as the "Mandela Rules", no additional provisions relating to civil society et al were included.

organizations and the public". This consistency is clearly due to the fact that, within the context of the activities of the United Nations, "non-governmental organization" has a specific legal meaning. As noted at the beginning of this paper, non-governmental organizations can apply for consultative status with the Economic and Social Council, and a large number have done so.

In various standards and norms, the drafters had apparently wanted to restrict the scope of NGOs addressed to those with a special interest or expertise in the area in question, and thus a few standards and norms refer to "the non-governmental organizations concerned" (Procedure 12 of the Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary), "relevant non-governmental organizations" (articles 19, 20 and 22 of the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice), and "competent non-governmental organizations" (guideline 19 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which deals with technical assistance in matters relating to such access).

The term "civil society" is used in several standards and norms. In addition, the following three variations appear:

- "civil society organizations" (para 5 of the resolution adopting the Kadoma Declaration on Community Service)
- "civil society groups" ((g) of the Arusha Declaration on Good Prison Practice), and
- "members of civil society" (Guideline 9 of the Guidelines for Action on Children in the Criminal Justice System).

The term "the community", in turn, is used as a general concept to refer to the public at large, to persons who are not (necessarily) acting in an organized manner. Guideline 5 of the Guidelines for the Prevention of Crime states that "[w]hile the term "community" may be defined in different ways, its essence in this context is the involvement of civil society at the local level."⁴⁹

To confuse the terminology even more, the following terms, all of which are derived from the word "community", arguably refer also to civil society:

- community-based organizations (para 9 of the introduction to the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems),
- community organizations and agencies (guideline 22 of the Riyadh Guidelines),⁵⁰
- community groups (guideline 29 of the Riyadh Guidelines; see also guidelines 32 through 39),
- community representatives (Guideline 2 of the Guidelines for cooperation and technical assistance in the field of urban crime prevention), and
- voluntary organizations, local institutions and other community resources (the Beijing Rules, rule 26)

Finally, it can be mentioned that "the community" as a basic term appears in two standards and norms, the Basic Principles for the Treatment of Prisoners (basic principle 10) and the Tokyo Rules (general principle 1.2 and rule 13.4)

As for the substance of these different references, they fall into three general categories:

- references calling for non-governmental organizations to assist the Secretary-General, for example in the collection of data or in the preparation of reports;
- references calling for better public awareness of the issues dealt with in the instrument in question, including wider dissemination of copies of the instrument to the public (or, alternatively, to non-governmental organizations); and
- references calling for mobilization more widely of community resources, and for public participation.

⁴⁹ Somewhat confusingly, this same standard and norm, having made an attempt at conceptual clarity, then proceeds to use several different concepts, all of which seem to be much the same: community organizations and non-governmental organizations (both used in Guideline 9), civil society (Guidelines 21, 24, 26 and 27), 'all segments of civil society' (Guidelines 15 and 19), and 'communities and other segments of civil society' (Guideline 16).

⁵⁰ In addition, guideline 9(c) of the Riyadh Guidelines refers to 'non-governmental agencies'.

References to the provision of assistance to the Secretary-General

The first of the three categories is the smallest of the three.

Three standards and norms adopted during the same year, 1989, contain a provision stating that the Secretary-General is to prepare periodic reports on the implementation of the standard and norm, in cooperation with, inter alia, non-governmental organizations.

Para II (B) (2) of the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials states that the Secretary-General shall prepare such periodic reports

“drawing also on observations and on the cooperation of specialized agencies and relevant intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council”.

Along the same lines, Procedure 8 of the Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary mandates the Secretary-General to prepare independent quinquennial reports on implementation on the basis not only of information received from governments, but also from, inter alia, non-governmental organizations, in particular professional associations of judges and lawyers, in consultative status with the Economic and Social Council. Finally, Procedure 13 of the Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary mandates the Secretary-General to “take steps to ensure that non-governmental organizations in consultative status with the Economic and Social Council become actively involved in the implementation process and the related reporting procedures”.

These three standards and norms are anomalies, in that no similar provision existed in earlier standards and norms, nor were similar phrasing incorporated into later standards and norms. 1989 was the year in which the restructuring of the UN Crime Programme got underway, and one of the driving forces was the wish of member states to have greater say in the programme. In this light, it is somewhat understandable that subsequently drafted standards and norms dropped such provisions.

The standard and norm on “Firearm regulation for purposes of crime prevention and public health and safety” (1997) is another anomaly, in that para 6 makes reference to the involvement of NGOs in regional workshops to be held later on that year, “although not when sensitive law enforcement issues will be discussed”. Para 7 requests that the views of e.g. NGOs be solicited on the development of a declaration of principles.

The Guidelines for Action on Children in the Criminal Justice System (1997) provides in Guideline 40 for the establishment of a coordination panel that would formulate a common strategy, and that would have NGOs “that have a demonstrated capacity to deliver technical cooperation services in this area should be invited to participate in the formulation of the common strategy”.

Finally, the Plan of Action for implementation of the Victim’s Declaration (1998) contains several provisions opening the work of the UNODC for input from, inter alia, non-governmental organizations. Para 2 requests the Secretary-General to develop, in collaboration with relevant intergovernmental and non-governmental organizations, criteria for the selection of technical cooperation projects for the establishment or the further development of victim services. The following paragraph invites Member States, intergovernmental and non-governmental organizations and the institutes of the United Nations Crime Prevention and Criminal Justice Programme network to assist the Secretary-General in updating a Guide and Handbook on implementation. Para 5 requests the Secretary-General, in cooperation with interested Member States and non-governmental organizations, to support an international database on practical national and regional experiences in providing technical assistance and on bibliographic and legislative information, including case law relevant to this field, and para 6 invites Member States and non-governmental organizations to provide information for the database on projects, new programmes, case law and legislation and other relevant guidelines and to help in identifying experts who could assist Member States, upon request.

References in standards and norms calling for better public awareness

When UN standards and norms were drafted from the mid-1980s on, a provision was generally included

on the importance of promoting public awareness about the issue in question. Such provisions called either for dissemination of the UN standard and norm itself, or for greater public awareness.

An example of a provision calling for dissemination of an instrument is para II(B)5 of the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials,⁵¹ which provides that “The Secretary-General shall make available the Code and the present guidelines to all States and intergovernmental and non-governmental organizations concerned, in all official languages of the United Nations.” Correspondingly, the last preambular paragraph of the Basic Principles on the Independence of the Judiciary⁵² provides *inter alia* that “[t]he following basic principles ... (should) be brought to the attention of judges, lawyers, members of the executive and the legislature *and the public in general...*” (emphasis added here).

As for the many standards and norms containing provisions on public awareness, the formulation depends on the context. Some of these provisions emphasized the importance of the public understanding the importance of the work being done by the criminal justice system. For example Rule 8 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty refers to the awareness of the public “that the care of detained juveniles and preparation for their return to society is a social service of great importance”,⁵³ and guideline 11(c) of the Guidelines for Action on Children in the Criminal Justice System emphasizes the importance of the *understanding of the public* of the spirit, aims and principles of child-centred justice” (emphasis added here).⁵⁴ Para. 4 of the Basic Principles on the Role of Lawyers, in turn, refers to the need to inform the public about their rights and duties under the law “and the important role of lawyers in protecting their fundamental freedoms”.⁵⁵

Provisions in other standards and norms are designed to mobilize public opinion regarding the seriousness of certain issues. Perhaps the most comprehensive set of such provisions is to be found in the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice.⁵⁶ Article 22, which deals with crime prevention, urges among others “relevant non-governmental organizations”, as appropriate,

- to develop and implement relevant and effective public awareness and public education initiatives, as well as school programmes and curricula, that prevent violence against women by promoting respect for human rights, equality, cooperation, mutual respect and shared responsibilities between women and men,
- to set up outreach programmes, and provide relevant information to women about gender roles, women’s human rights and the social, health, legal and economic aspects of violence against women in order to empower women to protect themselves and their children against all forms of violence,
- to set up outreach programmes for offenders or persons identified as potential offenders in order to promote non-violent behaviour and attitudes and respect for equality and the rights of women,
- to develop and disseminate, in a manner appropriate to the audience concerned, including in educational institutions at all levels, information and awareness-raising materials on the different forms of violence that are perpetrated against women and the availability of relevant programmes that include information on the relevant provisions of criminal law, the functions of the criminal justice system, the victim support mechanisms that are available and the existing programmes concerning non-violent behaviour and the peaceful resolution of conflicts,
- to support all initiatives, including those of non-governmental organizations and other relevant organizations seeking women’s equality, to raise public awareness of the issue of violence against women and to contribute to the elimination of such violence.

⁵¹ Economic and Social Council resolution 1989/61, annex.

⁵² *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August - 6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

⁵³ General Assembly resolution 45/113, annex.

⁵⁴ Economic and Social Council resolution 1997/30, annex.

⁵⁵ *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.1), chap. I, sect. B.3, annex.

⁵⁶ General Assembly resolution 65/228, annex.

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References in standards and norms calling for mobilization more widely of community resources, and for public participation

A very large number of standards and norms recognize the importance of mobilizing all possible resources in order to respond to the issues addressed in the respective instruments:

- the Beijing Rules (Rules 1.3 and 25),
- the UN Victim Declaration (art. 14; see also preambular para 1 of the 1989 resolution on the implementation of the Victim Declaration),
- Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary (Procedures 12 and 13),
- the resolution on implementation of the Basic Principles for the Treatment of Prisoners (para 10),
- the Tokyo Rules (general principle 1.2, and rules 13.4, 19 and 22.1),
- the Riyadh Guidelines (Guidelines 6, 9(c), 22, 29 and 32 through 39),
- Declaration on the Elimination of Violence against Women (art. 4(e), 4(o), 4(p) and 5(h)),
- Guidelines for cooperation and technical assistance in the field of urban crime prevention (Guideline 2 (b), 3(b)(ii) and 3(d)(ii)(c)),
- Guidelines for Action on Children in the Criminal Justice System (Guidelines 5, 9, 23, 27, 34, 40 and 53),
- the Kampala Declaration (points 1, 4 and 8),
- Plan of Action for implementation of the Victim's Declaration (paras 1, 4, 7, 8 and 9),
- the Kadoma Declaration on Community Service (para 5 of the adopting resolution),
- the Arusha Declaration on Good Prison Practice (para g),
- the Basic Principles on the use of restorative justice programmes in criminal matters (para 22),
- the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Guidelines 3(b), 13(c)(iii), 16, 18 and 36), and
- the Bangkok Rules (preambular para 5 and rules 46, 47, 59 and 62)

Four standards and norms deserve special attention when speaking of resource mobilization and public participation:

- the 2002 Guidelines for the Prevention of Crime,
- the 2010 Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice,
- the 2012 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, and
- the 2014 UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice.

Not only are these four standards and norms of relatively recent vintage – the most recent was adopted only three years ago – but they are commendably clear on the importance of promoting cooperation between the governmental and the non-governmental sectors. Guideline 16 of the Guidelines for the Prevention of Crime, although it acknowledges the leadership role of the state, notes the importance of civil society:

“In some of the areas listed below, Governments bear the primary responsibility. However, the active participation of communities and other segments of civil society is an essential part of effective crime prevention. Communities, in particular, should play an important part in identifying crime prevention priorities, in implementation and evaluation, and in helping to identify a sustainable resource base.”

Moreover, some of the guidelines appear to stress that both governments and civil society have an independent responsibility to act. Guidelines 24, 26 and 27, for example, are addressed to “governments and civil society”, and set out what activities they should engage in, without suggesting that civil society should (always) act in line with governmental requests and under governmental supervision.

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems recognize that it is the state that has the responsibility for providing access to justice. In this light – and in comparison with the way on which the Guidelines for the Prevention of Crime at times place governments and civil society on an independent footing as actors – the legal aid standard and norms generally uses a formulation like “states in consultation with civil society”.